

November 8, 2019

**HAND DELIVERED**

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

**Re: Dakota Access, LLC  
Emmons County Pump Station  
Case No. PU-19-204  
OAH File No. 2019-0280**

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. Prehearing Brief of Dakota Access, LLC; 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

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**51** **PU-19-204** Filed: 11/8/2019 Pages: 18  
**Prehearing Brief**

Dakota Access, LLC

Lawrence Bender, Fredrikson&Byron, P.A.

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

**Dakota Access, LLC  
Dakota Access Pipeline Pump Station – Emmons County  
Siting Application**

**Case No. PU-19-204**

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**PREHEARING BRIEF OF DAKOTA ACCESS, LLC**

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Dakota Access, LLC (“Dakota Access”), by and through its undersigned counsel, hereby submits to the North Dakota Public Service Commission (“Commission”) this Prehearing Brief in anticipation of the hearing scheduled for November 13, 2019 at 9:00 a.m. CST on the application of Dakota Access for waiver of procedures and time schedules and combined application to amend Certificate of Corridor Compatibility 179 (“Certificate No. 179”) and to amend Route Permit 191 (“Permit No. 191”) for the addition of a pump station to be located in Emmons County, North Dakota. Among other things, this Prehearing Brief explains how the Standing Rock Sioux Tribe (“Standing Rock”) improperly seeks to expand the scope of the upcoming hearing.<sup>1</sup>

**SUMMARY OF APPLICATION**

On June 20, 2019, Dakota Access made application to the Commission, requesting an amendment to Certificate No. 179 and Permit No. 191 (“Application”) to allow for the optimization and upgrade of the Dakota Access Pipeline (“DAPL”), an approximately 358-mile, 12-, 20-, and 30-inch diameter crude oil pipeline commencing in North Dakota and terminating in Illinois. *See* Application (Doc. No. 1). This optimization and upgrade would require

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<sup>1</sup> Contemporaneous with this Brief, Dakota Access is filing a Motion to Strike the testimony of Messrs. Kuprewicz, Holmstrom, and Eagle that go beyond the scope of this hearing.

installation of a new pump station in Emmons County, North Dakota (the “Optimization”). *See id.* at p. 2.

The Optimization will allow for transportation of up to 1,100,000 total barrels of crude oil per day on the DAPL – an increase from the DAPL’s current capacity of 570,000 barrels of crude oil per day. *See id.* The change involved here is limited: a new pump station will be located in Emmons County, North Dakota, and will consist of five 6,000 HP electrically driven motors and pumps contained within a building. *See id.* The new pump station would require an amendment of Certificate No. 179 because it extends approximately 16.6 acres outside of the corridor designated therein, and would require an amendment of Permit No. 191 because its location extends approximately 19.5 acres outside of the route designated therein. *See id.*

Dakota Access’s Application describes the facility improvements in detail, including the preferred location; a description of site preparation, construction, and reclamation procedures; and landowner notification. *See id.* Dakota Access also describes its identification and evaluation of possible alternatives to the proposed Optimization, including a no-action alternative; rail, truck, and new pipeline transportation alternatives; and pump station site alternatives. *See id.* at pp. 3-6. Dakota Access’s evaluations have concluded that no alternatives effectively satisfy the Optimization’s objectives. *See id.* The Application further sets out environmental studies conducted to determine the impact of the Optimization on cultural and natural resources. *See id.* at pp. 7-13. The Application also provides a comprehensive list of exclusion areas and avoidance areas. *See id.* at pp. 14-19. Dakota Access has ultimately determined and presented to the Commission that no exclusion areas or avoidance areas are located within the new pump station site, and no cultural or natural resources will be impacted.

*See id.* Despite these findings, Dakota Access has provided in its Application a list of mitigation measures, should any impacts to resources emerge. *See id.* at p. 20.

### **PROCEDURAL HISTORY**

Following the submission of Dakota Access's Application, on July 29, 2019, Standing Rock requested a hearing. *See* Request for Hearing (Doc. No. 17). In the Standing Rock's view, the hearing should range far beyond the pump station at issue. Standing Rock claims that a hearing is necessary to determine the pipeline's compliance with oil and gas industry standards, to address pressurization of the pipeline, to evaluate purported spills and violations by Dakota Access, and to evaluate an alleged increased risk and likelihood of a crude oil spill caused by increased capacity on the pipeline. *See id.* None of these requests is confined to the improvement in question.

