

**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

DAKOTA ACCESS, LLC’S POST-HEARING BRIEF

Dakota Access, LLC (“Dakota Access”), by and through its undersigned counsel, hereby submits to the North Dakota Public Service Commission (the “Commission”) its Post-Hearing Brief.

INTRODUCTION

As Commissioner Fedorchak described in her opening statement at the public hearing in this case, North Dakota has been “extremely blessed” with “incredible energy resources.”¹ Those resources fuel not only North Dakota’s economy, but that of the entire country. Dakota Access witness Dr. Jeff Makhholm further explained that the Bakken resource is “unique in the world”² – and production in the region continues to increase. There is no contrary evidence. In fact, it is undisputed that production from the Bakken has increased since the Commission approved the Dakota Access Pipeline (“DAPL”) and since the DAPL went into commercial service in June 2017.³

¹ Hearing Transcript (“Tr.”) at 8:19 - 9:2. To facilitate use of the hearing record, Dakota Access took a copy of the official recording it obtained from the Commission to a professional third-party transcriptionist. A copy of that hearing transcript is provided as **Attachment A**.

² See Tr. at 34:5 – 14 (“But because we are so good in this country at planning and routing safe transport access through pipelines, we’ve facilitated the monetization of the Bakken field. That’s a reflection of the way in which we regulate pipelines effectively and the Federal and State level and the role The Bakken field is unique in the world in that respect. It’s a pillar of new oil industry production...”);

³ See, e.g., Dakota Access Exhibit 10, Pre-filed Testimony of Dr. Jeff Makhholm (“Makhholm Test.”) at 7:10 - 17; Tr. at 54:17 – 55:6.

The Commission's hearing was prompted by Dakota Access's response to increased demand from shippers.⁴ In particular, after Dakota Access explored ways to accommodate that demand to get North Dakota's oil resource to market, it determined that adding a small number of additional pump stations – only one in North Dakota (Emmons County) – could optimize the capacity of the existing DAPL, allowing the safe, efficient, and economical transport of additional oil to address the growing demand.⁵

Dakota Access has provided extensive evidence that the proposed pump station, by increasing shipping capacity, will help ensure reliable energy resources for the state and the nation. That evidence is not refuted. Dakota Access has also provided extensive, unrefuted evidence that the siting, construction, and operation of the proposed pump station will result in minimal to no adverse impacts to the environment and people of North Dakota. The remaining “safety” issues raised by Intervenor Standing Rock Sioux Tribe (“SRST”) are not properly before the Commission, and even if they were, Dakota Access has provided ample evidence for the Commission to determine that the addition of the proposed Emmons County Pump Station will cause no significant detriment to the environment or the welfare of North Dakotans. Instead, the testimony is clear that the resulting increase in throughput will not increase either the possibility of a spill or the volume of a modeled worst-case-discharge should one ever occur.

The proposed pump station will ensure continuing system reliability and allow the DAPL to fulfill energy needs in an orderly and timely fashion while minimizing adverse human and environment impact. For the reasons that follow, the Commission should grant the amendment to the route permit and certificate of corridor compatibility to construct the Emmons County Pump Station.

⁴ See Makholm Test. at 6:7 – 7:9.

⁵ See Makholm Test. at 6:7 – 7:9, 8:13 – 9:10; Dakota Access Exhibit 9, Pre-filed Testimony of Todd Stamm (“Stamm Test.”) at 3:16 – 4:11).

I. The Proposed Emmons County Pump Station will have No Significant Adverse Impact on the Environment or Welfare of North Dakota.

Dakota Access's proposed Emmons County Pump Station requires an amendment, under North Dakota Century Code ("NDCC") sections 49-22.1-06 and 49-22.1-07, to the Commission's route permit and certificate of corridor compatibility. As explained at the hearing, the Commission uses a "standard of minimal impact," (Tr. 10:4) in determining whether the facility under review "allows North Dakota to continue developing the resources we have, allowing for reliable energy resources for our state and the nation while also minimizing the impact to the environment and to the people." Tr. 10:14-18; *see also* NDCC 49-22.1-02 ("It is necessary to ensure the location, construction, and operation of . . . facilities will produce minimal adverse effects on the environment and the welfare of the citizens of this state The policy of this state is to site energy conversion facilities and to route transmission facilities in an orderly manner compatible with environmental preservation and the efficient use of resources.").

