

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Dakota Access, LLC
Dakota Access Pipeline Pump Station – Emmons Cn
Siting Application

Case No. PU-19-204

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

February 19, 2020

Appearances

Commissioners Brian Kroshus, Julie Fedorchak, and Randy Christmann.

Lawrence Bender, Attorney at Law, Fredrikson & Byron, P.A., 1133 College Drive, Suite 1000, Bismarck, North Dakota 58501 and Bret A. Dublinske and Brandt M. Leonard, Attorneys at Law, Fredrikson & Byron, P.A., 505 E. Grand Avenue, Suite 200, Des Moines, Iowa 50309, on behalf of Dakota Access, LLC.

Zachary Pelham, Special Assistant Attorney General, 314 E Thayer Avenue, Bismarck, ND 58502, on behalf of the North Dakota Public Service Commission.

Timothy Q. Purdon, Attorney at Law, Robins Kaplan, LLP, 1207 West Divide Avenue, Suite 200, Bismarck, North Dakota 58503, on behalf of Intervenor Standing Rock Sioux Tribe.

Timothy J. Dawson, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street, Suite 303, Bismarck, North Dakota 58503, as Procedural Hearing Officer.

Preliminary Statement

On January 20, 2016, the Commission issued Certificate of Corridor Compatibility 179 and Route Permit 191 designating a transmission facility corridor and a transmission facility route to Dakota Access, LLC for the construction, operation, and maintenance of a 358-mile crude oil pipeline and associated facilities in Mountrail, Williams, McKenzie, Dunn, Mercer, Morton, and Emmons Counties in North Dakota, Case No. PU-14-842.

On June 20, 2019, Dakota Access, LLC (Dakota Access) filed with the Public Service Commission (Commission) a combined application (Application) to amend Certificate of Corridor Compatibility 179 and to amend Route Permit 191 for the addition of a pump station (Pump Station) to its existing Dakota Access Pipeline. The Pump Station will be located in Emmons County, North Dakota, Case No. PU-19-204.

Also on June 20, 2019, Dakota Access, LLC filed an application to waive the requirements to hold a separate hearing for the waiver application, to waive any hearing requirements and instead proceed by virtue of a notice and opportunity for hearing procedure.

On July 10, 2019, the Commission deemed the Application complete and issued a Notice of Opportunity for Hearing providing until August 9, 2019 for comments and requests for hearing.

On July 30, 2019, Mike Faith, Jr., Chairman of the Standing Rock Sioux Tribe (SRST) filed a written request for hearing.

On August 19, 2019, Dakota Access filed a response to the request for hearing.

On August 21, 2019, the Commission issued a Notice of Hearing scheduling a hearing to begin November 13, 2019 at 9:00 a.m. CST, at the Emmons County Courthouse Auditorium, 100 4th Street NW, Linton, ND 58552. The Notice provided until October 14, 2019, to file a Petition to Intervene. The Notice enumerated the issues to be considered.

The issues to be considered in the application for waiver of procedures and time schedules include:

1. Are the proposed facilities of such length, design, location, or purpose that they will produce minimal adverse effects and that adherence to applicable procedures and time schedules may be waived?
2. Is it appropriate for the Commission to waive any procedures and time schedules as requested in the application?

The issues to be considered in the application for an amended certificate of corridor compatibility and an amended route permit are:

1. Will the location and operation of the proposed facilities produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?
3. Will 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?

On August 28, 2019, SRST filed a petition to intervene.

On September 12, 2019, ALJ Dawson issued an order granting SRST's petition to intervene.

On October 9, 2019, Charles and Donna Kurszewski filed a petition to intervene.

On October 24, 2019, ALJ Dawson issued an order denying the petition to intervene of Charles and Donna Kurszewski.

On November 1, 2019, Dakota Access prefiled the testimony of Charles Frey, Todd Stamm, Jeff D. Makhholm and Dennis Woods.

On November 1, 2019, SRST prefiled testimony of Jon Eagle Sr., Donald Holmstrom, and Richard Kuprewicz.

On November 8, 2019, SRST filed a prehearing brief.

On November 8, 2019, Dakota Access filed a prehearing brief.

On November 8, 2019, Dakota Access filed a motion to strike the testimony of Donald Holmstrom, Richard Kuprewicz, and Jon Eagle Sr., submitted by SRST.

