

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Dakota Access, LLC
Dakota Access Pipeline Project
Siting Application

Case No. PU-14-842

AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE

STATE OF NORTH DAKOTA)
) SS.
COUNTY OF BURLEIGH)

Patrick Fahn, being first duly sworn, deposes and states as follows:

1. I make this affidavit pursuant to N.D. Admin. Code § 69-02-02-09.
2. I am the Director of the Public Utilities Division of the North Dakota Public Service Commission.
3. Under my direction and control, the Public Utilities Division responsibilities include implementation of the state’s Siting Act policy to ensure that the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota. The Division monitors and enforces utility compliance with applicable State laws and rules, as well as Commission orders and procedures.
4. The Order to Show Cause being issued against Dakota Access, LLC, is premised on the failure of Dakota Access to notify the Commission pursuant to the January 20, 2016, May 24, 2016, June 22, 2016, Orders, which included the Certification Relating to Order Provisions (“Certification”). Specifically, the Commission’s third-party construction inspector Keitu

Engineers & Consultants, advised the Commission on October 25, 2016, that it noted on October 21, 2016, during an inspection of the Project, that an area had been flagged and construction of a route adjustment was in progress. See Report, attached as Exhibit A [Dkt. 225]. The Report further indicated that Keitu inspectors were informed by Dakota Access that the route adjustment had taken place as a result of an unanticipated discovery which occurred on or around October 15, 2016. *Id.* Commission staff contacted Dakota Access on October 25, 2016, seeking additional information. Dakota Access provided a response on October 27, 2016. Dakota Access Response, attached as Exhibit B [Dkt. 227].

5. Dakota Access did not comply with N.D.C.C. § 49-22-16.3, the Certification, or the January 20, 2016, May 24, 2016, June 22, 2016, Orders, prior to beginning construction on the route adjustment and is subject to penalties set forth at N.D.C.C. § 49-22-21.

6. The North Dakota Century Code section 49-22-21 provides in relevant part

Any person who willfully engages in any of the following conduct shall be subject to a civil penalty of not to exceed ten thousand dollars for each such violation for each day that such violations persist, except that the maximum penalty may not exceed two hundred thousand dollars for any related series of violations:

* * *

b. Constructs, operates, or maintains an energy conversion facility or a transmission facility other than in compliance with the certificate or permit and any terms, conditions, or modifications contained therein.

7. The North Dakota Century Code section 49-22-16.3(1) provides:

1. Before or during construction, a utility, without any action by the commission, may adjust the route of a gas or liquid transmission line within the designated corridor if, before conducting any construction activities associated with the adjustment, the utility files with the commission certification and supporting documentation that:

- a. The construction activities will be within the designated corridor;
- b. The construction activities will not affect any known exclusion or avoidance areas within the designated corridor; and
- c. The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route.

8. The Certification states, in relevant part:

12. Company understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made and a report of such examination is filed with the Commission and the State Historical Society and clearance to proceed is given by the Commission.

* * *

38. ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED: Before conducting any construction activities for any adjustment to the designated route within the designated corridor under NDCC 49-22-16.3(1), the Company will file:

- a. Certification and supporting documentation affirming that construction activities will be within the designated corridor, will not affect any known exclusion or avoidance areas within the designated corridor;
- b. Certification and supporting documentation, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, route and the route adjustment;
- c. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

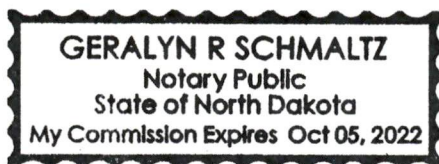
FURTHER YOUR AFFIANT SAYETH NOT.

Dated this 31 day of May, 2017.



Patrick Fahn
Director, Public Utilities Division, North
Dakota Public Service Commission

Subscribed and sworn to before me this 31st day of May, 2017.



Notary Public