Dakota Access has provided the Commission with abundant evidence that the proposed Emmons County Pump Station has been sited, and will be constructed and operated, such that it will have no more than a minimal impact on the environment and citizens of North Dakota, making this amendment consistent with North Dakota policy as expressed in NDCC 49.22.1-02. Emmons County has already issued Dakota Access a conditional use permit for the construction of the pump station.⁶ The only issues raised at the hearing about the actual siting of the proposed Emmons County Pump Station were potential sound impacts. Dakota Access witness Charles Frey testified that during operation, the maximum sound level at the fence line of the property

⁶ *See* Dakota Access Exhibit 4: Conditional Use Permit Application and Approval Letter; *see also* Tr. 99:12 – 19 (Q. Any issues with Emmons County? I understand you have conditional use permit from Emmons County. Correct? A. We do. Q. And you're in -- to your knowledge you're in full compliance with any requirements that the County may require of the Dakota Access for this proposed facility. A. Yes.").

would be 55 decibels – the equivalent of soft conversation between two persons.⁷ Mr. Frey testified that Dakota Access commissioned a sound modeling analysis by a third-party expert, which it used to design sound mitigation measures that Dakota Access will undertake at the site to ensure compliance with the 55-decibel maximum. These include housing the pumps in a building, and adding sound-attenuating insulation.⁸ Mr. Frey explained that the nearest dwelling was 1,580 feet from the fence line of the pump station property, and uninhabited.⁹ He further explained that Dakota Access has nearly identical pump stations on the existing system and has never had a noise complaint from a landowner or regulatory agency.¹⁰ Mr. Frey also testified that for the one landowner who did have questions about noise from the proposed pump station, Dakota Access arranged for him to visit a nearly identical pump station in South Dakota to hear for himself, and that satisfied the landowner's noise concerns.¹¹

As for potential environmental issues raised at the hearing about the proposed pump station itself, they were limited to Mr. and Mrs. Kurszewski's questions whether a potential release might reach Beaver Creek. Mr. Frey explained that measures in place will make a release reaching Beaver Creek extremely unlikely, if not impossible. These include berms, leak detection systems, and the natural topography:

Q. All right. And my understanding of their concerns is that their concern of, in the event of an anticipated release of crude from this particular facility, the pump station that's proposed here, that there would be the potential for that to flow into Beaver Creek, which then flows into the Missouri River. Are you able to comment as to that that aspect of their concern at all, Sir?

⁷ See Tr. 88:22 – 89:5 (“The actual design parameters that we have in place with the acoustical engineering firm that we’ve hired to model this, is to limit the decibel levels to 55 at the fence line at any point in time day or night.”); Tr. 91:7 – 10 (“So as we are here talking a conversation between two people at normal tone would register about 60 decibels. So that gives you a context of what 55 decibels is.”).

⁸ Tr. 85:2 – 5; 88:22 – 89:18.

⁹ Tr. 111:2-6. Mr. Frey also testified that, in the “hypothetical instance” that a landowner were to raise concerns about the decibel level at an occupied residence, Dakota Access “would install additional sound controls to bring the decibel levels down to the 55.”). Tr. 90:14-91:14.

¹⁰ Tr. 111:11 – 112:6.

¹¹ Tr. 86:22 – 87:17.

A. I can comment about the pump station – release at the pump station, a couple of things to keep in mind. There is a berm around the storage tank or the surge tank that'll be there that's sized for a hundred percent of the capacity of the tank along with a freeboard amount, I'm not sure of for rain events. So the building itself where the pumps and motors are housed, the foundation is a curb, and so any release of the from the piping or the pumps and motors, the piping in the pond building would be contained in the building initially. And there's leak detection associated with that so that we would have -- our control room would have an immediate indication of a release, and the facility would be shut down. The natural drainage from the pump station is not being changed. We're not changing entry and exit points for drainage. We are on the north side of, I don't know if it's State or County Road 13, but the Highway 13. Beaver Creek is to the south of Highway 13, So highway 13 serves as a natural berm or control device between the pump station and Beaver Creek. It would -- any runoff or release from the station would run along the road. Eventually, it would come to a culvert where it could traverse to the south side. That culvert empties into a cultivated field. So there's no direct path for any event at the pump station to follow to get to Beaver Creek.