Thereafter, the Commission set this matter for hearing to be held on November 13, 2019 ("November Hearing"). *See* Notice of Hearing (Doc. No. 24). The issues to be considered regarding the Application, as put forth in the Notice of Hearing, include (1) whether the location and operation of the proposed Optimization will produce minimal adverse effects on the environment and on the welfare of the citizens of North Dakota; (2) whether the proposed Optimization is compatible with the environmental preservation and the efficient use of resources; and (3) whether the proposed Optimization will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity, and ensuring energy needs are met and fulfilled. *See id.*

On August 28, 2019, Standing Rock, by and through its counsel, filed a petition to intervene, arguing that Standing Rock has a right to protect its interests in its members' reliance on Lake Oahe for drinking water and irrigation for its farmers and ranchers, and believes that its

interests may be affected by the Optimization as the Standing Rock Sioux Reservation is located less than one-half mile downstream from the DAPL where it crosses Lake Oahe. *See* Petition to Intervene (Doc. No. 29). Because there was no opposition to the petition, the Administrative Law Judge ordered that Standing Rock is permitted to appear at the November Hearing as an intervenor in this matter. *See* Order on Petition to Intervene (Doc. No. 30).

On October 9, 2019, Charles and Donna Kurszewski also filed a petition to intervene, which was denied due to insufficient information to satisfy the statutory intervention requirements set forth in N.D.C.C. § 28-32-28 and N.D. Admin. Code § 69-02-02-05. *See* Petition to Intervene (Doc. No. 33); Order on Petition to Intervene (Doc. No. 35). The Kurszewskis are not excluded, however, from participating in the public testimony portion of the November Hearing. *See id.*

#### **EVIDENCE TO BE PRESENTED BY DAKOTA ACCESS IN SUPPORT OF THE APPLICATION**

In anticipation of the November Hearing on Dakota Access's Application, Dakota Access has filed with the Commission a hearing exhibit list which includes several items that have already been filed,<sup>2</sup> as well as the written testimony of Charles Frey, Todd Stamm, Jeff D. Makhholm, Ph.D., and Dennis Woods. The following includes a summary of each witness's testimony to be presented at the November Hearing.

##### **A. Charles Frey**

Charles Frey is the Vice President of Liquids Engineering with Energy Transfer Partners, L.P., and is responsible for the engineering and related activities for the DAPL. Mr. Frey will testify to the specifics of the Emmons County pump station proposed by Dakota Access.

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<sup>2</sup> The exhibit list includes Dakota Access's Application (Doc. No. 1); Letter Regarding Anticipated Noise Levels at Pump Station (Doc. No. 15); Prefiled Witness List (Doc. No. 34); Emmons Co. Conditional Use Permit/Approval Letter (Doc. No. 37); Map Concerning Location of Pump Station to Near By Structures (Doc. No. 37); SHPO Concurrence Letter dated July 1, 2019 (Doc. No. 38); and Agency Consultation Matrix (Doc. No. 38).

Specifically, Mr. Frey will describe the Emmons County pump station's purpose, location, and physical construction—both within and outside of the facility. Mr. Frey will provide information regarding the entities responsible for the Emmons County pump station's construction and operation, and will discuss the anticipated costs thereof, as well as the anticipated upgrades to other pump stations currently on the DAPL. Mr. Frey will describe the pump station's principal design characteristics, safety evaluations of the DAPL under increased-capacity conditions, and how the Emmons County pump station will improve the existing DAPL in compliance with all applicable federal and state regulations.

**B. Todd Stamm**

Todd Stamm is the Vice President of Liquid Pipeline Operations with Energy Transfer, L.P. ("ET"), an indirect equity owner of Dakota Access. Mr. Stamm is responsible for the health and safety (environmental and security) of ET's pipeline assets, as well as the regulatory, operational, and finance performance of ET's pipeline assets. Mr. Stamm will testify to describe how the DAPL will be operated safely and efficiently with the new Emmons County pump station, for the purpose of transporting higher volumes of crude oil.

Specifically, Mr. Stamm will testify to the operation and maintenance of the Emmons County pump station, including the continued utilization of practices, procedures, and initiatives described and agreed to by Dakota Access for the building and operation of the DAPL; the monitoring of the operations and conditions of the Emmons County pump station; and the effect the Emmons County pump station and increase of capacity of crude oil transportation will have relative to continued compliance with the applicable regulations of the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration.