On November 12, 2019, SRST filed an Opposition to Motion to Strike.

On November 13-14, 2019, the public hearing was held as scheduled.

On December 30, 2019, SRST filed a post-hearing brief.

On December 30, 2019, Dakota Access filed a post-hearing brief.

On December 30, 2019, Dakota Access filed a clean version of the Certification Relating to Order Provisions – Transmission Facility Siting.

Having allowed all interested persons an opportunity to be heard and having heard, reviewed, and considered all testimony and evidence presented, the Commission makes the following findings of fact:

Findings of Fact

1. Dakota Access, LLC is a Delaware limited liability company authorized to do business in the State of North Dakota as evidenced by the corporate papers filed with the Commission on July 19, 2019, in Case No. PU-15-102.

Size and Type of Facility

2. The Pump Station will consist of five, 6,000 horsepower electrically driven motors and pumps contained within a building. Other facilities on the Pump Station site include a motor control center, an electrical substation, and a 12,000 to 15,000 barrel tank.
3. The Pump Station will allow for an increase in the maximum capacity of pipeline transportation from approximately 600,000 to 1,100,000 total barrels of crude oil per day in the existing Dakota Access Pipeline. The Dakota Access Pipeline originates at the Stanley Tank Terminal near Stanley in Mountrail County and exits North Dakota to South Dakota at a point near Westfield, North Dakota.
4. The maximum operating pressure for the entire Dakota Access Pipeline, including the Pump Station, will remain at 1,400 pounds per square inch.
5. The design, construction, and operation of the Pump Station will be in accordance with the United States Department of Transportation regulations governing the transportation of hazardous liquids by pipeline as set forth in 49 Code of Federal Regulations (CFR) Part 194 and Part 195. The design, construction, and operation of the Dakota Access Pipeline will remain in accordance with the United States Department of Transportation regulations governing the transportation of hazardous liquids by pipeline as set forth in 49 Code of Federal Regulations (CFR) Part 194 and Part 195.
6. The Dakota Access Pipeline, including the Pump Station and associated valves with remote actuators, employs a supervisory control and data acquisition (SCADA) system that monitors and tracks, on a continual 24 hour basis, the pressure, temperature, density, and flow of liquid petroleum under transport and displays each movement's status to operators in the Operations Control Center in Houston, Texas. The Dakota Access Pipeline has a dedicated console and a dedicated team of operators at the Operations Control Center.
7. Commercial operation of the Pump Station is anticipated in the third quarter 2020, but no later than first quarter 2021.
8. The total cost of the pump station is approximately \$35 to \$40 million.

Study of Preferred Location

9. The preferred location of the Pump Station is within an approximately 20.8-acre parcel, for which Dakota Access has purchased an option and will ultimately own in fee simple. The parcel is located in the South 1/2, Southeast 1/4 of Section 5, Township 132 North, Range 77 West, in Emmons County, North Dakota.
10. The 20.8-acre parcel falls within the one-mile-wide study area (Study Area) analyzed for the original Dakota Access Pipeline application in Case No. PU-14-842.

Dakota Access evaluated the Study Area for wetlands and waterbodies, vegetation, trees and shrubs, wildlife, protected species and critical habitats, soils, and geology.

11. Dakota Access conducted a Class I cultural resources literature search on the Study Area. Dakota Access conducted a Class III cultural resources field inventory on the Study Area.

12. Dakota Access conducted a Class II/III cultural resources field inventory for the corridor and route associated with the present Application.

13. Dakota Access conducted an environmental analysis for the 20.8-acre parcel (Survey Area).

14. The following agencies were contacted by Dakota Access concerning the pump station project:

a. Federal – Federal Aviation Administration; US Army Corps of Engineers; United States Department of Defense; United States Fish and Wildlife Service.

b. State – North Dakota Aeronautics Commission; North Dakota Department of Agriculture; North Dakota Department of Career and Technical Education; North Dakota Department of Commerce; North Dakota Department of Health; North Dakota Department of Human Services; North Dakota Department of Labor and Human Rights; North Dakota Department of Transportation; North Dakota Department of Trust Lands Energy Development Impact Office; North Dakota Game and Fish Department; North Dakota Indian Affairs Commission; North Dakota Parks and Recreation Department; North Dakota Pipeline Authority; North Dakota State Soil Conservation Committee; North Dakota State Water Commission; North Dakota Transmission Authority; Office of Attorney General; Office of Governor; State Historical Society of North Dakota;

c. Local – Emmons County.