Tr. 92:18 – 94:7.

In addition to the site-specific controls that Mr. Frey identified, other testing and safety measures will further lower such a risk, including extensive hydrotesting and inspection of 100 percent of girth welds, which exceeds the federal Pipeline and Hazardous Materials Safety Administration (“PHMSA”) requirements, and the use of fusion bonded epoxy coating on the pipeline.¹² In addition, Dakota Access witness Dennis Woods provided testimony confirming the minimal impact on cultural and environmental resources at the pump station site.¹³

No evidence at the hearing or in any of the pre-filed testimony suggests that the siting, construction, or operation of the proposed pump station would have any adverse impact on the environment or welfare of North Dakotans. Dakota Access’s testimony and documentary evidence about an absence of such effects was unrefuted. In fact, none of that testimony or other

¹² See Tr. 70:15 – 21 (describing hydrostatic testing to 125 percent of MOP); 252:12 – 20 (describing hydrotesting above and beyond PHMSA requirements); 250:14 – 251:1 (discussing NDT inspection of 100 percent of girth welds in excess of PHMSA requirements);

¹³ See generally, Dakota Access Exhibit 11: Pre-filed Testimony of Dennis Woods (“Woods Test.”).

evidence regarding the pump station itself was even challenged. The sole intervenor in the case, SRST, presented two expert witnesses, but neither even bothered to discuss the pump station site itself.¹⁴

As noted, the proper issue before the Commission is whether siting, construction, and operation of the proposed *pump station* will have more than a minimal impact on the environment and the welfare of North Dakota's citizens. Because the record is clear that no such effect will occur, the Commission should grant the request for amendment to the route permit and certificate of corridor compatibility on that basis alone. In short, ample, unchallenged evidence proves that the proposed *pump station* has been sited, and will be constructed and operated, in a manner that will ensure continuing system reliability and integrity while fulfilling energy needs in an orderly and timely fashion, while minimizing potential adverse impacts to the people and environment of North Dakota.

II. The Intervenor's Remaining Arguments Are Not Properly Before the Commission Because They Seek To Re-litigate the Original Permit and Matters Pending in Federal Court or Are Preempted by Federal Rules.

In lieu of addressing the central issue in this case – the proper siting, construction, and operation of the Emmons County Pump Station – intervenor SRST has attempted to use this proceeding to litigate issues preempted by federal law, and to re-litigate both the Commission's previous permit decisions and federal law issues that are currently being litigated in a pending case brought by SRST against the U.S. Army Corps of Engineers – *Standing Rock Sioux Tribe et al. v. U.S. Army Corps of Eng'rs*, Case No. 1:16-cv-1534 (D.D.C.) (the "Federal Litigation") – based on the federal government's previous decisions.

¹⁴ See Tr. 245:13 – 16 (R. Kuprewicz Testifying) ("Q. Were you asked to review the potential impacts of the physical construction of a new pump station in Emmons County? A. Not – no, I have not done that."); see also Tr. 327: 13 – 20 (D. Holmstrom Testifying) ("Q. So you don't make any recommendations in your testimony regarding an alternative site to place the pump station? A. No. Q. You don't make any recommendations about the environmental and cultural surveys that were done for the pump station site? A. No.").

The Commission's July 10, 2019 Notice of Opportunity for Hearing included the "issues to be considered." Docket No. 8. On July 30 2019, SRST filed a Request for Hearing setting forth numerous additional issues that it thought should be addressed at any hearing, including whether the application complies with "recognized and generally accepted . . . industry standards" and applicable regulations for an increase in pipeline flow rate, the risk of over pressurization, prior incidents around the United States that SRST claimed to involve out-of-state affiliates of Dakota Access, and whether the increase in flow rate significantly increases the likelihood of a theoretical spill. *See* Docket No. 17.

