

July 22, 2020

HAND DELIVERED

Mr. Steve Kahl
Interim Executive Director
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

**RE: BOE Pipeline, LLC
16-Inch Crude Oil Pipeline
Case No. PU-16-094**

Dear Mr. Kahl:

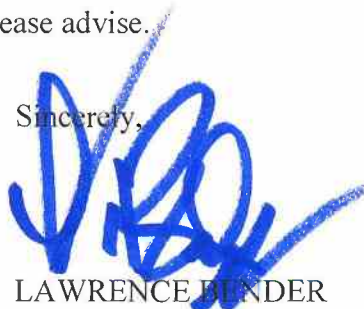
Please find enclosed for filing in the above-referenced matter an original and five (5) copies of the following documents:

1. Application for an Order of Continuing Suitability of Certificate of Corridor Compatibility No. 187 and Route Permit No. 199;
2. Exhibit A – Affidavit of John C. Wadsworth in Support of BOE Pipeline, LLC's Application for an Order of Continuing Suitability of Certificate of Corridor Compatibility No. 187 and Route Permit No. 199; and
3. Exhibit 1 to Affidavit of John C. Wadsworth – SHPO Response Letter dated March 22, 2018;

submitted on behalf of BOE Pipeline, LLC. A compact disc containing an electronic copy of the above listed documents and this letter in PDF format is also enclosed herewith.

If you should have any questions, please advise.

Sincerely,



LAWRENCE BENDER

LB/kl
Enclosures
70537520.1

Attorneys & Advisors / Fredrikson & Byron, P.A.
main 701.221.8700 / 1133 College Drive, Suite 1000

fr 47 PU-16-94 Filed 07/22/2020 Pages: 10

Application for an Order of Continuing Suitability of Certificate of Corridor Compatibility
BOE Pipeline, LLC
Lawrence Bender, Fredrikson&Byron P.A.

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

**BOE Pipeline, LLC
16-Inch Crude Oil Pipeline – Dunn and McKenzie
Siting Application**

CASE NO. PU-16-94

**APPLICATION FOR AN ORDER OF CONTINUING SUITABILITY OF
CERTIFICATE OF CORRIDOR COMPATIBILITY NO. 187 AND
ROUTE PERMIT NO. 199**

On February 24, 2016, BOE Pipeline, LLC (“BOE”) filed with the North Dakota Public Service Commission (“Commission”) a Consolidated Application for a Certificate of Corridor Compatibility and Route Permit and an Application for a Waiver or Reduction of Procedures and Time Schedules (“Application”) to authorize the construction of approximately 41.8 miles of 16-inch outside diameter crude oil pipeline and associated facilities located in Dunn and McKenzie Counties, North Dakota (the “Project”). *See* Docket Nos. 1 and 2. On August 17, 2016, the Commission entered its Findings of Fact, Conclusions of Law and Order (“Order”) issuing Certificate of Corridor Compatibility No. 187 (“Certificate”) and Route Permit No. 199 (“Route Permit”) to BOE for the construction and operation of the Project. *See* Docket No. 38.

BOE submits this Application for an Order of Continuing Suitability pursuant to § 49-22.1-16 of the North Dakota Century Code which requires a utility to certify to the Commission that the site or route continues to meet the conditions upon which the Certificate and Route Permit were issued if construction commences more than four years after a certificate or permit for the site or route has been issued. BOE will not commence construction of the Project within four years after August 17, 2016, the date the Certificate and Permit were issued. Accordingly, BOE submits the following information pursuant to § 49-22.1-16 of the North Dakota Century Code and § 69-06-09-01 of the North Dakota Administrative Code:

1. BOE certifies to the Commission that the Project continues to meet the conditions upon which the Certificate and Route Permit were issued. *See Exhibit A*, Affidavit of John C. Wadsworth (“Wadsworth Aff.”), ¶ 5.
2. Except as set forth in the finalized Class III Cultural Resources Inventory, there has been no change to the Project Study Area or Survey Area (Corridor) with respect to the Commission’s transmission facility siting criteria since the Commission’s August 17, 2016 Order in Case No. PU-16-94. *Id.*, ¶ 6.
3. BOE finalized the Class III Cultural Resources Inventory for the Project. *Id.*, ¶ 7.
4. A complete, unredacted copy of the Class III Cultural Resources Inventory and addendum thereto (collectively, the “Class III Inventory”) has been filed with the North Dakota State Historical Preservation Office (“SHPO”). *Id.*, ¶ 8.
5. The Class III Inventory identified thirteen (13) cultural resource sites within the Survey Area as well as recommendations for avoidance and mitigation measures developed through consultation with, among other agencies, the Bureau of Land Management, Tribal Historic Preservation Offices and SHPO. *Id.*, ¶ 9.
6. In its letter dated March 22, 2018, SHPO concurred with the avoidance measures set forth in the Class III Inventory. *Id.*, Ex. 1.
7. The recommended avoidance measures include at least four (4) potential re-routes of the proposed pipeline. *Id.*, ¶ 11.
8. In the event the Commission grants this application for an order of continuing suitability, BOE will file with the Commission the appropriate route adjustment certifications and supporting documentation with respect to the planned re-routes. *Id.*, ¶ 12.

9. The order of continuing suitability should be issued prior to BOE certifying the route adjustments so that BOE does not incur the additional costs associated with planning and certifying the re-routes only to have the Commission deny this application for an order of continuing suitability. *Id.*, ¶ 13.
10. BOE will follow the recommendations for avoidance measures set forth in the Class III Inventory as well as the recommendations of SHPO and other state and federal agencies having jurisdiction over the Project or portions thereof. *Id.*, ¶ 14.
11. BOE shall commence construction of the Project no later than August 17, 2024. *Id.*, ¶ 16.

In reliance on the foregoing, BOE requests that the Commission enter an order finding that the Project route and corridor continue to meet the conditions upon which the Certificate and Route Permit were issued.

BOE requests that the Commission waive the hearing requirement in its entirety and proceed by virtue of its notice and opportunity for hearing procedure in consideration of this application and BOE's certification. In support of this request, BOE submits the following:

- a. The Project route and corridor continue to meet the conditions upon which the Certificate and Route Permit were issued. *Wadsworth Aff.*, ¶ 5.
- b. BOE shall construct and operate the Project in accordance with all applicable laws, rules, regulations and orders of the Commission. *Id.*, ¶ 15.
- c. The Commission has all the necessary information available in BOE's previously filed submissions and the information provided by and on behalf of BOE in this application and the attached affidavit to render a decision, thereby making the formal hearing process unnecessary.

For the reasons stated herein, BOE requests that the Commission enter an order finding that the Project route and corridor continue to meet the evaluation and criteria requirements set forth in Ch. 49-22.1 of the North Dakota Century Code and § 69-06-08-02 of the North Dakota Administrative Code and that the Commission waive the hearing requirement in its entirety and proceed by virtue of its notice and opportunity for hearing procedure in consideration of this Certification.

Dated this 22nd day of July, 2020.

FREDRIKSON & BYRON, P.A.

By: 

Lawrence Bender, ND Bar #03908
1133 College Drive, Suite 1000
Bismarck, ND 58501-1215
Telephone: (701) 221-8700
lbender@fredlaw.com

Attorneys for BOE Pipeline, LLC

4. I am familiar with the Class III Cultural Resource Inventory and addendum thereto (collectively, the “Class III Inventory”) completed with respect to the Project.

5. BOE certifies to the Commission that the Project continues to meet the conditions upon which the Certificate and Route Permit were issued.

6. Except as set forth in the finalized Class III Cultural Resources Inventory more particularly discussed herein, there has been no change to the Project Study Area or Survey Area (Corridor) with respect to the Commission’s transmission facility siting criteria since the Commission’s August 17, 2016 Order.

7. Subsequent to the entry of the Order and issuance of the Certificate and Route Permit by the Commission, BOE finalized its Class III Inventory.

