

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

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

**Case No. PU-16-94**

**ORDER ON CONTINUING SUITABILITY**

**December 2, 2020**

**Preliminary Statement**

On February 24, 2016, BOE Pipeline, LLC (BOE) filed applications with the North Dakota Public Service Commission (Commission) for a certificate of corridor compatibility and route permit concerning approximately 41.8 miles of 16-inch outside diameter pipeline and associated facilities for the transmission of crude oil (Project). The Project would be located in Dunn and McKenzie Counties, North Dakota.

On August 17, 2016, the Commission adopted its Findings of Fact, Conclusions of Law and Order (Order) issuing Certificate of Corridor Compatibility No. 187 (Certificate 187) and Route Permit No. 199 (Permit 199) to BOE designating a location for the construction, operation and maintenance of the Project.

On July 22, 2020, BOE filed with the Commission an Application for an Order of Continuing Suitability (Application) pursuant to North Dakota Century Code section 49-22.1-16.

On August 5, 2020, the Commission issued a Notice of Opportunity for Hearing (Notice), which provided until September 3, 2020 for receiving written comments or hearing requests. No requests for hearing were received. The Notice identified the issues to be considered in this matter are:

1. Whether the site continues to meet the evaluation requirements and conditions under which Certificate 187 and Permit 199 were issued, and
2. If so, during what time period should construction be authorized to begin.

On August 6, 2020, the North Dakota Mineral Resources – Geological Survey filed comments on the Application.

On August 24, 2020, the North Dakota Parks and Recreation Department filed comments on the Application.

On August 28, 2020, the North Dakota Department of Environmental Quality filed comments on the Application.

On September 24, 2020, BOE responded to the comments of the North Dakota Mineral Resources – Geological Survey, the North Dakota Parks and Recreation Department and the North Dakota Department of Environmental Quality (September 24 Response).

### **Discussion**

North Dakota Century Code section 49-22.1-16 requires a utility to certify to the Commission that a site or route continues to meet the conditions upon which the Certificate and Permit were issued if construction commences more than four years after a certificate of permit for the site or route has been issued.

BOE did not commence construction of the Project within four years after August 17, 2016, the date that Certificate 187 and Permit 199 were issued.

By the affidavit of John C. Wadsworth, Chief Operating Officer, BOE certifies that the Project continues to meet the conditions upon which the Certificate 187 and Permit 199 were issued.

The Commission's August 17, 2016 Order found that BOE's Class III cultural resource survey identified four previously recorded cultural sites, 20 new cultural sites and eight isolated finds. The Order found that the Class III study has not yet been finalized as the federal process requires that a Memorandum of Agreement and a testing plan be developed in consultation with Federal, State, and Tribal entities to ensure that any impacts to newly identified recommended eligible cultural resources are mitigated in accordance with professional and industry standards. BOE testified that cultural monitors will be present during earth moving activities and cultural resource sites will be buffered by 50 feet on state and private lands and by 100 feet on federal lands. An Inadvertent Discovery Plan will also be developed to identify procedures for any additional finds that are uncovered during the construction process.

Subsequent to the Commission's August 17, 2016 Order, BOE finalized the Class III cultural resource inventory identifying thirteen (13) cultural resource sites within the designated corridor. BOE submitted recommendations for avoidance and mitigation measures for these sites to the North Dakota State Historic Preservation Office (SHPO) for review and comment. By letter dated March 22, 2018, SHPO concurred with BOE's recommendations that included at least four potential pipeline route changes. BOE did not file in its Application for an Order of Continuing Suitability any applications or certifications for reroutes.

The North Dakota Mineral Resources – Geological Survey states that that the proposed route crosses several mapped landslide areas and traverses through an area of the state where the areal density of landslides is high suggesting that other additional unmapped areas of slope instability may also exist. Geological Survey expresses that

careful inspection and engineering evaluation of the pipeline route should be continued in areas that may be prone to slope instability and that areas like these should be avoided whenever possible.

The Commission's August 17, 2016 Order found that the route crosses through an area that is very landslide prone. The Order found that the route was sited to avoid as many landslide areas as possible but, it was not possible to avoid four landslide areas. Alternative routes through these areas were considered but rejected due to topography constraints, constructability concerns, other pipelines in the area and landowner requests. BOE stated that during construction through the landslide areas, a combination of sandbag and foam trench breakers will be installed in geologically unstable areas to limit the saturation pressure within the trench, which will minimize the risk of potential landslides in the area. The Commission found there was no reasonable alternative to the route crossing landslide areas. In its February 24 applications, BOE stated that it would survey and monitor the landslide areas for any movement during and upon completion of construction. In its September 24 Response, BOE states additionally that, if unmapped areas are encountered during construction the plan for them will be the same as for the mapped areas.

BOE's September 24 Response points out that the North Dakota Parks and Recreation Department's concerns were addressed in BOE February 24, 2016 applications.

BOE's September 24 Response points out that most of the North Dakota Department of Environmental Quality's (DEQ) concerns were addressed in BOE February 24, 2016 applications. The DEQ states that aggregate used for road construction should not contain any erionite. BOE states that, should any permanent or temporary access roads be surfaced with gravel, aggregate would be acquired from a commercial/approved source. BOE also states that an application for stormwater discharge will be submitted to the DEQ prior to construction.

Having considered this matter, the Commission finds the corridor designated by Certificate 187 and the route designated by Permit 199, issued on August 17, 2016, in this proceeding, continue to meet the conditions upon which the Certificate and Permit were issued and the evaluation requirements of Chapter 49-22 of the North Dakota Century Code and Article 69-06 of the North Dakota Administrative Code. BOE must supplement the applications and file changes to the corridor and route to reflect avoidance and mitigation measures recommended by BOE and approved by SHPO for cultural resource sites.

Therefore, the Commission makes the following:

### **Order**

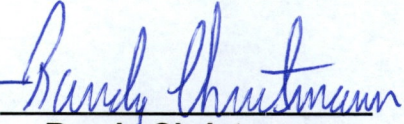
The Commission orders BOE Pipeline, LLC's Application for an Order of Continuing Suitability is granted conditioned upon BOE filing applications and

certifications, and receiving Commission approval prior to construction, for route and corridor adjustments necessary to implement avoidance and mitigation measures recommended by BOE and approved by SHPO for cultural resource sites identified by BOE's finalized Class III cultural resource survey.

**PUBLIC SERVICE COMMISSION**

  
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