Dakota Access's August 19, 2019 Response to that Request explained, *inter alia*, that most of these other proposed issues "concern pipeline safety" and are thus under the jurisdiction of the PHMSA and "are already addressed by federal pipeline safety law, with which Dakota Access complies." Docket No. 22, p.1. On August 21, 2019, the Commission issued a Notice of Hearing for November 13, 2019 setting forth the same "issues to be considered" that the Commission included in its July 10, 2019 Notice of Opportunity for Hearing. Docket No. 24. This Notice of Hearing did *not* add any of SRST's requested extra-jurisdictional issues to the list of "issues to be considered" at the November 13 Hearing. *Id.* Instead, the three issues the Commission set forth concerned whether: (1) "the location and operation of the proposed facilities [will] produce minimal adverse effects on the environment;" (2) the "proposed facilities [are] compatible with the environmental preservation and the efficient use of resources;" and (3) the "proposed facility locations minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion." *Id.*

Despite the Commission's explanation of the scope of the issues, even a cursory review of the pre-filed testimony of Mr. Holmstrom and Mr. Kuprewicz demonstrates that SRST still intended to litigate the safe operation of the pipeline system – a subject within

PHMSA's exclusive jurisdiction – and not issues confined to the proposed facility itself. *See, e.g.,* Exhibit 11 – Kuprewicz Testimony at 9:180 – 85, 10:194 (testifying regarding velocities, the use of DRA and surge); Exhibit 12 – Holmstrom Testimony at 2:38 – 3:59 (testifying about Dakota Access's "safety record"; "existing oil spill response planning efforts"; and Dakota Access's "risk management approach."). This testimony goes far beyond the issues germane to this proceeding. In fact, in several instances the pre-filed testimony of Mr. Kuprewicz and Mr. Holmstrom directly attacks the adequacy of PHMSA regulations and claims Dakota Access is not in compliance with federal regulations. *See* Exhibit 11 – Kuprewicz Testimony at 20:412 – 214 (criticizing "reliance on federal worst case discharge regulations"); Exhibit 12 – Holmstrom Testimony 8:162-164 (contending that Dakota Access is not compliant with "PHMSA WCD regulation").

The Commission was correct to limit the issues as it did in its pre-hearing orders, because none of the intervenor's arguments about the safe operation of the pipeline system is properly before the Commission. The federal Pipeline Safety Act ("PSA") establishes a comprehensive program for pipeline safety, addressing design, construction, operation, and maintenance, and Congress expressly reserves exclusive jurisdiction over pipeline safety to the Federal program, as administered by PHMSA, particularly for interstate pipelines. *See* 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."). In addition to the statute's express statement as to its preemptive reach, the Eighth Circuit has repeatedly held that states are prohibited from regulating the safety of interstate pipelines in any way. *See, e.g., Kinley Corp. v. Iowa Utils. Bd.*, 999 F.2d 354, 358 (8th Cir. 1993) ("Congress has expressly stated its intent to preempt the states from regulating in the area of safety in connection with interstate hazardous liquid pipelines.").

In addition to attempting to litigate preempted issues, SRST seeks to re-litigate this Commission's prior permit decisions and matters of federal law that are before the United States District Court for the District of Columbia in the Federal Litigation. For example, during cross examination, Mr. Holmstrom admitted that his testimony and intervenor's position is not so much about whether the Commission should authorize the proposed pump station as it is an argument that the Commission should have never granted a permit for DAPL "in the first place":

Q. You say you're here to talk about the expansion. The testimony I just read says 'even without the expansion.' Correct?

A. This is one statement. That's correct, and that's our position – my position.

Q. So your position is this Commission was wrong to grant DAPL a permit in the first place?

A. My position is yes, that's true."

Tr. 385:14-21.

In fact, both Mr. Kuprewicz and Mr. Holmstrom acknowledged at the hearing that their testimony advanced arguments identical to those that SRST already made (and is making yet again) in the Federal Litigation. Mr. Kuprewicz admitted on cross-examination that his testimony on PHMSA's findings as to remote leak detection systems is identical to the position of SRST in the Federal Litigation.¹⁵ Likewise, when being questioned about Exhibit 14 – SRST's Memorandum in Support of its Motion for Summary Judgment on Remand in the Federal Litigation, Mr. Holmstrom admitted that an argument advanced in his testimony was a verbatim recitation of an argument SRST is making in the Federal Litigation:

Q. And if we look at the table of contents in Exhibit 14, the Tribe's memorandum in the Federal case, the argument one says: "The remand relies on a flawed worst-case spill estimate." Correct?

