

August 4, 2017



Timothy J. Dawson - Director
Office of Administrative Hearings
State of North Dakota
2911 North 14th Street, Suite 303
Bismarck, ND 58503

**Re: Dakota Access, LLC
Dakota Access Pipeline Project**

Dear Judge Dawson:

At the prehearing conference held yesterday, considerable discussion was had relative to exchanging witness lists and exhibits before the hearing scheduled for August 17, 2017. At one point in the discussion, Advisory Counsel for the North Dakota Public Service Commission ("Commission") indicated the Commission would likely not call any witnesses but that Dakota Access, LLC had the right to subpoena witnesses. In that regard, please find enclosed herewith the following:

1. Dakota Access, LLC's Motion of Issuance of Subpoenas;
2. Brief of Dakota Access, LLC in Support of Motion for Issuance of Subpoenas;
3. Proposed Subpoenas for:
Kathleen Spilman
Jaimee Antognazzi
Ryan King
Karine (Becker) Finken
Ryan Schaner
Hannah Summers

Presumably as the Administrative Law Judge responsible for handling the procedural aspect of the hearing, you will be addressing this request. In the event you determine this matter should be addressed by the Commission, we respectfully request that the matter be forwarded to them at your earliest convenience.

Attorneys & Advisors
main 701.221.8700
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Fredrikson & Byron, P.A.
1133 College Drive, Suite
Bismarck, North Dakota
58501-1215

345 PU-14-842 Filed: 8/4/2017 Pages: 17
**Motion for Subpoenas, with supporting brief,
subpoenas, and service document**

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Should you have any questions, please advise.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Bender', with a long, sweeping flourish extending to the right.

LAWRENCE BENDER

Enclosures

cc: Illona Jeffcoat-Sacco
Zachary Pelham
John Schuh
Keegan Pieper
William Leone

61918037_1.docx

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

Public Service Commission,	)	Case No. PU-14-842
)	
Complainant,)	
v.	)	DAKOTA ACCESS, LLC'S
	)	MOTION FOR ISSUANCE OF
Dakota Access, LLC,	)	SUBPOENAS
)	
Respondent.)	

[¶ 1] Pursuant to the Administrative Agencies Practice Act under N.D.C.C. § 28-32-33, Rule 45 of the North Dakota Rules of Civil Procedure, and N.D.A.C. §§ 69-02-05-03 and 98-02-03-02, Respondent, Dakota Access, LLC (“Dakota Access”), hereby requests subpoenas be issued to the individuals identified in the accompanying documents to appear and give testimony regarding the investigation of construction events in the above entitled matter. The identified individuals were involved in conducting inspections of the Dakota Access Pipeline Project (“Project”) on behalf of the North Dakota Public Service Commission. As such, the subpoenas are requested for individuals who can provide relevant testimony regarding construction inspections conducted for the Project.

[¶ 2] This Motion is based on the brief submitted herewith, and all of the pleadings and other documents previously submitted in this matter.

Dated this 4th day of August, 2017.

FREDRIKSON & BYRON, P.A.



By:

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WILLIAM LEONE (*pro hac vice* admission
pending)

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Attorneys for Respondent, Dakota Access, LLC

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

Public Service Commission,)	
	)	Case No. PU-14-842
Complainant,)	
v.)	
Dakota Access, LLC,	)	BRIEF OF DAKOTA ACCESS, LLC
	)	IN SUPPORT OF MOTION FOR
Respondent.	)	ISSUANCE OF SUBPOENAS

INTRODUCTION

[¶ 1] Respondent, Dakota Access, LLC (“Dakota Access”) herein submits this Brief in Support of its Motion for Issuance of Subpoenas pursuant to the Administrative Agencies Practice Act under N.D.C.C. § 28-32-33, Rule 45 of the North Dakota Rules of Civil Procedure, and N.D.A.C. §§ 69-02-05-03 and 98-02-03-02. The North Dakota Public Service Commission (“Commission”) has scheduled a formal hearing in the above-entitled action to be held on August 17, 2017, regarding the investigation of construction events for the Dakota Access Pipeline. Based on the information set forth herein, Dakota Access respectfully requests the attached subpoenas be issued for the individuals to appear and provide relevant testimony at the hearing.

