

NORTH DAKOTA PUBLIC SERVICE COMMISSION

In the Matter of

Dakota Access, LLC Consolidated Application
for an Amended Certificate of Corridor
Compatibility and Amended Route Permit;
Dakota Access Pipeline Pump Station -
Emmons County Siting Application

Case. No. PU-19-204
OAH File. No. 20190280

**Post-Hearing Brief by
Intervenor Standing Rock Sioux Tribe**

I. Introduction

The North Dakota Public Service Commission (the “Commission”) has a statutorily mandated duty to ensure that the location, construction, and operation of any liquid transmission pipeline in the State of North Dakota produces minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota. To meet this duty, North Dakota law requires the Commission to conduct a rigorous factual inquiry, informed by extensive document and data productions by pipeline applicants as well as public hearing and comment. The Commission is engaged in just such a rigorous inquiry in the present proceeding regarding Dakota Access, LLC’s (“Dakota Access”) application to nearly double the capacity of the Dakota Access Pipeline (“DAPL”) from 570,000 barrels per day (bpd) to 1,100,000 bpd. *See* Dakota Access Pipeline Optimization, Dkt. 1.2 at 2 (the “Application” or “DAPL Capacity Expansion”).

At the public hearing held on November 13, 2019, the Commission received over 13 hours of testimony and public comment, on top of several hundred pages of pre-filed testimony provided to the Commission in the weeks leading up to the hearing. Much of the hearing focused on the degree to which the DAPL Capacity Expansion will (1) increase the likelihood of a spill occurring (i.e., “occurrence risk”), (2) worsen the consequences of any potential spill (i.e., “consequence risk”), and (3) uniquely and specifically threaten the environment and welfare of North Dakotans residing on the Standing Rock Reservation. These risks were articulated at length in the pre-filed testimony of the Tribe’s witnesses. While the hearing elicited testimony from both Dakota Access’s and the Tribe’s witnesses that validated and contextualized these risks, the hearing was most instructive for confirming the existence of critical documents and data that are essential to the Commission’s “minimal adverse effects” determination but which Dakota Access has not yet provided to the Commission. The Commission should require Dakota

Access to produce these missing materials to the Commission and to the Tribe as Intervenor, so that the Commission may properly complete its “minimal adverse effects” determination and fulfill its duty to the citizens of North Dakota.

II. The Hearing Reinforced The Substantial Risks Identified by the Tribe’s Witnesses

In the pre-filed testimony of the Tribe’s witnesses Richard Kuprewicz (Dkt. 82), Donald Holmstrom (Dkt. 83), and Jon Eagle (Dkt. 84) and in the Tribe’s pre-hearing brief (Dkt. 49), the Tribe previewed its concerns that the DAPL Capacity Expansion will produce substantial adverse effects on the environment and citizens of North Dakota. Doubling the throughput of the pipeline increases the risk that a spill will occur, and it worsens the potential consequences of any spill. Testimony received at the hearing validated these concerns.

A. The DAPL Capacity Expansion Will Increase Surge Risk

As the Tribe’s engineering expert Richard Kuprewicz explained, it is an axiomatic fact of liquid pipeline dynamics that doubling DAPL’s throughput will increase the risk that DAPL will experience “surge overpressure” events in which DAPL’s pressures exceed 110% of the pipeline’s maximum operating pressure (“MOP”). Kuprewicz Testimony at 170-242. Under Federal law, operators are prohibited from permitting the pressure in a pipeline “during surges or other variations from normal operations” to exceed 110% of MOP, and each operator “must provide adequate controls and protective equipment to control the pressure within this limit.” 49 CFR §195.406(b). At 1,100,000 bpd, the DAPL Capacity Expansion will result in actual flow velocities within the 30-inch mainline pipeline that exceed 15 feet per second. This is an extremely high velocity for crude oil, especially for a large diameter pipeline such as DAPL, and can cause surge overpressures greater than 110% to occur within microseconds. *See* Kuprewicz

Testimony, 170-242; Dkt. 58, Testimony of Richard Kuprewicz at 5:19:10-5:20:00. As Mr. Kuprewicz testified, to mitigate the risk of surge overpressure from the DAPL Capacity Expansion, it is essential to establish that a reliable transient surge analysis has been performed and that appropriate controls and mitigation measures are properly installed and maintained. Dkt. 58, Testimony of Richard Kuprewicz at 5:20:20-5:20:40.