¹⁵ See Tr. 282:9 – 283:9; See also Exhibit 14 – SRST's Memorandum in Support of Motion for Summary Judgment on Remand in the Federal Litigation.

A. And what page are you on?

Q. I'm on table of contents, page 2 of 63 if you're looking at that.

A. Better. Okay.

Q. And the argument, argument one is: "The remand relies on a flawed worst-case spill estimate." Correct?

A. And which would -- I see: "The Court's decision relied on a deeply flawed worst-case discharge, (A) and then (B), worst-case it's not even a best-case scenario." Right? Is that what you're referring to?

Q. So (B) actually even uses the same language that you use in your testimony here at the Commission. Correct?

A. That's correct.

Tr. 333:22 – 334:17.

In sum, the only arguments that SRST advances here – assertions of consequences from an increase in the increased transport volume of the DAPL – are arguments about the safe operation of the pipeline system. Such arguments are merely an attempt to litigate issues preempted by federal law or an attempt to re-litigate federal law issues that SRST has already raised in the Federal Litigation about the original DAPL approvals. Those issues are not properly before the Commission, as the Commission's pre-hearing Orders show. The Commission should disregard these arguments in determining whether the siting of the Emmons County Pump Station is appropriate.

III. Even if the Commission Does Reach the Issue of the Increased Transport Volume on the DAPL, the Amendments to the Route Permit and Certificate of Corridor Compatibility Should be Granted.

If the Commission considers SRST's arguments about the safety of the pipeline system as a whole, it should still grant the amendment because the increased throughput meets energy needs in a manner that respects the environment and overall welfare of North Dakota and its people. As a threshold matter, no party disputes that additional transport capacity is needed to support North Dakota's production industry and to serve energy demands. Dakota Access has

experienced a substantial increase in demand for crude oil transportation service on the DAPL since the DAPL's original permitting.¹⁶ In response to an Open Season held in December 2018, seven new shippers and existing shippers contracted for additional capacity far exceeding the DAPL's current transport capacity.¹⁷ Adding pumping capacity to the current DAPL system will allow Dakota Access to meet the growing demand from shippers by optimizing and fully utilizing the existing pipeline infrastructure, reducing the need to install new pipelines.¹⁸ No party has refuted or even tried to challenge any of these facts.

The Commission, applying the same standards at issue here, previously determined that the DAPL met relevant requirements for the furtherance of energy policy while protecting persons and the environment, and issued a permit for the DAPL's construction, maintenance, and operation. That decision is consistent with the decisions of the South Dakota Public Service Commission, the Iowa Utilities Board, and the Illinois Commerce Commission, all of which issued permits after finding that the DAPL met relevant requirements related to the protection of persons and the environment in those states.¹⁹ It is also consistent with the U.S. Army Corps of Engineers' review of the project and issuance of a permit and easement to Dakota Access. Similarly, it is undisputed that PHMSA has reviewed and approved Dakota Access's FRP.²⁰

SRST's arguments on this topic focus on the safe operation of the pipeline: that is, the asserted potential for surge pressures and the supposition that higher throughput means higher potential spill volumes. As SRST's own witness, Mr. Kuprewicz, admitted on cross-examination, Dakota Access went above and beyond applicable federal safety regulations in the design and construction of the DAPL in many areas, including additional hydrotesting,

¹⁶ Makholm Test. at 6:9 – 18.

¹⁷ Makholm Test. at 6:19 – 6:22.

¹⁸ Makholm Test. 7:1 – 4.

¹⁹ See Tr. at 386:17 – 389:22.

²⁰ *Id.*; see also Exhibit 15, PHMSA Approval Letter.

100 percent inspection of girth welds, pipeline inspection and transport procedures praised by Mr. Kuprewicz on other pipelines, fusion-bonded epoxy coating on the pipeline, cover depths and distance from other underground infrastructure in excess of PHMSA requirements, and more frequently scheduled integrity reassessments.²¹ Mr. Kuprewicz's admissions here were further echoed by Dakota Access witness John Godfrey:

Q. And do you have the experience to have an opinion on the manner in which Dakota Access cares and maintains for its pipeline?