Siting Criteria

15. The Commission has developed criteria pursuant to North Dakota Century Code chapter 49-22.1 to guide the corridor and route suitability, evaluation and designation process. The criteria, as set forth in North Dakota Administrative Code chapter 69-06-08 are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

16. Dakota Access evaluated the Survey Area regarding the Commission's Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

Exclusion Areas

17. An Exclusion Area is a geographic area that must be excluded in the consideration of a site for an energy conversion facility. Exclusion areas may be located within a corridor, but at no given point may such an area or areas encompass more than fifty percent of the corridor unless there is no reasonable alternative. A buffer zone to protect the integrity of the Exclusion Area must be included. A transmission facility route must not be sited within an Exclusion Area.

18. Dakota Access's cultural resources inventory within the Survey Area determined that no archaeological sites or cultural resources will be impacted by construction of the Pump Station.

19. Wetlands and waterbodies are Exclusion Areas. No wetlands were identified within the Survey Area. One ephemeral drainage was identified, which encompasses approximately 0.02-acre of the approximately 20.8-acre site. Pump Station construction will avoid all impacts to the ephemeral drainage location.

20. Areas that may impact migratory birds protected under the Migratory Bird Treaty Act are Exclusion Areas. A portion of the site for the proposed Pump Station is characterized as an active agricultural field that would not provide suitable nesting habitat for protected migratory birds. The remaining portion of the site is characterized as open pastureland, and could provide nesting habitat. Dakota Access will complete clearing efforts prior to the migratory bird nesting season. Should clearing occur during the migratory bird nesting season, late March to early August, Dakota Access will develop a Migratory Bird Conservation and Compliance Plan to outline measures it will implement to avoid, minimize, and reduce possible impacts on migratory birds.

21. Dakota Access's surveys did not record any other Exclusion Areas within the Survey Area.

Avoidance Areas

22. An Avoidance Area is a geographical area that may not be considered in the routing of a transmission facility unless the applicant shows that, under the circumstances, there is no reasonable alternative. In determining whether an Avoidance Area should be designated for a transmission facility, the Commission may consider, among other things, the proposed management of adverse impacts, the orderly siting of facilities, system reliability and integrity, the efficient use of resources, and alternative routes.

23. A transmission facility route may not be sited within an Avoidance Area unless the applicant demonstrates that under the circumstances there are no reasonable alternatives. Economic considerations alone are not sufficient to establish no reasonable alternative.

24. Reservoirs, municipal water supplies and water sources for organized rural water districts are Avoidance Areas. Dakota Access testified that an unanticipated release from the Pump Station will not impact Beaver Creek, which is located south of the proposed 20.8-acre parcel. Any potential release from the Pump Station will be initially contained within the building housing the Pump Station, as there will be an appropriately sized berm around the facility's storage tank. Dakota Access will also incorporate remote leak detection at the Pump Station, which will allow for immediate shut down of the facility should a release occur. Moreover, North Dakota Highway 13 serves as a natural berm between the Pump Station and Beaver Creek.

25. Dakota Access's surveys did not record any other Avoidance Areas within the Survey Area.

Selection Criteria

26. The Commission's Selection Criteria is set forth in North Dakota Administrative Code section 69-06-08-02(3). A corridor or route shall be designated only if it is demonstrated to the Commission by the applicant that any significant adverse effects which will result from the location, construction, and operation of the facility as they relate to the Selection Criteria, will be at an acceptable minimum, or that the effects will be managed and maintained at an acceptable minimum.

27. A majority of the 20.8-acre parcel is utilized for agriculture and livestock production. Construction and operation of the Pump Station will result in the permanent conversion of the 20.8 acres from agricultural land to industrial land.

28. The maximum sound level at the fence line of the proposed Pump Station site will be 55 decibels at any time, day or night. Dakota Access will incorporate sound mitigation measures to ensure compliance with the 55-decibel maximum, including housing the Pump Station within a building which includes sound-attenuating insulation.

