

May 8, 2017

VIA HAND-DELIVERY

Mr. Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

**Re: Dakota Access, LLC
Case No. PU-14-842**

Dear Mr. Nitschke:

Enclosed for filing in the above entitled matter, please find an original and ten (10) copies of Dakota Access, LLC's Response to WPC Comments on the North Dakota Tree and Shrub Replacement Plan and Certificate of Service.

Also enclosed is a CD containing the above-referenced documents in PDF format. Should you have any questions, please advise.

Sincerely,



LAWRENCE BENDER

LB/ber
Enclosures

cc: John Schuh – via e-mail
Sara Cardwell – via e-mail

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287 **PU-14-842** Filed: 5/8/2017 Pages: 6
**Response 2 May 2017 Intervenor comments on Tree
and Shrub Replacement Plan**

May 5, 2017

Mr. Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

**RE: Dakota Access Pipeline Project, Case No. PU-14-842
Response to WPC comments on the North Dakota Tree and Shrub Replacement
Plan**

Mr. Nitschke:

Dakota Access, LLC (“Dakota Access”) has been and is continuing to coordinate with landowners with respect to the scope and specifics of the North Dakota Tree and Shrub Replacement Plan (“replanting plan” or “plan”). As of May 4th, 2017 all 179 affected landowners have been contacted, more than 75 percent are electing to participate in the replanting effort, 23 percent have declined, and 2 percent have yet to finalize their decision. The replanting plan submitted to the Public Service Commission (“PSC”) has taken into consideration landowner preferences and site conditions. While the plan was drafted by KC Harvey Environmental, it should be noted that three Natural Resource Conservation Districts (“NRCS”) are carrying out the replanting efforts in Mercer, Morton, and Emmons County and their expertise has been incorporated into the plan.

Dakota Access, LLC has reviewed the comments submitted by Western Plains Consulting, Inc. (“WPC”) for the North Dakota Tree and Shrub Replacement Plan developed for the Dakota Access Pipeline project (“DAPL”) and is providing the following information in response to the comments.

1. All tree/shrub mitigation plantings should follow NRCS standards and specifications. The specifications are available on line at <https://efotg.sc.egov.usda.gov>.

Response: DAPL acknowledges the electronic field office technical guides referenced above as useful references in addressing the wide range of conditions that may be encountered during planting. Planting will be completed in general accordance with these guides in addition to other resources such as the NDSU-North Dakota Forest Service, and specific landowner requests.

2. According to the DAP tree and shrub replacement plan developed by K.C. Harvey Environmental, the mitigation plantings will include far fewer species than were removed from natural areas. If replanting is done in the future, an effort should be made to plant native species that are not replaced in 2017.

Response: The North Dakota Public Service Commission, Tree and Shrub Mitigation Specifications indicate, “Except in the case of invasive or noxious species, trees and shrubs must be replaced by the same or similar species, suitable for North Dakota growing conditions”. The mitigation plan for DAPL is consistent with this specification. The planting stock for the selected species has been propagated and obtained from nurseries in the vicinity of the planting areas and species are considered suitable for the North Dakota growing conditions. In addition to the planned planting, native shrubs will be allowed to naturally regenerate in areas where native topsoil has been preserved and replaced. This natural recruitment is not included in the minimum 2:1 replacement ratio required by the PSC and will include additional species that will increase species diversity in the post-reclamation environment. The replanting plan developed for DAPL is consistent with plans submitted to the PSC on other projects.

3. The 2:1 replacement ratio should not simply be a stem count replacement. Considering the lack of diversity in the mitigation plantings, a 2:1 spatial (canopy) coverage replacement is also suggested by WPC to compensate for the lack of diversity in the mitigation plantings.

Response: WPC suggests that spatial canopy cover replacement be used as criteria to address diversity in the mitigation planting as an alternative to the North Dakota Public Service Commission, Tree and Shrub Mitigation Specifications. The North Dakota Public Service Commission, Tree and Shrub Mitigation Specifications indicate that the inventory completed for development of the tree and shrub mitigation plan should inventory by an actual count, or by a sampling method that determines the woody vegetation population. No mention is made to spatial canopy cover related to determination of the number of woody plants that would be included in the mitigation plan. Canopy cover would not have a defined correlation to the 2:1 ratio for woody plants, and it would not provide a good metric to satisfy the performance specification required by the PSC after three years of monitoring. The suggested approach does not consider, as stated in Response 2 above, that diversity will occur in native growth areas as many species will regenerate naturally. Furthermore, spatial canopy cover is not a metric that would be applicable to the linear pipeline right-of-way where a lower canopy cover would be expected for the reclaimed right-of-way since planting cannot occur within the permanent right-of-way in accordance with U.S. Department of Transportation safety requirements. Since planting will not occur in the permanent right-of-way, alternative sites have been selected in some locations, for instance where landowners have requested new windbreaks be planted. In these situations, landowners have often requested alternative species that would have variable canopy cover.

4. The Windbreak Suitability Group (WSG) of each planned mitigation planting site should be determined/verified on-Site by a professional soil classifier, to enable selection of species adapted to the soil. There is a real risk of tree planners relying on the NRCS Web Soil Survey and assuming the WSG of the major soil component(s) in a soil map unit are

applicable to the entire soil map unit. This flawed approach can result in trees being planted on an inclusion soil (i.e., a minority area within a soil map unit) that is a different WSG than the dominant component(s). The result could be non-adapted trees being planted and growing well for five or ten years, then dying. That is a huge waste of time, effort and expense with no quick or easy fix. Who – if anyone – would be responsible for remediating such a failure? WPC is aware of at least one case where non-adapted trees were planned by a DAP sub-contractor and this scenario was very likely to occur, had it not been brought to our attention.

Response: Due to the linear right-of-way for the pipeline frequent transitions between soil mapping units is anticipated. Inclusion soils may occur within a given soil group that are not consistent with the surrounding soil. Completing detailed soil mapping for the entire mitigation program to identify these unknown areas is not practicable. The Web Soil Survey will be used to identify areas where non-adaptive soil conditions may occur. A field review is being completed prior to planting in each location, and if adverse soil conditions are encountered, additional review or selection of alternative locations may be warranted. DAPL has elected to plant approximately 10 percent more or additional trees and shrubs in excess of the 2:1 replacement ratio required as an additional measure to address mortality. The proposed mitigation (2:1 plus 10 percent) does not include naturally regenerated trees and shrubs that will be recruited from the seed stock and rhizomes present in the topsoil that was replaced during reclamation. The naturally regenerated plants are adapted to the local soil conditions and will supplement the remaining planted trees and shrubs inventoried after three years of monitoring. For these reasons, the catastrophic failure predicted by WPC is not likely. Total planted and naturally regenerated trees and shrubs will be documented during monitoring in order to measure success criteria and the need for any further mitigation.

Should PSC staff have additional questions after reviewing the North Dakota Tree and Shrub Replacement Plan developed for DAPL, please feel free to contact us.

Sincerely,



Monica Howard, Director of Environmental Science
Energy Transfer Partners, LP

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

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

CASE NO. PU-14-842

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the following document:

- Dakota Access, LLC's Response to WPC Comments on the North Dakota Tree and Shrub Replacement Plan

was on the 8th day of May, 2017 served by placing the same in the United States mail, postage prepaid, properly addressed to the following:

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The original and ten (10) copies of the foregoing document were also hand delivered to the North Dakota Public Service Commission on said date.

By: 

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