A. Yes, I do. I think that they have gone above and beyond, particularly in the design component. They're using deeper depth of cover; They're using heavy wall pipe in sensitive areas, road crossings and water crossings and rail crossings; they're using state-of-the-art pipe spec. And I'll tell you right now when I was QA/QC at the pipe mill, I did not like seeing Energy Transfer come in and place a pipe order because I knew they're going to wear me out. They really have taken the time to put the front end of the design in, okay, and they've made a lot of design enhancements specifically for this line. There's been a lot of talk about the number of valves out on the line. I would say that they're probably the most progressive when it comes to installing emergency flow-restricting devices to minimize the impact of any potential spill, in my experience.

Tr. 432:21 – 433:18.²²

SRST's stated concern that an increase in flow could increase the risk of spills is not only without support; the hearing testimony directly contradicts it. The maximum operating pressure of the pipeline, by which safety factors are established and to which the pipeline was designed, will not change as a result of the increased throughput. *See* Tr. 70:15 – 18 ("The safety factors on pipelines are established against the Maximum Operating Pressure. In this case, the Maximum Operating Pressure of the pipeline is 1,440 pounds, which does not change.").²³ Similarly, optimization will have no measurable impact on the pipeline's actual average operating pressure; rather, as a result of the addition of pump stations, certain segments of the

²¹ Tr. 249:1 – 256:20.

²² *See also* Tr. 431:8 – 432:5 (Witness Godfrey discussing Dakota Access's above and beyond approach to integrity assessment.

²³ *See also* Frey Test. 6:16 – 19; Stamm Test. 3:16 – 21.

pipeline will operate at higher than current pressures, while other segments will operate at lower than current pressures.²⁴ Notably, one location with a lower operating pressure after optimization will be the Lake Oahe crossing – the primary focus of intervenor SRST’s arguments.²⁵

An increase in throughput does not increase the risk of a spill occurring, as demonstrated by Mr. Frey’s testimony:

Q. Increasing the capacity from 570,000 barrels a day to 1.1 million barrels a day, does that increase the risk of a spill or leak? Does it increase the occurrence risk?

A. No.

Q. Does it decrease the occurrence risk?

A. No.

Q. Your testimony is the risk of this pipeline spilling or leaking remains exactly the same regardless of how much oil we're putting through it.

A. The risk on a pipeline is not, in my knowledge, related to flow rate or velocity in pipelines.

Q. Has no impact on the risk of an incident?

A. No.

Tr. 72:16 – 73:8.

Similarly, the capacity optimization will not increase the volume of the modeled worst case discharge.²⁶ Moreover, as Mr. Stamm testified, the capacity optimization will not necessarily increase the amount of oil released from the pipeline if a spill were ever to occur:

²⁴ Tr. 67:22 – 68:2 (... “after the optimization project is complete, some segments of the pipeline will see higher pressures; other segments of the pipeline will see lower pressures.”).

²⁵ Tr. 266:11 – 267:2.

²⁶ Tr. 152:6-10 (“In the case of this Facility Response Plan the worst-case discharge is the discharge of a tank, which has a significantly greater volume than that of the pipeline. Hence, my comment that the worst-case discharge for this FRP will not change [as a result of the optimization].”).

Q. Would you agree with me that the plan to increase the capacity of the Dakota Access Pipeline from 570,000 barrels per day to 1.1 million barrels per day, that increase in volume, it will increase the negative impact that would result from any spill or leak from the pipeline or pipeline facilities. Do you agree with that?

A. I do not.

Q. You put a just under twice amount of oil into a pipeline, and you're telling me that that will not increase the amount of oil released in a spill or a leak?

A. It may, but it may not.

Q. Will putting more oil into the pipeline decrease the amount of oil that leaks or spills if there's an incident?

A. It could.

Tr. 146:14 – 147:8. Mr. Stamm explained why:

Q. That you've got more in the pipeline and there isn't a higher risk in a slow-leak scenario that you're going to have more escape.

A. Can I provide an example?

Q. Yes, please.

A. Okay, sure. We talked about the hydraulic profile, if I can use the simple example of going from a 1,000 pounds down to 100 pounds. If we put in a new pump station, which is effectively what we're talking about doing here, you now have that profile cut in half. So now you're going from 1,000 down to 100, back up to 1,000 down to 100. If that leak, or assumed leak, hypothetical leak we're talking about, is happening at a location where the pressure is significantly less -- because once again I can't draw it -- probably doesn't do a good job trying to do this stuff -- but if it is at a location where the pressure is less, then the volume that would 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.