8. A complete, unredacted copy of the Class III Inventory was submitted to the North Dakota State Historical Preservation Office (“SHPO”) for review and comment.

9. The Class III Inventory identified thirteen (13) cultural resource sites within the Survey Area as well as recommendations for avoidance and mitigation measures developed through consultation with, among other agencies, the Bureau of Land Management, Tribal Historic Preservation Offices and SHPO.

10. In its letter dated March 22, 2018, SHPO concurred with the avoidance measures set forth in the Class III Inventory. A true and correct copy of the March 22, 2018 SHPO response letter is attached hereto and marked as **Exhibit 1**.

11. The recommended avoidance measures include at least four (4) potential re-routes of the proposed pipeline.

12. In the event the Commission grants BOE's application for an order of continuing suitability, BOE will file with the Commission the appropriate route adjustment certifications and supporting documentation with respect to the planned re-routes.

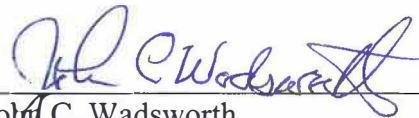
13. BOE prefers that the Commission first grant BOE's application for an order of continuing suitability so that BOE does not incur the additional costs associated with planning and certifying the re-routes only to have the Commission deny BOE's request for the order of continuing suitability.

14. BOE will follow the recommendations for avoidance measures set forth in the Class III Inventory as well as the recommendations of SHPO and other state and federal agencies having jurisdiction over the Project or portions thereof.

15. BOE will construct and operate the Project in accordance with all applicable laws, rules, regulations and orders of the Commission.

16. BOE shall commence construction of the Project no later than August 17, 2024.

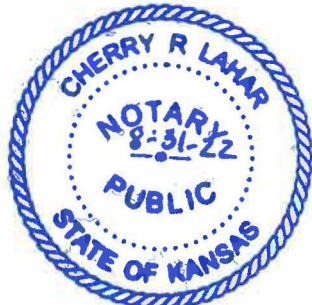
Dated this 21 day of July, 2020.



John C. Wadsworth
Chief Operating Officer, on behalf of BOE Pipeline, LLC

Subscribed and sworn to before me
this 21 day of July, 2020.

Cherry R. Lahar
Notary Public
My Commission Expires: 8-31-22



70526630.1

RECEIVED

MAR 20 2018



STATE HISTORICAL SOCIETY OF NORTH DAKOTA

March 22, 2018

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Governor of North Dakota

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Gerold Gerntholz
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Mr. Loren Wickstrom
Field Office Manager
Bureau of Land Management
North Dakota Field Office
99 23rd Avenue West Suite A
Dickinson, ND 58601-2619

ND SHPO Ref: 16-1764a BLM, USFS Bakken Oil Express Pipeline, LLC, BOE II, Dunn and McKenzie Counties, North Dakota, Class III CRI Addendum Report BLM: 2880 (NB030)

Dear Loren:

We have received and reviewed correspondence and documentation regarding 16-1764a BLM, USFS Bakken Oil Express Pipeline, LLC, Addendum to : BOE II Pipeline Project: A Class III Inventory in Dunn and McKenzie Counties, North Dakota," by Christopher R. von Wedell and Matthew Hull (KLJ, ROI 2469, November 2017).

We concur that avoidance measures as outlined in correspondence (Table 1 as updated) is acceptable with the provision that monitoring by a permitted professional archaeologist occurs in those cases as specified, and that it follows conditions as specified for the project in general.

Thank you for the opportunity to review this project and we look forward to further consultation on it should it occur. Please include the ND SHPO reference number listed above in any further correspondence for this specific project. If you have any questions, please contact either Paul Picha at (701) 328-3574 or ppicha@nd.gov or Susan Quinnell at (701) 328-3576 or squinnell@nd.gov.

Sincerely,

Claudia J. Berg
State Historic Preservation Officer (North Dakota)
and

Director, State Historical Society of North Dakota

c: Liv Fetterman, USFS, Bismarck, ND

c: Christoher R. von Wedell, KLJ-Bismarck, ND