STATEMENT OF FACTS

[¶ 2] Dakota Access is a limited liability company organized for the purpose of constructing the Dakota Access Pipeline. *See* Second Supplemental Findings of Fact, Conclusions of Law and Order (hereinafter “Second Suppl. Order”) 3, Docket No. 192. The Dakota Access Pipeline (“Pipeline” or “Project”) is an approximately 1,154-mile-long, 12-, 20-, 24-, and 30-inch-diameter crude oil pipeline and associated facilities stretching from North

Dakota to existing pipeline infrastructure near Patoka, Illinois. *Id.* at 3-4. In North Dakota, the Project is located in Mountrail, Williams, McKenzie, Dunn, Mercer, Morton, and Emmons Counties. *Id.*

[¶ 3] On December 22, 2014, Dakota Access filed an Application for a Certificate of Corridor Compatibility and Route Permit with the Commission for the approximately 358 miles of Pipeline and associated facilities located in North Dakota. *See generally* Application, Docket No. 1. On January 20, 2016, after holding three hearings regarding the Project, the Commission entered its Findings of Fact, Conclusions of Law and Order (“Order”) issuing Certificate of Corridor Compatibility Number 179 and Route Permit Number 191 for the Project. *See* Docket No. 134.

[¶ 4] On April 5, 2016, Dakota Access filed an application to amend Certificate of Corridor Compatibility No. 179 and Route Permit No. 191 for the Project (“Application to Amend”). *See* Docket No. 156. On May 24, 2016, the Commission issued its Supplemental Findings of Fact, Conclusions of Law and Order (“Supplemental Order”) and issued to Dakota Access First Amended Certificate of Corridor Compatibility No. 179 and First Amended Route Permit No. 191 designating a corridor and designating a route for the Project to include the proposed route adjustments, with the exception of Reroute Location 50. *See* Docket No. 179. On June 22, 2016, the Commission issued its Second Supplemental Findings of Fact, Conclusions of Law and Order (“Second Supplemental Order”) and issued to Dakota Access Second Amended Certificate of Corridor Compatibility No. 179 and Second Amended Route Permit No. 191 designating a corridor and designating a route for the Project to include all proposed route adjustments. *See* Docket No. 192.

[¶ 5] As part of the Commission review process following approval of the Project, the Commission retained a third-party construction inspector to provide inspection services. *See* Docket No. 136. The Commission retained Keitu Engineers & Consultants, Inc. (“Keitu”) as the third-party construction inspector for the Project. *Id.* In its capacity as third-party inspector, Keitu has conducted site inspections and submitted inspection reports and information to the Commission. *See* Docket Nos. 148, 151, 205, 212, 213, 215, 216, 218, 221, 222, 225, 229, 235-237, 244, 246, 247, 257, 258, 265, 278, and 282. Based in part on information provided by Keitu, the Commission has scheduled a formal hearing to be held on August 17, 2017, regarding the investigation of construction events. As the third-party construction inspector retained by the Commission, representatives of Keitu can provide relevant testimony regarding construction events and information associated with the inspections performed.

ARGUMENT

I. Subpoenas May Be Issued to Compel Appearance and Testimony at the Hearing.

[¶ 6] The Commission is an administrative agency subject to the Administrative Agencies Practice Act. *See* N.D.C.C. ch. 28-32. Pursuant to the Administrative Agencies Practice Act, “upon the request or motion of any party to the proceeding . . . a hearing officer may issue subpoenas . . . in accordance with the North Dakota Rules of Civil Procedure.” *See* N.D.C.C. § 28-32-33. Rule 45 of the North Dakota Rules of Civil Procedure allows for a subpoena to be issued commanding an individual to attend and testify in an action. *See* N.D.R.Civ.P. 45.

[¶ 7] In addition, “[t]he hearing officer has the duty to conduct a hearing, and related proceedings, to take all necessary action to maintain order and avoid delay, and has all powers necessary to these ends, including, but not limited to . . . Issue subpoenas and discovery orders.”

N.D.A.C. § 98-02-03-02. ALJ Timothy Dawson has been designated as the hearing officer to preside over the formal hearing scheduled for August 17, 2017. Under the powers granted to the ALJ, issuance of subpoenas in this matter fits squarely within the duties as the hearing officer. North Dakota Administrative Code § 69-02-05-03 also allows for subpoenas to be issued upon written application for proceedings before the Commission.