Although they could not identify any operators besides Energy Transfer that operate pipelines at flow velocities greater than 15 feet per second, Dakota Access's witnesses disagreed that 15 feet per second constitutes a "fast" flow velocity. Dkt. 58, Testimony of Charles Frey 1:27:50-1:28:20. Nevertheless, Dakota Access's witnesses admitted that doubling DAPL's throughput will in fact increase the risk of surge overpressure. Dkt. 58, Testimony of Charles Frey at 2:49:00-30 (acknowledging "we believed we were going to need to enhance [surge mitigation protections] for the expansion of DAPL."). Dakota Access's witnesses further confirmed that they possess a transient surge analysis performed by Dr. Michael Hein of Fluid Flow Consultants, Inc. that analyzes the surge overpressure risk of the DAPL Capacity Expansion and recommends control devices and mitigation measures to address that risk. Dkt. 58, Testimony of Charles Frey at 2:49:00-30. Dakota Access's witnesses confirmed that this transient surge analysis has been produced to the Illinois Commerce Commission, but not to this Commission. Dkt. 58, Testimony of Charles Frey at 1:25:00-1:26:10. On cross-examination, Mr. Kuprewicz confirmed that he has reviewed this transient surge analysis, that it is "an excellent start," but that further analysis is required before the Commission or anyone else can conclude that the transient surge analysis and its recommendations will be sufficient to mitigate the risk of surge overpressures in excess of 110% of MOP. Dkt. 58, Testimony of Richard Kuprewicz at 5:17:50-5:23:00.

B. By Increasing Flow Rates and Operating Pressure, the DAPL Capacity Expansion Increases the Risks of Pipeline Failure

As the Tribe's engineering expert testified, all steel pipelines contain anomalies, imperfections in pipe steel or welds, or weld heat affected zones (aka HAZs). *See* Kuprewicz Testimony at 244-369. Higher operating pressures increase the risk that such anomalies and imperfections will become points of failure. *Id.* Accordingly, operators are required to periodically reassess the integrity of hazardous liquid pipeline sections where an inadvertent release would affect populated areas, drinking water sources, or sensitive ecological resources – i.e., “High Consequence Areas,” or HCAs. *Id.*

The hearing confirmed that the DAPL Capacity Expansion will significantly increase DAPL's operating pressures throughout certain segments of the pipeline. But the hearing likewise confirmed that Dakota Access has failed to provide the Commission with *any* specific information about those operating pressure increases – their magnitude, their location, their proximity to HCAs, and whether Dakota Access's integrity reassessment protocols are sufficient in light of these pressure increases.

In his pre-filed testimony, Mr. Kuprewicz explained that Dakota Access should have already prepared detailed hydraulic profiles for its pipeline system for both the base 570,000 bpd case and the post-expansion 1.1 million bpd case. *See* Kuprewicz Testimony at 286-293. At the hearing, Dakota Access's witnesses confirmed that Mr. Kuprewicz was right: Dakota Access has prepared hydraulic profiles of the DAPL system at the 570,000 bpd flow rate, as well as the post-expansion 1.1 million bpd flow rate. Dkt. 58, Testimony of Charles Frey at 1:18:30-1:18:40. These profiles provide a detailed picture of the operating pressures throughout the DAPL system. When analyzed in conjunction with an index of all HCAs crossed by DAPL, the hydraulic profile

will allow the Commission to evaluate specifically where high-pressure segments of DAPL intersect with HCAs – and thus provide the Commission with a comprehensive understanding of those areas where the DAPL Capacity Expansion poses the greatest threat to the environment and citizens of North Dakota.