29. Intervenor SRST asserts that nearly doubling the capacity of the DAPL pipeline from approximately 570,000 bpd to 1,100,000 bpd, as well as injecting drag reducing agent, will increase the flow velocity of the oil in the pipeline. Intervenor SRST asserts that increasing the flow velocity increases risks of surge overpressures in excess of 110% of maximum operating pressure. Intervenor SRST urges that Dakota Access be required to file a transient surge analysis so the Commission may assess the adequacy of controls and protective equipment that Dakota Access proposes to employ to eliminate the risk of surge overpressure in excess of 110 % of maximum operating pressure.

30. Surge refers to the change in pressure in liquid pipelines caused by a major change in flow. Surge can be triggered by an event such as an unplanned mainline valve closure or an unplanned pump shutdown. Code of Federal Regulations, Title 49, Part 195, Section 406 (49 CFR 195.406) states that no operator may permit the pressure in a

pipeline during surges or other variations from normal operations to exceed 110 percent of the pipeline operating pressure limit. Dakota Access will manage surge so as not to exceed 105 percent of the operating pressure limit on the pipeline system.

31. To manage surge so as not to exceed 105 percent of the operating pressure limit on the pipeline system in the event of an unplanned pump station shutdown, Dakota Access will have a surge-relief valve at each of the pump stations on the Dakota Access Pipeline and will have a surge-relief tank for each surge-relief valve. To manage surge so as not to exceed 105 percent of the operating pressure limit on the pipeline system in the event of an unplanned mainline valve closure, Dakota Access' controls system will shut down all upstream pump stations. In addition, Dakota Access has commissioned Fluid Flow Consultants and Dr. Hein to do a surge analysis and make recommendations for devices to control any abnormal operating pressures to manage surge so as not to exceed 105 percent of the operating pressure limit on the pipeline system. Dakota Access will fully follow the recommendations of Fluid Flow Consultants and Dr. Hein.

32. Intervenor SRST asserts that nearly doubling the capacity of the DAPL pipeline will increase the risk of additional pipeline failures occurring due to higher pressures that will be experienced along the pipeline. Intervenor SRST alleges that the risk associated with higher pressures can only be adequately assessed by evaluating hydraulic profiles of the system, and how those hydraulic profiles overlap with high consequence areas. Intervenor SRST asserts that an oil spill into Lake Oahe would harm the waters that sustain the Tribe's people, economy and spiritual lives. Intervenor SRST urges that Dakota Access be required to file with the Commission the hydraulic profile graphs for the pipeline system in North Dakota, file a delineation of all high consequence areas by milepost for the Dakota Access pipeline in North Dakota, and file an up-to-date, Dakota Access Pipeline specific Integrity Management Plan.

33. The definition of high consequence area (HCA) is found under 49 CFR 195.450. For a hazardous liquid pipeline that could affect a high consequence area, 49 CFR 195.452 requires that the operator develop a written integrity management program and that the operator continually assess and evaluate its pipeline system to manage pipeline integrity and identify preventive and mitigative measures to protect the high consequence area. Dakota Access has developed an Integrity Management Plan for the Dakota Access Pipeline. The Integrity Management Plan will be updated as required.

34. Intervenor SRST asserts that nearly doubling the capacity of the DAPL pipeline will increase potential spill volumes and the worst case discharge volume. To assess this risk, Intervenor SRST again urges that Dakota Access be required to file with the Commission its analysis of estimated oil release volumes and locations based on and as informed by its hydraulic profile and transient surge analysis for the pipeline system. Intervenor SRST also urges that Dakota Access be required to file with the Commission an updated worst case discharge that incorporates all factors required by PHMSA, and a spill model based on the updated worst case discharge and corresponding changes to the FRP and Lake Oahe Geographic Response Plan.

35. Under 49 CFR 194.101, the operator of a pipeline facility that can be expected to cause significant and substantial harm to the environment in the event of a discharge of oil into or on the navigable waters or adjoining shorelines must prepare and submit a facility response plan (FRP) to the Pipeline and Hazardous Materials Safety Administration (PHMSA) for review. Dakota Access has developed a FRP.

36. Response plan is defined under 49 CFR 194 to mean the operator's core plan and the response zone appendices for responding to the maximum extent practicable, to a worst case discharge of oil, or the substantial threat of such a discharge. Response zone means a geographic area along a length of pipeline for which the operator must plan for deployment of, and provide, spill response capabilities.