Tr. 202:1 – 21.

The only other issue that SRST's witnesses raised regarded pressures in the pipeline caused by a surge. Again, this topic is preempted by federal law, specifically PHMSA regulations requiring a pipeline operator to keep pressures, even in transient situations, under 110% of maximum operating pressure. *See* 49 C.F.R. § 195.406(b). Pre-emption aside, the

Commission has ample reason to conclude that Dakota Access has taken the steps needed to help ensure the safety of the pipeline even in a rare surge situation. Dakota Access retained a highly qualified independent engineer – Dr. Hein – to model the potential for surge using the proposed flow rate after the optimization, and to make recommendations to ensure not only that Dakota Access complied with 49 C.F.R. § 195.406, but with the even stricter limit of 105% of MOP.²⁷

Dr. Hein recommended, based on his analysis, adding passive surge relief valves to the new pump stations, and increasing the size of the surge relief tanks at existing pump stations. He also recommended setting the primary logic controllers of the pumps and mainline valves so that when any valve starts to close, all upstream pumps are automatically shut down – a process that occurs faster than the full closure of the valves.²⁸ Dakota Access has committed to following all of Dr. Hein’s recommendations.²⁹

Even Mr. Kuprewicz acknowledged that his position and that of Dakota Access are “very close,” and that surge relief valves could address the issue if they are “properly...installed.”³⁰ He also admitted he has no evidence that Dakota Access would not install them correctly – his concern to the contrary is entirely speculative. Tr. 270:4 – 8 (“Q: You don't have any evidence that would lead you to believe that Dakota Access doesn't know how to properly install an SRV. A: I do not have that, but I'm just saying that I've had cases where that's been a problem.”) There is no basis for Mr. Kuprewicz’s concerns. Dakota Access has skilled contractors experienced in the installation of surge relief valves. Further, Dakota Access takes safety seriously – even Mr. Kuprewicz agrees that Dakota Access had gone above and beyond

²⁷ See Tr. 105:4 – 20; 106:20 – 108:11; 141:6 – 142:7 (Dakota Access witness Frey discussing PHMSA requirements related to surge overpressures, surge analysis performed for Dakota Access by Dr. Hein and Fluid Flow Consultants and Dakota Access’s adoption of the recommendations therein); Tr. 433:19 – 437:10; 455:16 – 456:11 (Dakota Access witness John Godfrey discussing PHMSA requirements related to surge overpressures, his review of and expert opinions regarding the surge analysis performed for Dakota Access by Dr. Hein).

²⁸ See Tr. 106:20 – 107:16.

²⁹ See Tr. 106:20 – 107:16; 134:10 – 17; 141:13 – 142:2; 437:7 – 10.

³⁰ Tr. 300:18 – 19; 313:1 – 5.

minimum safety requirements in the design, construction and operation of the DAPL.³¹ Moreover, as Mr. Godfrey credibly testified, Dakota Access is taking proper steps to prevent surge overpressure.³²

Mr. Holmstrom's testimony merits only brief discussion. He raised the more general and clearly preempted issues related to a "Worst Case Discharge." As noted above, this calculation is made pursuant to federal rules and reported in the federal Facilities Response Plan.³³ The WCD for the DAPL is at a tank farm, not along the pipeline itself, and that WCD volume is also substantially larger than any reasonable calculation for leak scenarios on the pipeline itself.³⁴ Mr. Holmstrom's only other point is a baseless accusation that Dakota Access and its parent company have a bad overall safety record. The Commission should find that Mr. Holmstrom's testimony is not credible. He admitted that this proceeding was his first consulting engagement,³⁵ and that he has no prior experience with mainline oil transmission pipelines.³⁶ Moreover, his allegations about Dakota Access's and Energy Transfer's alleged safety record were highly misleading, based on incorrect and raw counts of reported incidents over a period of time, and even included alleged incidents from periods when Energy Transfer did not even own all of the subject assets.³⁷ Mr. Holmstrom admits he made no effort to verify the data, nor did he compare incident records in any apples-to-apples manner – *e.g.*, by volume carried, route miles, or age of the asset:

Q. Anywhere in your testimony about those numbers? Do you adjust those metrics for system miles?

A. No. No, I don't.

³¹ Tr. 249:1 – 256:20.

