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September 5, 2017

Public Service Commission  
600 E. Boulevard, Dept. 408  
Bismarck, ND 58505-0480

RE: In the Matter of the Application of Cenex Pipeline LLC  
Case No. PU-17-97  
OAH File No. 20170124

Commissioners:

Enclosed, please find the intervenors Objection to Proposed Findings of Fact, Conclusions of Law, and Order along with a copy of the Certificate of Service indicating service on the interested parties' representatives in the above-referenced matter.

Thank you.

Sincerely,

Derrick Braaten

/bjo  
Enclosures

82 **PU-17-97** Filed: 9/7/2017 Pages: 6  
**Objection to proposed Findings of Fact,  
Conclusions of Law and Order**

Johnsrud, Livdahl, Jorgenson, Ruprich, Vandenberg, Schumacher  
- Petitioners  
Derrick Braaten, BaumstarkBraatenLaw

NORTH DAKOTA PUBLIC SERVICE COMMISSION

In the Matter of the Application of Cenex Pipeline LLC for a Certificate of Corridor Compatibility and a Route Permit for approximately 149.7 miles of 10-inch diameter refined petroleum products pipeline and associated facilities in Williams, Mountrail, and Ward Counties, North Dakota

Case No. PU-17-97  
OAH File No. 20170124

**OBJECTION TO  
PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND ORDER**

[¶1] Intervenors Dennis Johnsrud and Mavis Johnsrud, Dale Livdahl, Glenn and Susan Jorgenson, Robert and Elaine Ruprich, Leon Vandeberg, and Shirley Schumacher, by and through their attorneys Derrick Braaten, JJ England, and David Keagle, object to paragraph 37 of the Proposed Findings of Fact, Conclusions of Law, and Order submitted by Cenex Pipeline, LLC because it conflicts with paragraph 12 of Exhibit 2 as well as the oral testimony submitted at the hearing by Shawn Michael Stahley. The Intervenors hereby request that the Commission strike paragraph 37 from its findings and replace it with a finding more consistent with the Exhibits and testimony in this matter.

[¶2] Paragraph 37 states:

In the event that construction is undertaken by Cenex after topsoil has frozen to the point that frost inhibits soil segregation, Cenex has committed to the following applicable winter construction guidelines as set forth in the following documents: NDSU Ext. Service Pub. R1728 and INGAA Foundation, Inc. Report No. 2013.04.

[¶3] While both of these documents counsel against topsoil segregation during frozen conditions, they do so in permissive language. Although the documents recognize that topsoil segregation during frozen conditions is impracticable, deleterious to soil health, and increases the potential for

subsidence, the guidance does not forbid the practice. It is possible that the finding in paragraph 37 could be construed as authorizing practices that Cenex repeatedly assured Intervenors and the Commission that it would not use during the hearing.

[¶4] The testimony of Cenex's representative, Mr. Stahley, repeatedly affirmed that topsoil would be segregated in advance of any winter construction and that no topsoil removal would happen during frozen conditions. Further, paragraph 12 of Hearing Exhibit 2, the Commission's Certification document, states that "topsoil must be removed before topsoil freezes in the late fall/early winter to the point that frost inhibits proper soil segregation" unless otherwise approved by the Commission. Since the Commission has the inherent power to revisit and modify its orders, a more appropriate finding as to the topsoil segregation issue would be the quoted language from Exhibit 2 referred to above. Intervenors request, however, that the Commission never authorize segregation of topsoil in frozen conditions on their properties because it can be extremely deleterious to revegetation and reclamation efforts.

[¶5] For the foregoing reasons, Dennis Johnsrud and Mavis Johnsrud, Dale Livdahl, Glenn and Susan Jorgenson, Robert and Elaine Ruprich, Leon Vandeberg, and Shirley Schumacher, by and through their attorneys Derrick Braaten, JJ England, and David Keagle, object to paragraph 37 of the Proposed Findings of Fact, Conclusions of Law, and Order submitted by Cenex Pipeline, LLC and request that the Commission find that no topsoil segregation will occur during winter conditions.

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Dated this 5<sup>th</sup> day of September, 2017.

**BAUMSTARK BRAATEN LAW PARTNERS**

*/s/ Derrick Braaten*

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NORTH DAKOTA PUBLIC SERVICE COMMISSION

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**CERTIFICATE OF SERVICE**

I hereby certify that the following document:

**1. OBJECTION TO PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

was on the 5<sup>th</sup> day of September, 2017, served via U.S. Mail and e-mail upon the following:

Timothy J. Dawson  
Administrative Law Judge  
Office of Administrative Hearings  
2911 North 4th Street, Suite 303  
Bismarck, ND 58503  
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Dated this 5<sup>th</sup> day of September, 2017.

**BAUMSTARK BRAATEN LAW PARTNERS**

          /s/ Derrick Braaten          

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