**C. Jeff D. Makhholm, Ph.D.**

Jeff D. Makhholm, Ph.D. is a Managing Director at National Economic Research Associates, a firm of consulting economists that has been heavily involved in the definition and creation of competitive energy markets in the United States and around the world, including United States natural gas markets. Dr. Makhholm will testify to the increase in customer demand for crude oil, and how increasing the capacity of the DAPL, through the Optimization presented by Dakota Access, will be the superior approach for meeting the increased customer demand.

Specifically, Dr. Makhholm will testify to the purpose and need for the Optimization of the DAPL, including the anticipated and actual daily throughput volume for the DAPL, and whether that throughput is sufficient to meet shipper demands that have increased due to an increase of production of crude oil. Dr. Makhholm will also address that the existing DAPL requires upgrades to meet such shipper demands, and how upgrading the DAPL is superior over transportation by railroad or truck.

**D. Dennis Woods**

Dennis Woods is the President of Perennial Environmental Services, LLC (“Perennial”), and is responsible for the day-to-day operations and overseeing work with clients, including Dakota Access. Mr. Woods will testify regarding Perennial’s completion of certain environmental studies and reporting.

Specifically, Mr. Woods will testify to the environmental, cultural, and natural resource studies conducted in connection with the proposed Emmons County pump station and the outcome and results of those studies. Mr. Woods will also testify to the siting criteria rules applicable to the Optimization, as set forth in N.D. Admin. Code § 69-06-08-02, and whether Dakota Access has complied with such siting rules. Mr. Woods will further discuss the

coordination and consultations by Dakota Access with governmental agencies and entities prior to filing the Application, and the measures Dakota Access has in place to minimize potential impacts on the environment during construction and operation of the Emmons County pump station.

**EVIDENCE TO BE PRESENTED BY STANDING ROCK  
IN OPPOSITION OF THE APPLICATION**

In anticipation of the November Hearing on Dakota Access's Application, Standing Rock has filed with the Commission the written testimony of Jon Eagle, Donald Holmstrom, and Richard Kuprewicz. As explained further below, through this testimony Standing Rock seeks to do three impermissible things: (1) relitigate the original January 20, 2016 permits, which were properly granted by the Commission; (2) draw the Commission into matters that are exclusively within the jurisdiction of the federal government, i.e., issues where federal regulation preempts state action; and (3) relitigate issues that, while sincerely and passionately presented, Standing Rock has received or will receive review of (or both) by the U.S. District Court for the District of Columbia. *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, No. 16-CV-1534 (D.D.C.) ("*SRST*"). Notably, Mr. Eagle's and Mr. Holmstrom's testimony never discusses the Emmons County pump station, and, Mr. Kuprewicz's testimony focuses almost entirely on issues outside of the scope of the November Hearing.

**A. Jon Eagle**

Jon Eagle speaks passionately about Standing Rock and its history, including its treatment by the United States government, and its deep connection to the lands and waters of North Dakota, including generalities about Lake Oahe. Mr. Eagle's testimony barely addresses the DAPL at all, however, other than to complain about things that, if true, would apply even without the proposed Optimization. His brief mentions of the Optimization are devoid of any

evidence that bears on the criteria for the Commission's decision on Dakota Access's Application.

**B. Donald Holmstrom**

Donald Holmstrom's testimony primarily complains about the spill and discharge modeling and related response plans for the DAPL. Not only are these criticisms the subject of the pending federal lawsuit, the existing plans are filed with, and have been accepted by, the federal Pipeline and Hazardous Materials Safety Administration ("PHMSA"). Mr. Holmstrom's testimony, like that of Mr. Eagle, never mentions the Emmons County pump station—the subject of the November Hearing. Moreover, a protective order in the federal lawsuit bars Mr. Holmstrom from testifying in any other case (including this one) based on certain of the information that he mentions in his prepared testimony.

**C. Richard Kuprewicz**

Richard Kuprewicz's testimony suffers from similar flaws on the topics of spill and discharge modeling, as well as the discussion of surge pressures on the DAPL. Mr. Kuprewicz concedes the fundamental problem with Standing Rock's position, however, when he states "Federal regulations are clear: 'No operator may permit the pressure in a pipeline during surges or other variations from normal operations to exceed 110 percent of [MOP]....'" *See* Pre-Filed Testimony of Richard Kuprewicz ("Kuprewicz Test.") (Doc. No. 42), 10:208-210.<sup>3</sup> In other words, Mr. Kuprewicz and Mr. Holmstrom are raising issues regulated extensively by the federal PHMSA, under the voluminous federal rules in 49 C.F.R. Parts 194 and 195. Both Mr. Holmstrom and Mr. Kuprewicz want the Commission to require additional steps—filings that are not presently required by state law. Rather than assert that Dakota Access's Application is in any