37. Worst case discharge is defined under 49 CFR 194 to mean the largest foreseeable discharge of oil, including a discharge from fire or explosion, in adverse weather conditions. This volume will be determined by each pipeline operator for each response zone and is calculated according to 49 CFR 194.105. The worst case discharge is the largest volume, in barrels, determined using four calculations. Dakota Access determined the largest volume discharge is the volume of the single largest tank, which has greater volume than that of the pipeline.

38. Each operator is required 49 CFR 194.121 to update its FRP to address new or different operating conditions or information. Dakota Access will immediately modify its FRP to recognize the Pump Station and other factors, and will submit the change to PHMSA within 30 days of making the change. Dakota Access testified that the worst case discharge, and adequate response personnel and equipment to respond to that worst case discharge, will not change. The largest volume discharge for the FRP for the Dakota Access Pipeline, with the addition of the Pump Station, will continue to be the volume of the single largest tank.

39. Dakota Access will have adequate resources to manage a spill of the magnitude of the worst case discharge, anywhere along the pipeline. Dakota Access will stage additional emergency response equipment at the Pump Station. The availability and location of equipment will be included in the updated FRP.

40. Dakota Access will add at least one full-time personnel that would be located at or in the immediate proximity of the Pump Station.

41. Dakota Access will meet or exceed PHMSA regulations in 49 CFR 194 and 49 CFR 195.

42. Intervenor SRST urges that Dakota Access be required to file with the Commission proof that the capacity expansion adheres to all applicable American Petroleum Institute (API) best practices including Recommended Practice (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.”

43. Dakota Access is adopting API’s RP 1173 and parts of API’s RP 1160. In addition, Dakota Access will meet or exceed industry standards, including several API standards, incorporated by reference into 49 CFR Part 195.

44. In the spring of 2020, Dakota Access will go to each of the counties along the route of the Dakota Access Pipeline and do a review of the pipeline system operation, the response, the expectations, and whether any additional training needs to be provided.

45. No known significant adverse effects will result from the location, construction, and operation of the facility as they relate to the Selection Criteria.

Measures to Minimize Impact

46. Dakota Access developed control documents for the construction of its Dakota Access Pipeline. The control documents, where applicable, will be utilized during construction activities related to the Pump Station in order to minimize and mitigate impacts to environmental resources. Dakota Access’s control documents include, at a minimum: Stormwater Pollution Prevention Plan; Spill Prevention, Containment, and Countermeasure Plan; Unanticipated Discoveries Plan; Noxious Weed Plan; and Dust Control Plan.

47. Emmons County has approved a conditional use permit to construct and operate the Pump Station at the preferred location.

48. Dakota Access will employ at least one Environmental Inspector to monitor construction activities.

49. Dakota Access has agreed to measures to mitigate potential project impacts, as indicated by the attached November 13, 2019 Certification Relating to Order Provisions – Transmission Facility Siting (Certification).

From the foregoing Findings of Fact the Commission makes the following conclusions of law:

Conclusions of Law

1. The Commission has jurisdiction over the applicant, Dakota Access, LLC, and over the subject matter of the Application under North Dakota Century Code Chapter 49-22.1.

2. Dakota Access, LLC is a utility as defined in North Dakota Century Code Section 49-22.1-01(13).

3. The pump station is a facility as defined in North Dakota Century Code Section 49-22.1-01(5).
4. The location, construction, and operation of the pump station at the proposed location will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
5. The location, construction, and operation of the pump station at the proposed location is compatible with the environmental preservation and the efficient use of resources.
6. The pump station will 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.
7. It is appropriate for the Commission to waive those certain procedures and time schedules as requested in the waiver application under North Dakota Century Code section 49-22.1-05.

From the Findings of Fact and Conclusions of Law, the Commission makes the following order:

Order

The Commission orders:

1. Dakota Access's application for a waiver of procedures and time schedules is granted.
2. Dakota Access shall construct, operate, and maintain the Pump Station in accordance with the Findings of Fact.
3. Third Amended Certificate of Corridor Compatibility No. 179 is issued to Dakota Access, LLC. The designated corridor is amended for the addition of an approximately 20.8-acre area for the construction, operation, and maintenance of a pump station, in Emmons County, North Dakota. The addition to the designated corridor will consist of the pump station site as depicted in Exhibit A and Exhibit B to the Application filed on June 20, 2019.
4. Third Amended Route Permit No. 191 is issued to Dakota Access, LLC. The designated route is amended for the construction, operation, and maintenance of a pump station in Emmons County, North Dakota. The addition to the designated route for this purpose is depicted in Exhibit A and Exhibit B to the Application filed on June 20, 2019.