But, as their witnesses confirmed at the hearing, Dakota Access’s 1.1 million bpd hydraulic profile has not yet been provided to the Commission. Dkt. 58, Testimony of Charles Frey at 1:18:30-1:18:40. Without DAPL’s 1.1 million bpd case hydraulic profile, the Commission has no way of evaluating the risks posed by the DAPL Capacity Expansion’s increased operating pressures, nor any basis for determining whether Dakota Access’s integrity reassessment measures are sufficient to mitigate the risk of adverse effects on the environment and citizens of North Dakota.

C. Energy Transfer’s Poor Safety Record Remains a Significant Concern

The Tribe’s pipeline safety expert Donald Holmstrom testified that Dakota Access’s parent company, Energy Transfer, has the worst hazardous liquid safety record in the industry over the past 13 years. *See* Prefiled Testimony of Donald Holmstrom, Dkt. 41 at 57-63 (“Holmstrom Testimony”). Mr. Holmstrom testified that, according to PHMSA, DAPL itself has already experienced at least 12 spills of over 6,100 gallons of Bakken crude oil. *Id.* at 263-307. At the hearing, Dakota Access’s witness Mr. Stamm testified that five of those twelve spills should actually be attributed to ETCO (the portion of Energy Transfer’s “Bakken Pipeline” that runs from Patoka, IL to Nederland, TX)¹ and that those spills occurred in facilities, not on the pipeline itself, but otherwise did not dispute those numbers. Dkt. 58, Testimony of Todd Stamm

¹ Energy Transfer, Bakken Pipeline (Dakota Access and ETCO) <https://www.energytransfer.com/crude-oil/> (last accessed Dec. 16, 2019).

at 2:54:00-2:55:42. Mr. Stamm testified that he “believe[d]” at least one of these one of these spills occurred in a high-consequence area, but was not sure. *Id.*

In total, from 2006 to 2018, Energy Transfer pipelines were responsible for 458 hazardous liquid incidents, resulting in \$109,737,246 in property damage from 2,557,716 gallons of hazardous liquid spilled, making Energy Transfer by far the most hazardous pipeline operator across that 13-year period. Holmstrom Testimony at 263-307. The second most hazardous pipeline operator over that period experienced 45% fewer liquid spills than Energy Transfer. *Id.* Energy Transfer’s poor safety practices have prompted unprecedented regulatory enforcement action in recent years. In 2017-2018, Sunoco (an entity controlled by Dakota Access’s corporate parent) was forced to suspend pipeline operations because of environmental contamination on four separate occasions across three states, with one state regulator describing its practices as “egregious and willful” violations of law. *Id.*

In their questioning of Mr. Holmstrom at the hearing, Dakota Access’s attorneys sought to downplay or disclaim responsibility for these incidents. For example, Dakota Access’s attorneys suggested that Energy Transfer’s poor safety record as reflected in the PHMSA database might be attributable to the fact that Energy Transfer has acquired aged assets from other operators over the past 13 years. *See* Dkt. 58, Testimony of Donald Holmstrom at 7:19:20-40. Mr. Holmstrom was clear that, while he could not speak to the specific date Energy Transfer may have acquired assets from previous operators over the years, there is no reason to believe that Energy Transfer’s poor safety record is merely an artifact of its historical acquisitions. If that were the case, one would expect Energy Transfer’s safety record to have improved in recent years, and that has not happened. *Id.* at 7:18:30-7:19:30. In fact, as Mr. Holmstrom stated in his pre-filed testimony, just in the post-2017 period in which DAPL has been in operation, Energy

Transfer company-wide hazardous liquid spills have resulted in \$20,540,487 in property damage. Holmstrom Testimony at 263-307.