II. The Testimony to Be Provided Pursuant to the Subpoenas is Relevant to the Hearing Topic.

[¶ 8] Dakota Access is entitled to have the following individuals appear and testify at the formal hearing regarding the construction inspections:

- (1) Kathleen Spilman – Managing Director, Keitu
- (2) Jaimee Antognazzi – Operations Manager, Keitu
- (3) Ryan King – Project Manager, Keitu
- (4) Karine (Becker) Finken – Project Manager, Keitu
- (5) Ryan Schaner - Inspector
- (6) Hannah Summers - Inspector

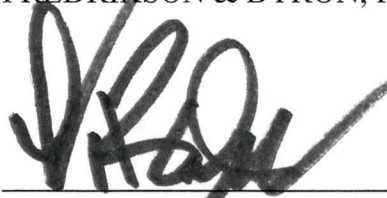
On behalf of Keitu, the above listed individuals performed inspections for the Project or have knowledge regarding the inspections and information submitted to the Commission in Keitu's capacity as the third-party inspector. As such, Dakota Access requests the proposed subpoenas attached hereto be issued to the individuals listed above.

CONCLUSION

[¶ 9] Based upon the authority granted to issue subpoenas in administrative matters, Dakota Access respectfully requests the subpoenas attached hereto be issued to compel the above named individuals to appear and provide testimony at the hearing scheduled for August 17, 2017.

Dated this 4th day of August, 2017.

FREDRIKSON & BYRON, P.A.



By: _____

LAWRENCE BENDER, ND Bar #03908
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WILLIAM LEONE (*pro hac vice* admission
pending)
KRISTOPHER C. KLEINER, ND Bar #07949
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Attorneys for Respondent, Dakota Access, LLC

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

Public Service Commission,)	
	)	Case No. PU-14-842
v.)	
	)	SUBPOENA TO APPEAR AND
Dakota Access, LLC,	)	TESTIFY
)	
Respondent.)	

THE STATE OF NORTH DAKOTA, to Kathleen Spilman, Keitu Engineers & Consultants, Inc., 1403 27th St. NW, Mandan, North Dakota 58554.

WHEREAS, Respondent, Dakota Access, LLC, by and through its counsel, Lawrence Bender, Attorney at Law, whose phone number is 701-221-8700 and address is 1133 College Drive., Ste. 1000, Bismarck, ND 58501, has requested that you be commanded to give testimony in the above-entitled proceeding pursuant to the authority provided by N.D.C.C. § 28-32-33 and N.D.A.C. §§ 69-02-05-03 and 98-02-03-02;

NOW, THEREFORE, YOU ARE HEREBY REQUIRED, under Rule 45 of the North Dakota Rules of Civil Procedure, to attend and give testimony before the Public Service Commission and Timothy Dawson, the Administrative Law Judge presiding at the formal hearing in the above-entitled action, at the time, date, and place specified below regarding the investigation of construction events.

Place: Commission Hearing Room, State Capitol, 12th Floor, 600 E. Boulevard Ave., Bismarck, North Dakota 58505

Date: Thursday, August 17, 2017

Time: 8:30 A.M. CT

Dated this ____ day of August, 2017.

Timothy Dawson
Administrative Law Judge

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

Public Service Commission,)	
	)	Case No. PU-14-842
v.)	
	)	SUBPOENA TO APPEAR AND
Dakota Access, LLC,	)	TESTIFY
)	
Respondent.)	

THE STATE OF NORTH DAKOTA, to Jaimee Antognazzi, Keitu Engineers & Consultants, Inc., 1403 27th St. NW, Mandan, North Dakota 58554.

WHEREAS, Respondent, Dakota Access, LLC, by and through its counsel, Lawrence Bender, Attorney at Law, whose phone number is 701-221-8700 and address is 1133 College Drive., Ste. 1000, Bismarck, ND 58501, has requested that you be commanded to give testimony in the above-entitled proceeding pursuant to the authority provided by N.D.C.C. § 28-32-33 and N.D.A.C. §§ 69-02-05-03 and 98-02-03-02;

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Timothy Dawson
Administrative Law Judge

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

Public Service Commission,)	
	)	Case No. PU-14-842
v.)	
	)	SUBPOENA TO APPEAR AND
Dakota Access, LLC,	)	TESTIFY
)	
Respondent.)	

**THE STATE OF NORTH DAKOTA, to Ryan King, Keitu Engineers & Consultants, Inc.,
1403 27th St. NW, Mandan, North Dakota 58554.**

WHEREAS, Respondent, Dakota Access, LLC, by and through its counsel, Lawrence Bender, Attorney at Law, whose phone number is 701-221-8700 and address is 1133 College Drive., Ste. 1000, Bismarck, ND 58501, has requested that you be commanded to give testimony in the above-entitled proceeding pursuant to the authority provided by N.D.C.C. § 28-32-33 and N.D.A.C. §§ 69-02-05-03 and 98-02-03-02;

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Timothy Dawson
Administrative Law Judge

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

Public Service Commission,)	
	)	Case No. PU-14-842
Complainant,)	
v.)	
	)	SUBPOENA TO APPEAR AND
Dakota Access, LLC,	)	TESTIFY
)	
Respondent.)	