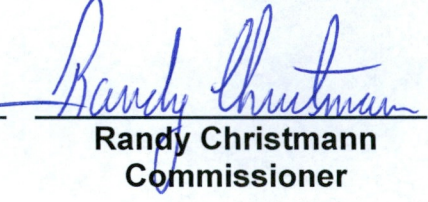
5. The November 13, 2019 Certification Relating to Order Provisions – Transmission Facility Siting, which will apply to the Pump Station site, is incorporated by reference and attached to this Order. The November 13, 2019 Certification does not amend the May 20, 2015 Certification Relating to Order Provisions – Transmission Facility Siting for the Dakota Access Pipeline, which remains in full effect for the Dakota Access Pipeline in Case No. PU-14-842.

6. Dakota Access will participate in the North Dakota One-Call Excavation Notice System.

PUBLIC SERVICE COMMISSION


Julie Fedorchak
Commissioner


Brian Kroshus
Chairman


Randy Christmann
Commissioner

**PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA**

**Third Amended
Certificate of Corridor Compatibility Number 179**

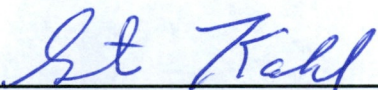
This is to certify that the Commission has designated a transmission facility corridor to Dakota Access, LLC, for the construction, operation, and maintenance of approximately 358 miles of 12-, 20-, 24-, and 30-inch diameter crude oil pipeline and associated facilities in Mountrail, Williams, McKenzie, Dunn, Mercer, Morton, and Emmons Counties, North Dakota, and terminals near Stanley in Mountrail County, near Tioga in Williams County, near Epping in Williams County, near Trenton in Williams County, near Watford City in McKenzie County, and near Johnsons Corner in McKenzie County; and a pump station near Linton in Emmons County, North Dakota.

This certificate is issued in accordance with the Orders of the Commission dated January 20, 2016, May 24, 2016, and June 22, 2016 in Case No. PU-14-842; and February 19, 2020 in Case No. PU-19-204, and is subject to the conditions and limitations noted in the Orders.

Bismarck, North Dakota, February 19, 2020

ATTEST:

PUBLIC SERVICE COMMISSION



Executive Secretary



Commissioner

PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA

Third Amended Route Permit Number 191

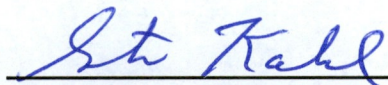
This is to certify that the Commission has designated a transmission facility route for Dakota Access, LLC, for the construction, operation, and maintenance of approximately 358 miles of 12-, 20-, 24-, and 30-inch diameter crude oil pipeline and associated facilities in Mountrail, Williams, McKenzie, Dunn, Mercer, Morton, and Emmons Counties, North Dakota, and terminals near Stanley in Mountrail County, near Tioga in Williams County, near Epping in Williams County, near Trenton in Williams County, near Watford City in McKenzie County, and near Johnsons Corner in McKenzie County; and a pump station near Linton in Emmons County, North Dakota.

This permit is issued in accordance with the Orders of this Commission dated January 20, 2016, May 5, 2016, and June 22, 2016 in Case No. PU-14-842; and February 19, 2020 in Case No. PU-19-204, and is subject to the conditions and limitations noted in the Orders.

Bismarck, North Dakota, February 19, 2020.