Similarly, Dakota Access's attorneys sought to minimize the relevance of recent regulatory actions against Energy Transfer entities in Pennsylvania, Ohio, and West Virginia by pointing out that, in those states, Energy Transfer entities were ordered to suspend operations because they spilled drilling fluid, not shipped product. *See* Dkt. 58, Testimony of Donald Holmstrom at 7:21:35-7:22:20. As Mr. Holmstrom explained, major accidents are caused by management system deficiencies. If a company experiences multiple types of accidents – drilling fluid spills, pipeline spills, facility spills – that is indicative of deficiencies in management systems more broadly. *Id.* at 7:22:20-7:23:15. Energy Transfer's safety record speaks to a company that is plagued by deficient management systems across the entirety of its operations. Accordingly, it is imperative that the Commission closely scrutinize all pertinent operational and safety information related to the DAPL Capacity Expansion to ensure that the adverse impacts Energy Transfer has imposed on the residents of Pennsylvania, Ohio, West Virginia, and the other states where it operates are not imposed on North Dakotans.

D. The Hearing Confirmed That The DAPL Capacity Expansion Threatens To Worsen the Consequences of Any Spill

As the Tribe's experts testified, doubling DAPL's throughput presents a risk that, in the event of a spill, a greater volume of oil will be discharged. *See* Kuprewicz Testimony at 318-369; Holmstrom Testimony at 117-155. The Tribe's experts testified that Dakota Access's "Worst Case Discharge" analysis – a critical piece of any pipeline operator's oil spill response planning efforts – is based on unrealistic assumptions that ultimately underestimate the true worst-case discharge that DAPL may experience. The Tribe's experts further testified that, to their

knowledge, Dakota Access has not made an effort to update or revisit its flawed WCD to account for the massive increase in throughput and velocity that would accompany the DAPL Capacity Expansion. *See* Holmstrom Testimony at 117-155.

Dakota Access's witnesses unsurprisingly disagreed with the notion that DAPL's existing WCD is inadequate, but they did concede that Dakota Access has not developed an updated WCD for the proposed 1.1 million bpd capacity. Dkt. 58, Testimony of Todd Stamm at 3:11:00-3:11:30. They likewise conceded that Dakota Access has not yet developed an updated facility response plan to account for the 1.1 million bpd capacity increase, implying that they may not do so until the after the DAPL Capacity Expansion is completed since minimum federal pipeline regulations only require such a plan to be submitted within 30 days of going into operation. Dkt. 58, Testimony of Todd Stamm at 3:12:00-3:12:30. And, on instruction of counsel, Dakota Access refused to provide testimony regarding the DAPL crossing a Lake Oahe and what additional mitigation or safety measures may be necessary to protect that critical crossing. *See, e.g.*, Dkt. 58, Testimony of Todd Stamm at 3:14:00-3:15:00.

The testimony that Dakota Access's witnesses did provide as to the risk that the DAPL Capacity Expansion will worsen the consequences of any spill or leak from the pipeline was vague and evasive. And, above all, it reinforced the fact that it will be impossible for the Commission to meaningfully evaluate the DAPL Capacity Expansion's increased consequence risk without reviewing Dakota Access's transient surge analysis and hydraulic profiles. The back-and-forth between Commissioner Fedorchak and Energy Transfer's VP of Operations Todd Stamm made this clear:

Commissioner Fedorchak: So if you have a slow leak but you have more oil going through doesn't it stand to reason that you're going to have more oil

escape?

Mr. Stamm: It does not, I mean . . . The answer is it could, if, uh, when we talked about the worst-case discharge scenario, um, and a key component of that worst-case discharge scenario is the calculation of volume . . . you're using the flow rate as a key component of that calculation . . . when you're looking at a smaller release as you suggested . . . the flow rate is not changing the dynamics of the system or the release . . . we talk about . . . the leak detection capabilities and that's . . . I did provide that as a percentage of flow, but otherwise, um, hopefully that answers the question.

Commissioner Fedorchak: Well it still doesn't make sense to me though. . . . You've got more oil in a pipeline and there isn't a higher risk in the slow leak scenario that you're going to have more escape?