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<sup>3</sup> In comparable testimony for a related proceeding in Illinois regarding the Optimization, Mr. Kuprewicz conceded that the Commission cannot change federal regulations. Apparently realizing the problem that obvious truism created for his position, he removed it for his North Dakota testimony. It remains true nonetheless.

way legally deficient, Standing Rock wants the Commission to invent new requirements that go well beyond federal law. This is both inappropriate and flatly preempted.

**STANDING ROCK SEEKS TO IMPROPERLY  
EXPAND THE SCOPE OF THIS PROCEEDING**

Standing Rock seeks to improperly expand the scope of this proceeding by: (1) relitigating the original January 20, 2016 permits; (2) drawing the Commission into matters that are exclusively within federal jurisdiction; and (3) relitigating issues that Standing Rock has already litigated once, and is even litigating yet again, in federal court in Washington, D.C.

**A. Standing Rock Seeks to relitigate the validity of the original 2016 permits.**

Standing Rock's witnesses raise the same issues that Standing Rock asked the Commission to consider when permitting for the larger project was at issue. Mr. Eagle's concerns, as well as those voiced by Standing Rock's other two witnesses, are not unique to the Application now before the Commission. Instead, they are the types of issues the Commission has already considered. There is no basis for relitigating them.

**B. Standing Rock seeks to litigate issues within the sole domain of the federal government.**

As the Commission is aware, interstate pipeline safety falls within PHMSA's exclusive jurisdiction through extensive federal regulations, including 49 C.F.R. Parts 194 and 195. For hazardous liquids like crude oil, the Pipeline Safety Act, 49 U.S.C. § 60101 *et seq.* (the "Act"), and the rules to implement the Act at 49 C.F.R. Part 195, reach nearly every aspect of the safe operation of an oil pipeline. North Dakota's jurisdiction over interstate crude oil pipelines is substantially limited. As a result, in each of three prior cases before the United States Court of Appeals for the Eighth Circuit, the Court found that state pipeline regulations were preempted because they improperly encroached on the federal regulatory regime of interstate pipeline

safety. See *ANR Pipeline Co. v. Iowa State Commerce Commn.*, 828 F.2d 465 (8th Cir. 1987); *Kinley Corp. v. Iowa Utils. Bd.*, 999 F.2d 354 (8th Cir. 1993); *Northern Natural Gas Co. v. Iowa Utils. Bd.*, 377 F.3d 817 (8th Cir. 2004).

In particular, *Kinley* addressed hazardous liquids pipelines under federal law. The Act expressly preempts state requirements relating to safety. With an exception for one-call programs, the Act dictates: “A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.” See 49 U.S.C. § 60104(c); *Kinley*, 999 F.2d at 358 (relying on nearly identical language in the predecessor Hazardous Liquids Pipeline Safety Act (HLPISA) to preempt Iowa’s safety regulations); *Olympic Pipe Line Co. v. City of Seattle*, 437 F.3d 872, 877-80 (9th Cir. 2006).

Notably, in *Kinley*, the scope of the preemption was broad in two respects. First, although the Iowa Utilities Board argued that it was implementing a financial responsibility requirement, the Eighth Circuit found that was merely a proxy for safety based on timing and language in a letter the Board had sent to Kinley. *Id.* at 359. Here, the effort to regulate safety is even more transparent. Mr. Kuprewicz and Mr. Holmstrom ask the Commission to require Dakota Access to provide evidence relating to the safe operation of pipelines, including spill models, integrity management plans, and monitoring methodologies, when all of these are subject to exclusive federal pipeline safety oversight by PHMSA. This jurisdiction encompasses the safe construction, operation, and maintenance of interstate oil pipelines and includes regulation of product flow through maximum operating pressure. Information relating to spill risks and remediation is submitted to PHMSA pursuant to federal regulations in Parts 194 and 195. Compliance with federal operating pressure regulations is similarly a matter for federal regulators.

The second way that the preemption in *Kinley* was broad is that it preempted any state process:

[The Board] further argue[s] that because HLPFA does not establish a comprehensive federal permit scheme for hazardous liquid pipelines, the state hearing, permit, and inspection provisions, as well as the environmental protection and damage remedies provisions, are not preempted. We disagree. . . . [W]e think ANR is controlling here. Accordingly, we hold that the hearing, permit, and inspection provisions of Chapter 479 are so related to federal safety regulations that they are preempted by HLPFA with respect to interstate hazardous liquids pipelines.