ATTEST:

PUBLIC SERVICE COMMISSION



Executive Secretary



Commissioner

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

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

Case No. PU-19-204

**CERTIFICATION RELATING TO ORDER PROVISIONS
TRANSMISSION FACILITY SITING**

I am Charles A. Frey Jr., a representative of Dakota Access, LLC ("Company") with authority to bind the Company to requirements to be set forth by the Commission in its Order and I certify the following:

1. Company understands and agrees that any amendment Certificate of Corridor Compatibility or Route Permit issued by the Commission will be subject to the conditions and criteria set forth in Chapter 49-22.1 of the North Dakota Century Code and Chapter 69-06-08 of the North Dakota Administrative Code, and that Company shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. Company agrees to comply with the rules and regulations of all other agencies having jurisdiction over any phase of the transmission facility including all city, township, and county zoning regulations.
3. Company understands and agrees that it shall obtain all other necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission prior to construction activity associated with the transmission facility that requires said license or permit.
4. Company understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission is subject to suspension or revocation and may, in an appropriate and proper case, be suspended or revoked for failure to comply with the Commission's order, the conditions and criteria of the certificate or subsequent modification, or failure to comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies.
5. Company agrees to maintain records that will demonstrate that it has complied with the requirements of the Commission's order issuing a Certificate of Corridor Compatibility or Route Permit, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.
6. Company understands and agrees that the authorizations granted by any Certificate of Corridor Compatibility or Route Permit issued by the Commission for the transmission facility are subject to modification by order of the

Commission if deemed necessary to protect further the public or the environment.

Construction:

7. Company agrees to hold a preconstruction conference prior to commencement of any construction, which must include a Company representative, its construction supervisor, and a representative of Commission Staff, to ensure that Company fully understands the conditions set forth in the Commission's order.
8. Company understands and agrees that all cultural resource mitigation plans must be submitted to the North Dakota State Historic Preservation Office and approved prior to the start of any fieldwork and construction activity in the affected area.
9. Company agrees to inform the Commission and the Commission's third-party construction inspector of its intent to start construction on the transmission facility prior to the commencement of construction. Once construction has started, Company shall keep the Commission and the Commission's third-party construction inspector updated on construction activities on a monthly basis.
10. Company understands and agrees that staging areas or equipment shall not be located on land owned by a person other than Company unless otherwise negotiated with landowners.
11. Company understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made and a report of such examination is filed with the Commission and the State Historical Society.
12. Company understands and agrees that construction must be suspended when weather conditions are such that construction activities will cause irreparable damage to roads or land, unless adequate protection measures are taken by Company.
13. Company understands and agrees that the Commission has authority to stop Project construction activities in the event of a probable violation of the siting laws, siting rules, or applicable Commission Orders if, in the opinion of the Commission, construction activities are likely to result in irreparable or significant harm.

Restoration and Maintenance:

14. Company understands and agrees that it shall, as soon as practicable upon the completion of the construction of the transmission facility, restore the area affected by the activities to as near as is practicable to the condition as it existed prior to the beginning of construction.

15. Company understands and agrees that all pre-existing township and county roads and lanes used during construction must be repaired or restored to a condition that is equal to or better than the condition prior to the construction of the transmission facility and that will accommodate their previous use, and that areas used as temporary roads or working areas during construction must be restored to their original condition.
16. Company understands and agrees that reclamation, fertilization, and reseeding is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
17. Company will repair all fences and gates removed or damaged during all phases of construction and operation of the transmission facility.
18. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
19. Company understands and agrees that it shall remove all waste that is a product of construction and operation, restoration, and maintenance of the site, and properly dispose of it on a regular basis.
20. Company understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the transmission facility.

Communication with Landowners and PSC:

21. Company understands and agrees that it will file with the commission the name and phone number of the current company representative who is responsible for receiving and resolving landowner issues for the transmission facility. The company will update this information whenever there is a change to the current company representative for the life of all easements for the transmission facility.
22. Upon request, Company agrees to provide the Commission with engineering design drawings of the transmission facility prior to construction.
23. Company understands and agrees that it shall advise the Commission as soon as reasonably possible of any extraordinary events which take place at the site of the transmission facility, including injuries to any person.
24. Company agrees to report to the Commission, as soon as reasonably possible, the presence in the permit area of any critical habitat or threatened or endangered species of which Company becomes aware and which were not previously reported to the Commission.
25. Company understands and agrees that it shall inform the Commission in writing of any plans to modify the transmission facility or of any plans to modify the site plan for the transmission facility.

