

August 19, 2019

VIA HAND DELIVERY

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

**Re: Dakota Access Pipeline, LLC
Pipeline Optimization
Emmons County
Case No. PU-19-204**

Dear Mr. Kahl:

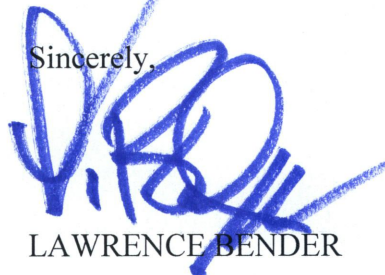
Please find enclosed herewith for filing with the North Dakota Public Service Commission, an original and ten copies of the following:

1. Letter by Dakota Access Pipeline, LLC in Response to the Standing Rock Sioux Tribe's Request for Hearing; and
2. Certificate of Service.

Please also find enclosed a disk containing the above-referenced documents in PDF format.

Should you have any questions, please advise.

Sincerely,



LAWRENCE BENDER

LB/kl
Enclosures
67750655 v1

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Response to 30 July 2019 Request for Hearing

Dakota Access, LLC

Lawrence Bender, Fredrikson&Byron, P.A.

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

**Dakota Access Pipeline, LLC
Emmons County Pump Station**

Case No. PU-19-204

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Letter by Dakota Access Pipeline, LLC in Response to the Standing Rock Sioux Tribe's Request for Hearing was, on August 19th, 2019, served by placing the same in the United States mail, postage prepaid, properly addressed to the following:

Timothy J. Dawson
ND Office of Administrative Hearings
2911 N 14th Street
Bismarck, ND 58503

Zachary E. Pelham
Pearce Durick PLLC
P.O. Box 400
Bismarck, ND 58502-0400

Mike Faith, Jr.
Chairman, Standing Rock Sioux Tribe
P.O. Box D, Building #1
North Standing Rock Ave.
Fort Yates, ND 58538

DATED this 19th day of August, 2019.


FREDRIKSON & BYRON P.A.

By: _____

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Attorneys for Dakota Access Pipeline, LLC



August 19, 2019

Mr. Brian Kroshus, Chairman
Ms. Julie Fedorchak, Commissioner
Mr. Randy Christmann, Commissioner
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

**RE: Dakota Access Pipeline Optimization
Emmons County Pump Station
Case No. PU-19-204**

Dear Commissioners:

On behalf of Dakota Access, LLC (Dakota Access), this letter responds to a request for hearing filed with the North Dakota Public Service Commission (Commission) by The Standing Rock Sioux Tribe (Standing Rock) on July 29, 2019. As you may be aware, Standing Rock's request relates to Dakota Access's application to amend Certificate of Corridor Compatibility No. 179 and Route Permit No. 191 issued by the Commission (docketed as Case No. PU-19-204), commonly referred to as Dakota Access's "Optimization". As you may also be aware, the scope of activity required for the Optimization is minor, principally entailing the installation of a new pump station in Emmons County and other similar upgrades within the existing footprint of the asset. As mentioned in Dakota Access's amendment, no work will be done on the mainline pipeline itself.

The purpose of this letter is to briefly provide the Commission with relevant, accurate background on the issues presented by Standing Rock's request. Many of the representations made in Standing Rock's request are misleading and riddled with inaccuracies. While those inaccuracies may be unintentional, Dakota Access nevertheless desires to ensure the Commission is not misled in any way or otherwise distracted with extraneous information not legally relevant to the Commission's review in this proceeding. As detailed below, the items raised by Standing Rock are under the jurisdiction of the federal Pipeline Hazardous Materials Safety Administration ("PHMSA") and are already addressed by federal pipeline safety law, with which Dakota Access complies. The Commission has not been vested with the regulatory authority over these concerns, and consequently, should not be used by Standing Rock as a means to obtain information from Dakota Access for third-party litigation or to promote an anti-fossil fuel agenda.¹ Also, to the extent it is raised, the U.S. Army Corps of Engineers, which granted easements for the pipeline to cross federal projects in North Dakota, is the

¹ On August 16, 2019 Standing Rock filed a motion in federal court in Washington D.C. seeking an order to shut down the Dakota Access Pipeline, including repeated references to Dakota Access's Optimization plans. Standing Rock Sioux Tribe et al. v. U.S. Army Corps of Eng'rs, Case No. 1:16-cv-1534 (D.D.C. Aug. 16, 2019), ECF No. 433-2 at 1, 10, 17, 51-52. This is the latest motion seeking this outcome in a case that originated more than three years ago.

proper agency to address any possible implications of the Optimization for those easements or its safety-related conditions.