³² Tr. 433:19 – 437:10; 455:16 – 456:11.

³³ See 49 C.F.R. § 194.105; see also Exhibit 15, PHMSA Approval Letter.

³⁴ See Tr. 151:20 – 152:10; 157:12 – 158:6.

³⁵ Tr. 325:8 – 13.

³⁶ Tr. 325:8 – 21.

³⁷ Tr. 369:20 – 370:2.

Q. Do you adjust the comparison for barrels transported?

A. No.

Q. You are aware that Energy Transfer's acquired some relatively aged assets over time, aren't you?

A. I believe some of them are aging, yes.

Q. Have you adjusted your numbers for age of system?

A. No.

Tr. 370:3-13. Mr. Holmstrom simply did a raw count. Tr. 370:16-17 (“I did a raw count of spill numbers, which to me is very significant.”). That is not expert analysis; that is misusing raw data in a way that even most laypersons would understand to be inappropriate.

Mr. Holmstrom’s allegation that Dakota Access lacks a culture of safety was similarly based on unsupported assumptions that the optimization project was not using a “Management of Change” process; Mr. Godfrey testified from firsthand knowledge that such a process is being used.³⁸ Moreover, Mr. Holmstrom’s sweeping accusations about Dakota Access’s approach to safety are wholly contradicted by Mr. Kuprewicz’s acknowledgement that Dakota Access went “above and beyond” in its efforts to design and build DAPL to operate safely. Mr. Holmstrom’s testimony should be disregarded.³⁹

In the end, SRST’s safety arguments – that the optimization increases the chance of a surge and the volume of a potential spill – are contradicted by clear and credible testimony. Dakota Access has taken all necessary steps to address the surge issue, and there is no evidence that the increased transport volume will make a spill more likely or materially increase the impact in the unlikely event one occurs. Indeed, the risk of a spill has been minimized by

³⁸ Tr. 329:3 – 330:5; 442:2 – 443:3.

³⁹ Tr. 249:1 – 256:20.

Dakota Access's "above and beyond" approach to safety, and the state of the art materials, processes, and testing that has been incorporated into the DAPL. Most important, however, is this simple, undisputed fact: on a barrel-mile basis, transporting oil by pipeline is much safer than transporting by rail or road.⁴⁰ No one has disputed that fact in this hearing. And no one has made any argument that the safety advantage of pipelines changes when the volume changes from 570,000 bpd to up to 1,100,000 bpd. No one disputed the increased production in the Bakken, or the increased demand from shippers; thus the additional 530,000 bpd can move by pipeline, or it can move through thousands of additional tank trucks or rail cars. Moving it by pipeline is the option to best "minimize adverse human and environmental impact." NDCC § 49-22.1-02. No evidence shows anything to the contrary.

CONCLUSION

This Commission correctly, like similar commissions in South Dakota, Iowa and Illinois, approved the original permit for the DAPL finding it was needed, it was appropriately sited, and it took necessary steps to protect the safety of citizens and the environment. The DAPL has been successfully operating for 2-1/2 years, safely and efficiently carrying North Dakota's oil resources to markets. The undisputed evidence in this case indicates that over that time, production from the Bakken has increased, and along with it demand from shippers for transport capacity has also increased. The evidence is also undisputed that increasing the capacity of the existing DAPL is a way to serve that demand, and it can be accomplished by adding just one new pump station in North Dakota, to be located in Emmons County. The Commission is aware, and the record supports, that using pipeline capacity to transport oil is safer than transporting the same volume by truck or rail. As a result, expanding the DAPL serves the Commission's mandate to develop North Dakota's energy resources while minimizing impacts on the

⁴⁰ See Makhholm Test. at 8:13 – 20.

environment and the people. The objectors have failed to demonstrate otherwise: the issues raised about operational safety have been thoroughly rebutted by Dakota Access, and in any event are preempted by federal law.

Because Dakota Access has met all application requirements and the optimization project meets the statutory criteria, the Commission should grant the requested amendment to the route permit and certificate of corridor compatibility.

DATED this 30th day of December, 2019.

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