Mr. Stamm: We talked about the hydraulic profile. If I can use the simple example of going from 1,000 pounds down to 100 pounds. If we put a new pump station in the middle, effectively what we're talking about doing here, you have that profile cut in half. So now you're going from 1,000 to 100, back up to 1,000 down to 100. If that assumed leak we're talking about is happening at a location where the pressure is significantly less . . . then the volume that will be released all other things being equal would be less. That was the example of, it will not necessarily be more just because the flow rate is more. Part of the challenge is jumping back and forth between a Worst-Case Discharge scenario and a smaller release . . . In a pipe rupture scenario, as you're calculating the volume out if the complete pipe is severed or ruptured, then yes I would agree with you that the additional flow, additional oil would be out.

Commissioner Fedorchak: So the pressure is the biggest issue determining how much flow gets out?

Mr. Stamm: Pressure and the size of the anomaly for the smaller releases that I believe we're discussing.

Dkt. 58, Testimony of Todd Stamm at 4:02:40-4:05:45.

While muddled, Mr. Stamm's testimony ultimately appears to affirm that the testimony of the Tribe's experts, as well as Commissioner Fedorchak's intuition, is correct. In the event of a rupture, the DAPL Capacity Expansion with its higher 1.1 million bpd capacity *will* cause more oil to be discharged compared to current operations. That additional discharge needs to be addressed, with adequate spill response planning and safety management, before it is allowed –

not after the fact. In the event of a smaller leak, the DAPL Capacity Expansion *may* cause more oil to be discharged, but the magnitude of that increase depends specifically on (1) the pressure in the segment where the leak occurs and (2) the size of the anomaly. If the leak occurs in a segment of the pipeline that, post-expansion, will operate at a higher pressure, then more oil will be discharged compared to current operations. As Commissioner Fedorchak correctly deduced, pressure is the biggest factor in determining how much oil will be discharged. And as Mr. Stamm admitted, the only way to understand how the DAPL Capacity Expansion will increase the pipeline's operating pressures throughout the system is by consulting the hydraulic profiles Dakota Access has prepared for the 570,000 bpd case and the 1.1 million bpd case.

Commissioner Fedorchak's questioning of Mr. Stamm raised several critical questions:

- Post-expansion, which segments of the pipeline will experience the highest operating pressures?
- Are any high-consequence areas located along those segments?
- Given these pressure increases, how much oil will be discharged in the event of a pinhole or other small leak?
- How large would such a leak have to be in order for Dakota Access's leak-detection system to detect it?
- How much oil will be discharged in the event a detectable leak?
- How much oil will be discharged in the event of an *undetectable* leak?

But neither Mr. Stamm nor any other Dakota Access witness actually answered any of these questions at the hearing. Rather, their testimony made it clear that these questions *cannot* be answered based on the present record: Dakota Access's hydraulic profiles, identification of HCAs, and spill models must be produced before such questions can be answered.

E. The Potential Adverse Effects on Tribal Members Are Substantial

Testimony offered at the hearing by Jon Eagle, Sr. underscored the profound risk that the DAPL Capacity Expansion poses to North Dakotans who call the Standing Rock Sioux Reservation home. The waters of Lake Oahe are critical to the welfare of the Tribe. The DAPL Oahe crossing imperils Tribal welfare, and the DAPL Capacity Expansion threatens to dramatically exacerbate that peril.

The waters of Lake Oahe are central to the Tribe's culture. As Mr. Eagle explained, members of the Tribe descend from ancient people who have creation stories that give them cultural affiliation to the land, water and air going back to the beginning of time. *Id.* Tribal elders teach that Water is sacred. The Lakota word for water is Mni Wiconi, or Water of life: without water, there is no life. Tribal members still go to the water to pray and make offerings so that all life that is sustained by the river may live. *Id.* People, horses, buffalo, deer, fish, birds, all life is considered to be sacred and is dependent upon water. *Id.*

Because of DAPL, Tribal members live every day under the risk of an oil spill that will harm the waters that sustain the Tribe's people, economy, and spiritual lives. An oil spill would foul the water that the Tribe drinks, that the Tribe relies upon for their Treaty-protected, subsistence hunting, fishing and traditional plant gathering, and that provides irrigation for the Tribe's farming and other economic ventures.