I. Concerns Raised by the Standing Rock Request for Hearing

Standing Rock's July 29, 2019 letter asserts that a hearing before the Commission is required to address the following concerns: (1) to determine whether the application complies with "recognized and generally accepted industry standards" and applicable regulations for an increase in pipeline flow rate; (2) to address the risk of over pressurization; (3) to assess whether prior incidents around the U.S. involving out of state affiliates to Dakota Access require denial of the amendment; and (4) whether the increase in flow rate significantly increases the likelihood of a theoretical spill. None of these concerns, as presented, are cognizable before the Commission because they concern pipeline safety. As the Commission is likely aware, pipeline safety is under the jurisdiction of the federal PHMSA.² Forums exist under federal law that allow the public to voice such concerns. This includes, amongst other forums, participation in PHMSA rulemakings by submitting comments or attending PHMSA's public meetings.³

In contrast to PHMSA's authority, the Commission's jurisdiction is set forth in the North Dakota Energy Conversion and Transmission Facilities Act, codified as Chapter 49-21.1 of the North Dakota Century Code (the "Act"). Under the Act, energy conversion and transmission facilities may not be constructed or operated within the state without a certificate of site compatibility or a route permit acquired from the Commission. It is the policy of the State to site energy conversion and transmission facilities in a manner that is compatible with environmental preservation and the efficient use of resources. In approving energy conversion and transmission facilities, the Commission is guided by state statutory requirements to ensure its requirements are achieved.

While the respective jurisdictional authority of both PHMSA and the Commission is unambiguous, it is important to note that states may enter into agreements with PHMSA to participate in the administration of pipeline safety programs for interstate pipelines, but only if they formally adopt all relevant federal standards and request certification. Such certifications must be reviewed and renewed by PHMSA annually. North Dakota is certified by PHMSA to inspect and enforce pipeline safety regulations for intrastate natural gas pipelines, but at present, North Dakota is not certified to inspect or enforce pipeline safety regulations for oil pipelines, whether interstate or intrastate.⁴ As a result, PHMSA maintains jurisdiction to inspect and enforce pipeline safety regulations for all oil pipelines in the State.⁵

II. Standing Rock's request is misplaced. Any prospective hearing, if so ordered by the Commission, should be based on applicable state legal requirements, not extraneous and inflammatory statements or information that is not legally relevant.

² The federal Pipeline Safety Act (PSA) establishes minimum safety standards for all hazardous liquid and natural gas pipelines in the United States (49 U.S.C. 60101 et seq). The PSA is implemented by the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency). PHMSA has promulgated pipeline safety regulations at 49 C.F.R. Part 192 (for natural gas pipelines) and 49 C.F.R. Part 195 (hazardous liquid/oil pipelines).

³ PHMSA's pipeline safety regulations have been promulgated using the public notice and comment process defined in the Administrative Procedure Act, 5 U.S.C. § 500 et seq.

⁴ Only fifteen states are certified to regulate intrastate oil pipelines. Only a small subset of those states have entered into an agreement to serve as "interstate agents" in order to participate in the regulation of interstate oil pipeline safety in those states (i.e., to serve as inspectors). These include Arizona, Minnesota, New York, Virginia, and Washington.

⁵ 49 U.S.C. 60104(c) ("A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation").

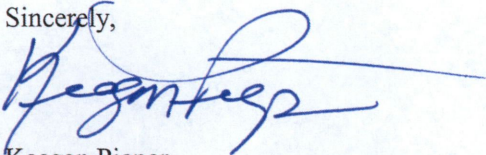
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Although the purported concerns raised by Standing Rock's request are not within the jurisdiction of the Commission, it is nevertheless worth noting that the request: (1) misplaces applicability of API RP 1173 (Pipeline Safety Management Systems) and 1160 (Managing System Integrity for Hazardous Pipelines), which are merely recommended practices for the industry;⁶ (2) overstates the significance of irrelevant incidents elsewhere in the country; (3) misstates or otherwise omits key details of Dakota Access' Petition (such as no increase in existing maximum operating pressure); (4) seeks to re-litigate the merits of issues that apply to the original pipeline construction which has already been certificated by the Commission;⁷ (5) misstates industry phrases and terms applicable to natural gas pipelines but not liquids; and (6) as previously mentioned, attempts to impose oversight by the Commission on areas not within its jurisdiction.

While Dakota Access is always willing to engage in a productive discussion about its Optimization plans, such discussions should be relevant and limited to the state legal standards and requirements applicable to Dakota Access's amendment (not the original pipeline construction), the scope of which is considerably narrower than that contemplated by Standing Rock's request. Dakota Access's amendment should not be used by Standing Rock to obtain a "second bite of the apple" with the Commission.

For the reasons stated, a hearing before the Commission cannot be justified solely on the merits of Standing Rock's request. These concerns are already addressed by federal law, and Dakota Access is in compliance with those requirements. Additionally, in the event the Commission determines a hearing is warranted, the scope of such hearing should be limited to the upgrades contemplated in Dakota Access's petition and should not involve extraneous information not legally relevant nor where the purported concerns are related to the original construction of the pipeline.

Sincerely,



Keegan Pieper
Associate General Counsel

Cc: Lawrence Bender

⁶ API RP 1173 and 1160 are not legally binding. Standing Rock also incorrectly cites to API RP 1160 as support for the Management of Change (or MOC) process. Instead, the MOC concept is already embedded in PHMSA regulations.

⁷ To the extent Standing Rock is raising concerns outside of the exclusive jurisdiction of PHMSA, those concerns have already been addressed by the Commission in the original proceeding and are now moot. As the Commission is aware, Dakota Access first made application for siting of the Dakota Access Pipeline in December of 2014. After holding hearings in Morton County, McKenzie County and Williams County, allowing input from any interested individuals or entities, the Commission on January 20, 2016 issued Corridor Certificate No. 179 and Route Permit No. 191 authorizing construction and operation of the Dakota Access Pipeline in the state of North Dakota.