

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Dakota Access, LLC**  
**Dakota Access Pipeline Project**  
**Siting Application**

**Case No. PU-14-842**  
**OAH File No. 20150029**

**ORDER ON PETITIONS TO INTERVENE  
AND PREHEARING ORDER**

**May 27, 2015**

**Appearances**

Wade C. Mann, Administrative Law Judge, Office of Administrative Hearings, 2911 North 4<sup>th</sup> Street, Suite 303, Bismarck, ND 58503.

Zachary Pelham, Special Assistant Attorney General, 314 E. Thayer Ave., P.O. Box 400, Bismarck, ND 58502-0400 on behalf of the Public Service Commission. Also present from the Public Service Commission were Commissioner Fedorchak, Commissioner Christmann, Illona Jeffcoat Sacco, Jack Schuh, Pat Fahn and Julie Prescott.

Brian Bjella and Blaine Johnson, Attorneys at Law, Crowley Fleck PLLP, 100 West Broadway, Suite 250, Bismarck, North Dakota 58501 on behalf of Dakota Access, LLC.

JJ England, Attorney at Law, Baumstark Braaten Law Partners, 109 North 4<sup>th</sup> Street, Suite 100, Bismarck, North Dakota 58501 and Matt J. Kelly, Attorney at Law, Tarlow and Stonecipher, PLLC, 1705 West College Street, Bozeman, Montana 59715 on behalf of the Petitioners identified below as the "Schultz Petitioners".

Bryan L. Giese, Attorney at Law, 107 First Avenue NW, Suite 100, Mandan, North Dakota 58554 on behalf of the Petitioner Douglas E. Bopp.

Bryan Van Grinsven and Tyler Bakke, Attorneys at Law, McGee, Hankla & Backes, P.C., 2400 East Burdick Expressway, Suite 100, Minot, North Dakota 58702 on behalf of the Petitioner North Dakota Pipeline Company, LLC.

**Order Granting Petitions to Intervene**

On May 11, 2015, counsel for John Schultz; Lois Ferebee; Dale Ferebee; and Douglas Ferebee submitted four separate Petitions to Intervene. On May 14, 2015, counsel for Daniel H. and Charlotte Neurohr; Gordon Kroh, Wesley Kroh and Eldon Kroh; Michael and Janice Isaak; Michael L. and Bonnie Haupt; Nina Filibeck; Russell Kunkel; Timothy and Roberta Wasem;

Kathleen Schmaltz; Robert J. Slavick; Leo and Karen Reisenauer; Paula Jo A. Wanner and Adam J. Wanner; Dennis Kunkel; Vernon J. Leingang; Edward Clive and Patricia G. Pelton; Jeff and Angie Renner; Grant Johnson; Lois Wanner; Thomas L. Tuhy; John Steckler; Joel Johnson; and Hildegard Steckler submitted twenty-one separate Petitions to Intervene. On May 18, 2015, counsel for Jerome Rice; Milton O. Lindvig; Gail Howard; Janet Anderson; Doug Hille; Florence Bessaw, JoAnn Payne and Mary Jane Miller; Zane and Alice Voigt; Larry and Hollis Erdmann; and Delbert Zarr submitted nine separate Petitions to Intervene. All of the Petitioners identified above are represented by attorney Derrick Braaten, Baumstark Braaten Law Partners, and Matt J. Kelly, Tarlow and Stonecipher, PLLC. The petition of John Schultz was the first petition filed on May 11<sup>th</sup> by attorneys Braaten and Kelly and for purposes of this Order, the petitions of the thirty-four petitioners represented by these two attorneys will be collectively referred to as the “Schultz Petitions.”

On May 20, 2015, counsel for Douglas E. Bopp submitted a Petition to Intervene and supporting affidavit. For purposes of this Order, this petition will be referred to as the “Bopp Petition.”

On May 22, 2015, counsel for North Dakota Pipeline Company, LLC submitted a Petition to Intervene and supporting affidavit. For purposes of this Order, this petition will be referred to as the “North Dakota Pipeline Petition.”

North Dakota Century Code § 28-32-28 addresses intervention in adjudicative proceedings and provides as follows:

An administrative agency may grant intervention in an adjudicative proceeding to promote the interests of justice if intervention will not impair the orderly and prompt conduct of the proceeding and if the petitioning intervenor demonstrates that the petitioner’s legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of statute or rule. The agency may impose conditions and limitations upon intervention. The agency shall give

reasonable notice of the intervention to all parties. An administrative agency may adopt rules relating to intervention in an adjudicative proceeding.

The North Dakota Public Service Commission (“Commission”) has adopted its own rules relating to intervention. The Commission’s rule on intervention provides in part as follows:

Any person with a substantial interest in a proceeding may petition to intervene in that proceeding by complying with this section. An intervention may be granted if the petitioner has a statutory right to be a party to the proceeding; or the petitioner has a legal interest which may be substantially affected by the proceeding, and the intervention would not unduly broaden the issues or delay the proceeding. The commission may impose conditions and limitations on an intervention to promote the interests of justice.