*Id.* at 359-60. *Cf. NE Hub Partners L.P. v. CNG Transmission Corp.*, 239 F.3d 333, 348 (3d. Cir. 2001) (“We therefore hold that state regulatory *process* may be preempted by conflict with federal law as well as by field occupation.”). As a result, Standing Rock’s attempt to use state process to address and discover information related to safety is preempted, just the same as an express regulation on a safety-related issue.

In interpretive guidance issued under HLPFA, the U.S. Department of Transportation addressed the question of jurisdiction of the federal and state governments. In Appendix A to 49 C.F.R. Part 195, the Department states bluntly that “HLPFA leaves to exclusive Federal regulation and enforcement the ‘interstate pipeline facilities,’ those used for the pipeline transportation of hazardous liquids in interstate or foreign commerce.” That is, no authority has been delegated to states regarding operational aspects of interstate liquids pipelines unless the state is certified by PHMSA to perform inspections and implement PHMSA regulations.<sup>4</sup> While Appendix A predates the Pipeline Safety Act of 1992, as the court in *Kinley* discussed, the 1992 Act actually “expands, rather than restricts, federal regulation of interstate hazardous liquid pipelines....” *Id.* at 360. That is, the force and scope of the federal preemption has only gotten

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<sup>4</sup> Even when a state is certified by PHMSA to perform inspections and implement PHMSA regulations, the state is only an agent of the federal government enforcing federal regulations. In any event, North Dakota is not certified for intrastate hazardous liquids, and it is expressly preempted from regulating interstate pipeline safety for both hazardous liquids and natural gas.

larger since Appendix A was issued. The *Kinley* Court's holding accordingly applies to the present proceeding:

Here, Congress granted exclusive authority to regulate the safety of construction and operation of interstate hazardous liquid pipelines to the Secretary of the Department of Transportation. This Congressional grant of exclusive federal regulatory authority precludes state decision-making in this area altogether and leaves no regulatory room for the state to either establish its own safety standards or supplement the federal safety standards. *ANR*, 828 F.2d at 472; see *Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Comm'n*, 461 U.S. 190, 212, 103 S.Ct. 1713, 1726, 75 L.Ed.2d 752 (1983).

*Kinley*, 999 F.2d at 359. The arguments raised and the additional burdens Standing Rock's witnesses ask the Commission to place on Dakota Access's Application are beyond any lawful scope of this proceeding.

**C. Standing Rock seeks to relitigate issues it has already litigated, and is litigating again, in the federal lawsuit.**

Finally, Standing Rock seeks to litigate here the very issues that it has already litigated, and is litigating yet again, in the federal lawsuit. For example, Standing Rock and its witnesses propose to establish that the existing worst case discharge ("WCD") analysis greatly underestimates the potential for a spill. That issue was already litigated in the federal case in 2017. *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs.*, 255 F.Supp.3d 101, 125 (2017) ("Standing Rock first maintains that the EA understates and does not properly assess the risk of an oil spill under Lake Oahe."). And, Standing Rock is trying to litigate it yet again after a limited remand in which the Corps reaffirmed its original decision to grant permissions for the DAPL. See Mem. In Supp. of Standing Rock Sioux Tribe's Mot. For Summ. J. on Remand at 13-17, ECF No. 433-2 (Aug. 16, 2019) ("SRST Summ. J. Motion") (arguing that the Army Corps's remand analysis relies on a flawed worst case spill estimate); Standing Rock Sioux Tribe Opp. to Cross-Mot. for Summ. J.; Reply in Supp. of Mot. for Summ. J. on Remand at 8-17, ECF No. 465 (Oct. 30, 2019) ("SRST Summ. J. Reply") (same).