The DAPL Capacity Expansion would significantly compound the threat already facing the Tribe. Doubling the throughput of a pipeline that already poses a grave threat to the water the Tribe drinks, the sacred sites where Tribal members pray, and the hunting, fishing, and plant gathering practices that are integral to the Tribe's way of life would have a profoundly adverse impact on Tribal members.

The magnitude of this threat was reinforced by the many public comments that the Commission received from concerned Tribal members. Tribal members who undertook the 5-hour round-trip journey from Standing Rock to Linton included elders, young children, and high-school and college students. Each Tribal member who stood up to provide public comment explained in his or her own way the substantial adverse effects that the DAPL Capacity Expansion threatens to impose on their lives and the environment where they live.

III. Request For Relief

The Tribe anticipates that Dakota Access may argue that the Commission should approve the Application without any additional delay or inquiry, and further that federal law and regulation preempt the Commission from conducting any additional analysis as to whether the DAPL Capacity Expansion comports with North Dakota's "minimal adverse effects" requirement. Such an argument would lack merit.

First, the Commission's issuance of the original pipeline permit to Dakota Access in 2016 was explicitly conditioned on the factual finding that "Dakota Access testified that the design, construction, and operation of the pipeline will be in accordance with the United States Department of Transportation (USDOT) regulations governing the transportation of crude oil, including USDOT regulations as set forth in 49 Code of Federal Regulations Part 195." Case No. PU-14-842, Findings of Fact, Conclusions of Law and Order (Jan. 20, 2016), Dkt. 134. Accordingly, the Commission has already established – and Dakota Access has already accepted – that Dakota Access's compliance with relevant federal laws and regulations is germane to the Commission's "minimal adverse effects" analysis under N.D.C.C. Sec. 49-22.1-02 and N.D. Admin. Code Sec. 69-06-08-02. Unlike the 2016 proceeding, in the present proceeding the testimony of Mr. Kuprewicz and Mr. Holmstrom establish that DAPL Capacity Expansion may

fail to accord with all applicable USDOT regulations governing the transportation of crude oil, including 49 C.F.R. 195, and this failure threatens to produce substantial adverse effects on North Dakotans.

Second, Dakota Access has already produced additional documents and data regarding its compliance with applicable federal rules and regulations to public utility commissions reviewing the DAPL Capacity Expansion in other states. Dakota Access's own witnesses attested to this at the hearing. Dakota Access can hardly argue that the Public Service Commission of *North Dakota* is preempted by federal regulation from reviewing, e.g., the transient surge analysis it commissioned to comply with 49 CFR §195.406(b) when Dakota Access voluntarily produced that same transient surge analysis to the Commerce Commission of *Illinois* for the same purpose. The Commission has an independent right and duty to collect whatever additional information may be necessary to fulfill its statutory duties under N.D.C.C. Sec. 49-22.1-02 and N.D. Admin. Code Sec. 69-06-08-02, including Dakota Access's transient surge analysis and hydraulic profiles.

At the hearing, Dakota Access's witnesses stated they are "sure" they can work with the Commission "to come to a satisfactory agreement on what [more] needs to be provided" to enable the Commission to make its minimal adverse effects determination. Dkt. 58, Testimony of Charles Frey at 1:32:49-1:33:04. Accordingly, the Tribe respectfully submits that the Commission should now formally request that Dakota Access produce the missing documents and data for review and analysis by the Commission and by the Tribe as Intervenor. There is no risk that requesting additional information from Dakota Access at this stage will unduly delay or prejudice the progress of the DAPL Capacity Expansion. Dakota Access's own witnesses testified that the design process for the DAPL Capacity Expansion is still a work-in-progress.