...

Contents of petition to intervene. A petition to intervene must be in writing and must set forth the grounds for intervention, the position and interest of the petitioner in the proceeding, what the petitioner would contribute to the hearing, and whether the petitioner’s position is in support of or in opposition to the relief sought.

N.D. Admin. Code § 69-02-02-05.

Dakota Access, LLC (“Dakota Access”) did not submit a written response to the petitions. A hearing was held May 26, 2015, to address the petitions. Dakota Access confirmed at the hearing that it did not oppose any of the petitions to intervene. Counsel for the Public Service Commission Advisory Staff did not take a position on the petitions.

Each of the thirty-four Schultz Petitions, the Bopp Petition and the North Dakota Pipeline Petition were supported by an affidavit or affidavits of the respective petitioner[s]. The petitions and supporting affidavits all set forth the grounds for intervention, the position and interest of the petitioners, what they can contribute to the hearing and their positions with respect to the relief sought by the applicant. The petitioners have each presented sufficient information to satisfy the statutory intervention requirements set forth in N.D.C.C. § 28-32-28 and the Commission’s rules on intervention.

Having considered the written submissions of the parties, the arguments presented at the prehearing conference and the applicable statutory provisions and administrative rules, it is hereby ORDERED that:

The Schultz Petitions, the Bopp Petition and the North Dakota Pipeline Company Petition to Intervene are granted. Petitioners John Schultz; Lois Ferebee; Dale Ferebee; Douglas Ferebee; Daniel H. and Charlotte Neurohr; Gordon Kroh, Wesley Kroh and Eldon Kroh; Michael and Janice Isaak; Michael L. and Bonnie Haupt; Nina Filibeck; Russell Kunkel; Timothy and Roberta Wasem; Kathleen Schmaltz; Robert J. Slavick; Leo and Karen Reisenauer; Paula Jo A. Wanner and Adam J. Wanner; Dennis Kunkel; Vernon J. Leingang; Edward Clive and Patricia G. Pelton; Jeff and Angie Renner; Grant Johnson; Lois Wanner; Thomas L. Tuhy; John Steckler; Joel Johnson; Hildegard Steckler; Jerome Rice; Milton O. Lindvig; Gail Howard; Janet Anderson; Doug Hille; Florence Bessaw, JoAnn Payne and Mary Jane Miller; Zane and Alice Voigt; Larry and Hollis Erdmann; and Delbert Zarr (“Shultz Intervenors”); Douglas E. Bopp and North Dakota Pipeline Company, LLC shall each be permitted to appear as intervenors in PSC Case No. PU-14-842.

#### **Prehearing Order**

Counsel for Dakota Access, the Commission and each of the Intervenors addressed hearing procedure for the scheduled public hearings on the Dakota Access Siting Application at the telephonic prehearing conference on May 26, 2015. In accordance with the agreement of the parties, and consistent with the applicable statutory provisions and the Commission’s administrative rules, it is hereby ORDERED that:

1. Intervenor Douglas E. Bopp shall be permitted to submit an affidavit as evidence into the record in lieu of presenting testimony at the Mandan hearing subject to the following conditions: a) After examination of the affidavit, the other parties of record

reserve the right to call Mr. Bopp to appear at one of the subsequent hearings to be cross-examined on the content of the affidavit. b) If Mr. Bopp is unable to make himself available for subsequent cross-examination upon the request of any of the parties, his affidavit shall not be made part of the record and shall not be considered as evidence by the Commission.

2. Order of procedure at each of the public hearings shall be as follows: Dakota Access as the applicant shall present its case first and be given the opportunity for rebuttal. Upon conclusion of Dakota Access' presentation, the Schultz Intervenors shall be permitted to offer testimony or other evidence. North Dakota Pipeline Company shall then have the opportunity to present testimony of other evidence if it elects to do so, followed by Mr. Bopp if he is present. Public comment will follow the last intervenor. Counsel for each of the intervenors will have the opportunity to present a brief opening statement prior to Dakota Access beginning its case.
3. Order of examination of witnesses at each of the public hearings shall be as follows: Counsel for Dakota Access; counsel for Commission Advisory Staff; Commissioners; counsel for the Schultz Intervenors; counsel for North Dakota Pipeline Company; and counsel for Mr. Bopp. Follow-up examination shall be permitted as necessary.

Dated at Bismarck, North Dakota, this 27<sup>th</sup> day of May 2015.

State of North Dakota  
Public Service Commission

By:   
Wade C Mann  
Administrative Law Judge  
Office of Administrative Hearings  
1707 North 9th Street  
Bismarck, North Dakota 58501  
Telephone: (701) 328-3260

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the **ORDER ON PETITIONS TO INTERVENE AND PREHEARING ORDER** was mailed by electronic mail on the 27 day of May 2015, to:

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OFFICE OF ADMINISTRATIVE HEARINGS  
Wade C. Mann, Administrative Law Judge

  
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