

# *Dakota Access, LLC*

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March 23, 2017

Mr. John M. Schuh  
Staff Attorney  
North Dakota Public Service Commission  
600 East Boulevard Avenue, Dept. 408  
Bismarck, ND 58505-0480

**RE: Dakota Access Pipeline Project, Case  
No. PU-14-842- Response to March 9,  
2017 Compliance Inquiry**

Dear Mr. Schuh:

Dakota Access, LLC (“DAPL”) provides the following information in response to your letter dated March 9, 2017, involving compliance with the North Dakota Public Service Commission’s (“Commission”) Order granting a certificate of corridor compatibility and route permit to DAPL in the above-referenced matter. Both of the issues raised in your letter have been previously addressed by DAPL in a response submitted to the Commission on November 29, 2016, but will again be addressed and clarified herein.

Regarding the first issue, you cite to a construction inspection report prepared by the Commission’s third party construction inspector noting issues with clearing through wooded areas. *See* PSC Docket No. 212. As previously indicated to the Commission, at the time of construction and clearing in various areas, DAPL was following the project plans and workspace drawings that were submitted to and approved by the PSC in the Order dated January 20, 2016. Construction under those approved plans began immediately thereafter on the terminal portion of the project and on or around May 16, 2016 for the pipeline portion of the project.

In the Commission’s Order there was an apparent conflict between the approved project-specific Environmental Construction Plan, the DAPL provided drawings and plan sheets, and the “generic” or “boiler plate” project conditions/provisions as provided in the North Dakota PSC Certification Relating to Order Provisions – Transmission Facility Siting (“Certification”), Provision 20, and corresponding Tree and Shrub Mitigation Specifications. Specification 8 states that workspace within windbreaks, shelterbelts, and all other wooded areas should be limited to 50 feet “unless otherwise approved by the Commission.” In this situation, all the project plans and workspace requirements, including the Environmental Construction Plan, clearly identified areas larger than 50 feet. Because all of those plans were approved without comment or modification by the Commission in its Order, those plans became the basis of the construction plan, and presumably met the approval by the Commission as stated in Specification 8 which states “unless otherwise approved by the Commission.” When DAPL received its Order, it was not thought that this was a mere discrepancy as would have been handled under

Provision 9, but an approval of the workspace plans under Specification 8 of the Tree and Shrub Mitigation Specifications.

However, when DAPL became aware of the differing opinions regarding the interplay of the documents, DAPL raised the issue with the Commission. On June 22, 2016, a motion was made and approved by the Commission revising the clearing limitation to 85 feet clarifying any conflict in the Order. Prior to the motion, several areas along the ROW were cleared to the width as submitted and approved on the project plans and drawings.

It is unclear from your letter whether the areas allegedly cleared outside the 85 foot width were areas cleared prior to the previous exchange between DAPL and the Commission resolving the clearing issues. Additionally, according to your letter and the report filed at PSC Docket No. 221, only one area located at MP 1.5, Spread 8, was cleared outside the 85-foot approved area. DAPL lacks additional information from the Commission to specifically address any other areas of clearing in dispute. Any areas the Commission may take issue will be revegetated and subsequent replanting will occur in compliance with the tree and shrub mitigation plan.

The second issue raised by the Commission in your letter is the perceived inadequate stripping, segregation, and handling of topsoil during construction. Again, DAPL previously submitted information regarding this issue to the Commission. It appears there is a difference of opinion between the Commission's third party inspector and other standards in the industry regarding topsoil stripping, segregation, and handling procedures. Duraroot Environmental Consulting has prepared the attached technical memorandum in response to the third party construction inspector report filed at PSC Docket No. 216 in an attempt to clarify the issues.

DAPL welcomes the opportunity to discuss these issues in more detail with the Commission to resolve any misunderstandings, and to allow the Commission to provide more information with respect to the issues raised. If you should have any questions, please advise.

Sincerely,

/s/ Mike Futch

Mike Futch  
DAPL Project Manager, North Dakota