Dkt. 58, Testimony of Charles Frey at 2:49:50-2:50:07. (“[W]e’re in the design process...” “So the design process is ongoing at least as of October 2019?” “Yes.”). Further, the parallel proceedings occurring before the Illinois Commerce Commission and the Iowa Utilities Board regarding the DAPL Capacity Expansion are expected to continue well into the second quarter of 2020, if not beyond.²

As explained by the Tribe’s experts and as established at the hearing, Dakota Access has failed to provide the Commission with documents and data that are critical to the Commission’s determination of whether the DAPL Capacity Expansion will produce minimal adverse effects on the environment and citizens of North Dakota. Foremost among these missing documents and data are Dakota Access’s transient surge analysis and hydraulic profiles – the relevance and importance of which were affirmed by the testimony of Dakota Access’s own witnesses at the hearing. Accordingly, the Tribe respectfully requests that the Commission order Dakota Access to supplement the record by producing its transient surge analysis, hydraulic profiles, as well as the other categories of documents and data identified by the Tribe’s witnesses in their pre-filed testimony, to wit:

1. The transient surge analysis and recommended mitigation measures that Dakota Access commissioned for the DAPL Capacity Expansion and which was produced to the Illinois Commerce Commission in October 2019.
2. Hydraulic profiles of the 30-inch pipeline system within North Dakota for the 570,000 bpd base case and the 1.1 million bpd expansion case, sufficient to show how the DAPL Capacity Expansion will increase operating pressures throughout the system.
3. An identification of all HCAs by milepost within North Dakota and Dakota Access’s plans for periodically reassessing the integrity of its pipeline in areas where an inadvertent release would impact those HCAs.

² <https://icc.illinois.gov/docket/casedetails.aspx?no=19-0673>;
<https://efs.iowa.gov/efs/ShowDocketSummary.do?docketNumber=FCU-2016-0006>.

4. Dakota Access's analysis of estimated oil release volumes and locations based on and as informed by its transient flow modeling and the pipeline's hydraulic profile.
5. An up-to date and DAPL-specific Integrity Management Plan (IMP) that complies with PHMSA regulations and industry standards.
6. Proof that, post-expansion, Dakota Access will adhere to all applicable API best practices, including RP 1173 (Pipeline Safety Management Systems), RP 1175 (Leak Detection Program Management), RP 1160 (Managing System Integrity for Hazardous Liquid Pipelines), and RP 1130 (Computational Pipeline Monitoring for Liquids).
7. An updated WCD for the DAPL Capacity Expansion that properly incorporates all factors required by PHMSA regulations.
8. A revised spill model based on the updated WCD and corresponding changes to the DAPL Facility Response Plan and Lake Oahe Geographic Response Plan.

Further, the Tribe respectfully requests that these materials be made available to the public and to the Tribe as Intervenor for independent review and analysis for a period of not less than sixty (60) days, and that the Tribe be afforded an opportunity to file additional briefing and expert affidavits at the close of the requested 60-day review period. The experts retained by the Tribe have decades of experience analyzing such materials, and the Tribe is eager to continue to share their expertise with the Commission and with the people of North Dakota.

Over the course of this proceeding, the Tribe has expended significant resources to help ensure that the DAPL Capacity Expansion receives a transparent and fair review in which all facts relevant to the Commission's duties under N.D.C.C. Sec. 49-22.1-02 and N.D. Admin. Code Sec. 69-06-08-02 are presented. Dakota Access has fought those efforts, filing a last-minute motion to prevent the Tribe's witnesses from testifying at the hearing altogether and trying to prevent the Commission from even considering the potential adverse effects that increasing DAPL's capacity from 570,000 bpd to 1.1 million bpd will have on the environment and citizens of North Dakota. *See* Dakota Access, LLC's Motion to Strike Testimony of Donald

Holmstrom, Richard Kuprewicz, and Jon Eagle, Sr. (Dkt. 50). Why Dakota Access would try to shut down these proceedings and evade any meaningful oversight when it continually trumpets DAPL as a “state-of-the-art” pipeline is anyone’s guess, but fortunately for the people of North Dakota its arguments have been rejected. As a result, the Tribe has been able to share its expertise and the insights of its retained experts with the Commission and the people of North Dakota. The testimony of the Tribe’s experts and the record established at the hearing are clear: Dakota Access must produce additional information, including its transient surge analysis and hydraulic profiles, before the Commission can determine that the adverse effects of the DAPL Capacity Expansion are sufficiently minimal to warrant approval.

Dated this 30th day of December, 2019.

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