In fact, the same *witnesses*—Mr. Holmstrom and Mr. Kuprewicz—already raised these same concerns, which now reappear in this matter. *Compare* Holmstrom Test. (Doc. No. 41), 4:69-72 (“Applicant relies on a WCD analysis that significantly underestimates the true worst-case scenario, and Applicant has failed to develop a valid spill model based upon an accurate WCD that can tell Applicant (or anyone else) what will happen to the oil once it is spilled.”); Kuprewicz Test. (Doc. No. 42), 16:323-326 (“My investigative experience is that most worst case discharge (“WCD”) estimates are significantly too low as release rates and the time for remote identification of a release, even a pipeline rupture, are often seriously understated by over optimistic computer remote monitoring identification times.”) *with* 2nd Holmstrom Decl at ¶ 11, ECF No. 342-1, *SRST* (Mar. 23, 2018) (“the WCD calculation that forms the basis of the oil spill response plan is gravely underestimated. It does not appear to include any time at all to detect the release, even though this can be hours or days.”); 2nd Kuprewicz Decl. at ¶ 4, ECF No. 195-1, *SRST* (Mar. 28, 2017) (summarizing prior conclusion that “the spill model report was ‘very misleading, false, and fails to adequately support key assumptions that need to be prudently considered for oil spill risks and most likely worst case spill volumes for the DAPL segment that could affect Lake Oahe.’”).

Similarly, Standing Rock and its witnesses want to litigate the safety record of DAPL’s corporate parent. Holmstrom Test. (Doc. No. 41), 3:58-63 (alleging that DAPL’s corporate parent has the “worst hazardous liquid safety record in the industry” making the risk of an oil spill from DAPL significant). This too is being litigated in the federal case. *See* *SRST* Summ. J. Motion, ECF No. 433-2 at 26-29 (arguing the Army Corps’s remand report is deficient for failure to account for the safety records of DAPL’s corporate parents); *SRST* Summ. J. Reply, ECF No. 465 at 19-21 (same).

Finally, Standing Rock puts forth testimony on the question whether the DAPL complies with industry best practices for safety. Holmstrom Test. (Doc. No. 41), 4:74-77 (“Applicant’s pipeline’s risk management approach is seriously dated and ineffective. It does not incorporate the latest approaches from pipeline industry best practices.”). This too is a claim Standing Rock is currently litigating in federal court. *See* SRST Summ. J. Motion, ECF No. 433-2 at 30-32 (arguing DAPL does not meet the industry’s best practices); SRST Summ. J. Reply, ECF No. 465 at 22-24 (same).

Not only is this the wrong forum for Standing Rock’s arguments, much of the “relief” sought by Mr. Holmstrom and Mr. Kuprewicz is for the Commission to order voluminous technical information to be provided—not only to the Commission, but to the “SRST as Intervenors to allow for independent verification.” *See, e.g.*, Kuprewicz Test. (Doc. No. 42), 18:375. Standing Rock should not be allowed to use this proceeding as a means to obtain information to further its legal position in the federal lawsuit against the USACE. The federal court litigation has its own discovery restrictions and substantial protections for information. The Commission should not be drawn into such litigation tactics. Dakota Access has filed an Application that complies with all requirements and provides all information required by North Dakota law. The information Standing Rock seeks and the issues it seeks to raise are beyond the proper scope of this proceeding, and merely usurp resources of the Commission and Dakota Access in pursuit of an improper result.

### **CONCLUSION**

Dakota Access, through its Application and supporting evidence, demonstrates to the Commission that the Optimization will produce minimal adverse impacts on the environment and the welfare of the citizens of North Dakota, while ensuring continuing system reliability and

integrity, and ensuring that the growing need for energy is met and fulfilled. Standing Rock has failed to submit, and will be unable to submit at the November Hearing, evidence that supports its opposition to the Dakota Access's Application, as it raises generalize complaints about the DAPL, or otherwise raises complaints that are clearly preempted by federal law. Accordingly, Dakota Access respectfully requests the Commission grant its Application.

Dated this 8th day of November, 2019.

FREDRIKSON & BYRON, P.A.

By: 

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**BEFORE THE PUBLIC SERVICE COMMISSION**

**STATE OF NORTH DAKOTA**

**Dakota Access, LLC  
Dakota Access Pipeline Pump Station – Emmons County  
Siting Application**

**Case No. PU-19-204  
OAH File No. 2019-0280**

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**CERTIFICATE OF SERVICE**

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[¶1] I, the undersigned, hereby certify that a true and correct copy of the Letter to Mr. Steve Kahl at the North Dakota Public Service Commission forwarding the following document for filing:

1. Prehearing Brief of Dakota Access, LLC  
was, on November 8th, 2019, served by placing the same in the United States mail, postage prepaid, properly addressed to the following:

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DATED this 8th day of November, 2019.

FREDRIKSON & BYRON P.A.

A handwritten signature in blue ink, appearing to read 'L. Bender', is written over a horizontal line.

By:

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