THE STATE OF NORTH DAKOTA, to Karine Finken, Keitu Engineers & Consultants, Inc., 1403 27th St. NW, Mandan, North Dakota 58554.

WHEREAS, Respondent, Dakota Access, LLC, by and through its counsel, Lawrence Bender, Attorney at Law, whose phone number is 701-221-8700 and address is 1133 College Drive., Ste. 1000, Bismarck, ND 58501, has requested that you be commanded to give testimony in the above-entitled proceeding pursuant to the authority provided by N.D.C.C. § 28-32-33 and N.D.A.C. §§ 69-02-05-03 and 98-02-03-02;

NOW, THEREFORE, YOU ARE HEREBY REQUIRED, under Rule 45 of the North Dakota Rules of Civil Procedure, to attend and give testimony before the Public Service Commission and Timothy Dawson, the Administrative Law Judge presiding at the formal hearing in the above-entitled action, at the time, date, and place specified below regarding the investigation of construction events.

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Timothy Dawson
Administrative Law Judge

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

Public Service Commission,)	
	)	Case No. PU-14-842
Complainant,)	
v.)	
	)	SUBPOENA TO APPEAR AND
Dakota Access, LLC,	)	TESTIFY
)	
Respondent.)	

THE STATE OF NORTH DAKOTA, to Ryan Schaner, Keitu Engineers & Consultants, Inc., 1403 27th St. NW, Mandan, North Dakota 58554.

WHEREAS, Respondent, Dakota Access, LLC, by and through its counsel, Lawrence Bender, Attorney at Law, whose phone number is 701-221-8700 and address is 1133 College Drive., Ste. 1000, Bismarck, ND 58501, has requested that you be commanded to give testimony in the above-entitled proceeding pursuant to the authority provided by N.D.C.C. § 28-32-33 and N.D.A.C. §§ 69-02-05-03 and 98-02-03-02;

NOW, THEREFORE, YOU ARE HEREBY REQUIRED, under Rule 45 of the North Dakota Rules of Civil Procedure, to attend and give testimony before the Public Service Commission and Timothy Dawson, the Administrative Law Judge presiding at the formal hearing in the above-entitled action, at the time, date, and place specified below regarding the investigation of construction events.

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Date: Thursday, August 17, 2017

Time: 8:30 A.M. CT

Dated this _____ day of August, 2017.

Timothy Dawson
Administrative Law Judge

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

Public Service Commission,)	
	)	Case No. PU-14-842
v.)	
	)	SUBPOENA TO APPEAR AND
Dakota Access, LLC,	)	TESTIFY
)	
Respondent.)	

THE STATE OF NORTH DAKOTA, to Hannah Summers, Keitu Engineers & Consultants, Inc., 1403 27th St. NW, Mandan, North Dakota 58554.

WHEREAS, Respondent, Dakota Access, LLC, by and through its counsel, Lawrence Bender, Attorney at Law, whose phone number is 701-221-8700 and address is 1133 College Drive., Ste. 1000, Bismarck, ND 58501, has requested that you be commanded to give testimony in the above-entitled proceeding pursuant to the authority provided by N.D.C.C. § 28-32-33 and N.D.A.C. §§ 69-02-05-03 and 98-02-03-02;

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Dated this ____ day of August, 2017.

Timothy Dawson
Administrative Law Judge

**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 true and correct copies of the following documents:

- Dakota Access, LLC's Motion of Issuance of Subpoenas;
- Brief of Dakota Access, LLC in Support of Motion for Issuance of Subpoenas;
and
- Proposed Subpoenas for:
 - Kathleen Spilman
 - Jaimee Antognazzi
 - Ryan King
 - Karine (Becker) Finken
 - Ryan Schaner
 - Hannah Summers

were on the 4th day of August, 2017 served by placing the same in the United States mail, postage prepaid, properly addressed to the following:

Zachary E. Pelham
Pearce & Durick
314 E. Thayer Ave.
P.O. Box 400
Bismarck, ND 58502-0400

Jack Schuh
Illona Jeffcoat-Sacco
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505

Timothy Dawson, Director
Office of Administrative Hearings
2911 North 14th Street – Suite 303
Bismarck, ND 58503

By: /s/ Lawrence Bender

LAWRENCE BENDER, ND Bar #03908
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Attorneys for Respondent, Dakota Access, LLC