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ALSO ADMITTED IN MINNESOTA AND MONTANA

February 18, 2020

*Via hand-delivery*

Public Service Commission  
State of North Dakota  
600 East Boulevard Ave, Dept. 408  
Bismarck, ND 58505

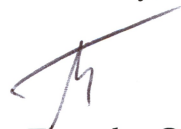
Re: Dakota Access, LLC  
Emmons County Pump Station  
PSC Case No. PU-19-204  
OAH File No. 20190280

Public Service Commission:

Attached for filing with the North Dakota Public Service Commission in Case No. PU-19-204 please find an original and ten copies of the following:

1. Intervenor Standing Rock Sioux Tribe's Reply In Support of Motion for Leave to File Informational Brief and Motion for Issuance of Subpoena
2. Certificate of Service

Sincerely,



Timothy Q. Purdon

TQP/mdc  
Enclosures

**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

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**INTERVENOR STANDING ROCK SIOUX TRIBE'S REPLY IN SUPPORT OF  
MOTION FOR LEAVE TO FILE INFORMATIONAL BRIEF AND  
MOTION FOR ISSUANCE OF A SUBPOENA**

Intervenor Standing Rock Sioux Tribe (the "Tribe") hereby respectfully submits to the North Dakota Public Service Commission (the "Commission") its Reply in Support of its Motion For Leave to File Informational Brief (Dkt. 101) and Motion For Issuance of a Subpoena (Dkt. 102).

**A. Dakota Access Concedes That The Commission Has the Authority  
Delineated in the Tribe's Informational Brief**

In its Combined Response to the Tribe's Motion for Leave to File Informational Brief and Motion for Issuance of a Subpoena, Dakota Access, LLC ("Dakota Access") concedes that the Commission possesses the authority to require Dakota Access to produce the additional documents delineated in the Tribe's Informational Brief ("the Requested Safety Information"), provided those documents are relevant to the Commission's "minimal adverse effects" analysis

under N.D.C.C. § 49-22.1-02. *See* Dkt. 103 at 3-5. Further, Dakota Access states that it intends to comply with any such document requests from the Commission. *See id.* at 3-4.

Dakota Access contends that the Tribe's Informational Brief is "unnecessary," but the four pages Dakota Access devotes to parsing the Tribe's brief, the transcript of the Commission's January 23, 2020 work session, and applicable statutory authority suggests otherwise. Dakota Access would have the Commission believe that the Requested Safety Information is not "relevant" to the Commission's analysis under N.D.C.C. § 49-22.1-02, but Dakota Access has already made – and lost – that argument. On the eve of the Commission's November 13, 2019 hearing in this proceeding, Dakota Access moved to strike the entirety of the witness testimony proffered by the Tribe. *See* Dkt. 50. The Tribe's testimony was largely focused on the need for Dakota Access to produce the Requested Safety Information because of its centrality to the Commission's "minimal adverse effects" determination under § 49-22.1-02. Dakota Access argued that such testimony was not at all relevant to the "narrow issues before the Commission." *Id.* at 9. The Administrative Law Judge presiding over the hearing decisively rejected that argument. Dkt. 58. The relevance of evidence that will help the Commission determine whether the DAPL Capacity Expansion "will produce minimal adverse effects on the environment and the welfare of the citizens of this state" has long been (and continues to be) accepted by every party to this proceeding *except for* Dakota Access.

#### **B. The Tribe's Motion for Issuance of a Subpoena is Timely**

The Tribe filed its Motion for Issuance of a Subpoena two weeks after the Commission's January 23, 2020 work session. Prior to that January 23 work session, the need for the Tribe to seek issuance of a subpoena for the Requested Safety Information was never apparent. Simply put, given the red flags raised by the Tribe's witnesses in pre-filed testimony and at November

13 hearing, it was incredible to think that the Commission, for whatever reason, might elect *not* to ask for the Requested Safety Information from Dakota Access given that it is squarely relevant to the Commission's "minimal adverse effects" determination under § 49-22.1-02. To the contrary, the course the proceedings up to January 23 suggested that the Commission was likely to demand the Requested Safety Information:

- On November 1, 2019 the Tribe submitted the pre-filed testimony of its witnesses (Dkt. 42, 43, 44) which raised the need for the Requested Safety Information pursuant to N.D.C.C. § 49-22.1-02.
- On November 8, 2019 Dakota Access filed a motion to strike the Tribe's pre-filed testimony, arguing that "none of the testimony is relevant" to the proceeding. Dakota Access's motion to strike was summarily denied by the Hearing Officer at the outset of the November 13, 2019 hearing. The Hearing Officer expressly concluded that the Tribe's testimony was relevant to the proceeding, as the Tribe argued in its opposition to Dakota Access's motion to strike. (Dkt. 53).
- The November 13, 2019 hearing provided fulsome testimony establishing that the Requested Safety Information is necessary and relevant to the Commission's "minimal adverse effects" analysis. (Dkt. 58).
- Dakota Access conceded at the November 13, 2019 hearing (as they do now) that they *will* produce the Requested Safety Information – *if* the Commission requests it.
- On December 30, 2019 the Tribe filed its post-hearing brief in which it expressly entreated the Commission to demand the Requested Safety Information. (Dkt. 90).

Up until the January 23 work session, the Tribe had no reason to suspect that it would fall to the Tribe itself, rather than the Commission, to subpoena the Requested Safety Information that is necessary and relevant to determining whether the DAPL Capacity Expansion will produce minimal adverse effects on the environment and the welfare of North Dakotans. The Tribe's Motion should accordingly be granted as timely.

Lastly, to the extent Dakota Access believes it may have valid relevance or burden objections to raise in response to the Tribe's subpoena, it will be entitled to raise such objections after the subpoena is issued. But Dakota Access's anticipated objections on those grounds do not constitute a valid reason to oppose the Tribe's motion to issue the subpoena at this stage. *See* Dkt. 103 at 8-9.

Dated this 18th day of February, 2020.

**ROBINS KAPLAN LLP**

By:  \_\_\_\_\_

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Tribe*

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

<i>In the Matter of</i>  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  <b>Certificate of Service</b>
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**Certificate of Service**

I, the undersigned, hereby certify that true and correct copies of the:

1. Intervenor Standing Rock Sioux Tribe's Reply In Support of Motion for Leave to File Informational Brief and Motion for Issuance of Subpoena
2. Certificate of Service

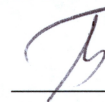
by Standing Rock Sioux Tribe and cover letter filed by hand-delivery with the North Dakota Public Service Commission were, on February 18, 2020, served by placing the same in the United States mail, postage paid, addressed to the following:

Lawrence Bender Fredrikson & Byron, P.A. 1133 College Drive, Suite 1000 Bismarck, ND 58501	Zachary Pelham Special Assistant Attorney General c/o Pearce Durick PLLC 314 East Thayer Avenue Bismarck, ND 58501	Timothy J. Dawson Administrative Law Judge Office of Administrative Hearings 2911 North 14th Street, Suite 303 Bismarck, ND 58503
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Dated this 18th day of February, 2020.

ROBINS KAPLAN LLP

By: \_\_\_\_\_



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