26. Company agrees to provide the Commission with both an electronic and a paper copy of the corridor approved by the Commission and the facility design specifications for the construction of the transmission facility showing the location of the transmission facility as built, and will provide this information within 3 months of the completion of the construction. Company also agrees to provide an electronic version of the corridor approved by the Commission and the facility design specifications for the construction of the transmission facility showing the location of the transmission facility as built that can be imported into ESRI GIS mapping software within 3 months of the completion of the construction. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in the appropriate vertical datum for the coordinate system used. All submissions must specify the datum in which the data was developed.
27. Company shall notify the Commission as soon as reasonably possible if any damage, as defined by North Dakota Century Code Chapter 49-23, occurs to underground facilities during construction conducted under the certificate or permit issued in this proceeding. In the event of any damage to underground facilities, Company shall suspend construction in the vicinity of the damage until compliance with One-Call Excavation Notice System requirements under North Dakota Century Code Chapter 49-23 has been determined.

Route Adjustments Before or During Construction:

28. Company agrees to utilize the following procedures if Company seeks a route adjustment before or during construction of the pipeline, pursuant under N.D.C.C. §49-22.1-15.
29. Company will specifically identify which subsection of NDCC 49-22.1-15 it is requesting the adjustment under. Company will file the name and contact information for a key contact person for the purposes of notice and communication during the adjustment application.
30. **ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED:** Before conducting any construction activities for any adjustment to the designated route within the designated corridor under NDCC 49-22.1-15(1), the Company will file:
 - a. Certification and supporting documentation affirming that construction activities will be within the designated corridor, will not affect any known exclusion or avoidance areas within the designated corridor;
 - b. Certification and supporting documentation, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, route and the route adjustment;

- c. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

31. **ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, AVOIDANCE AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22.1-15(2), within the designated corridor that may affect an avoidance area, and before conducting any construction activities for any adjustment to the designated route within the designated corridor, the Company will file:

- a. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying:
 - i. the designated corridor, route and the route adjustment;
 - ii. all exclusion and avoidance areas within the portion of the designated corridor containing the route adjustment
- b. Certification and supporting documentation affirming:
 - i. That construction activities will be within the designated corridor
 - ii. That construction activities will not affect any known exclusion area
- c. All field studies performed on the portion of the designated corridor containing the route adjustment;
- d. Specific information about any mitigation measures Company will take within the adjustment area;
- e. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment;
- f. Certification that unless the Commission previously authorized the impact to the same avoidance area, that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist;
- g. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

Company acknowledges and agrees that:

- 1. Written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity unless the Commission fails to act within ten working days of receipt of filing a

complete adjustment application, in which case the adjustment is deemed approved.

2. The initiation of the ten working days begins upon receipt of a complete filing, to include Company's certifications, supporting documentation and maps. However, Commission may extend the ten working day provision if Company, in the person of the key contact referenced above, is informed of the reason additional time is necessary for extension and has no objection to an extension.

32. **ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22.1-15(3), outside the designated corridor and not affecting any exclusion and avoidance area, before conducting any construction activities for any adjustment to the designated route outside the designated corridor, the Company will file:

- a. Certification and supporting documentation affirming that construction activities will not affect any known exclusion or avoidance areas,
- b. Certification and supporting documents stating the length of the proposed route outside of the corridor and a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, corridor adjustment, designated route and the route adjustment;
- c. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment; and
- d. Detailed field studies indicating exclusion and avoidance areas for the proposed adjustment area; and
- e. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

33. **ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, AVOIDANCE AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22.1-15(4), outside the designated corridor that may affect an avoidance area, and before conducting any construction activities for any adjustment to the designated route outside the designated corridor, the Company will file:

- a. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying:
 - i. the designated corridor, corridor adjustment, route and the route adjustment;

- ii. all exclusion and avoidance areas within the adjustment area
- b. Certification that construction activities will not affect any known exclusion area;
- c. Certification that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist within the designated corridor and route;
- d. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment;
- e. Provide specific information about any mitigation measures Company will take within the adjustment area;
- f. Detailed field studies indicating exclusion and avoidance areas for the proposed adjustment area; and
- g. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

Company acknowledges and agrees that:

- 1. Written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity unless the Commission fails to act within ten working days of receipt of filing a complete adjustment application, in which case the adjustment is deemed approved.
 - 2. The initiation of the ten working days begins upon receipt of a complete filing, to include Company's certifications, supporting documentation and maps. However, Commission may extend the ten working day provision if Company, in the person of the key contact referenced above, is informed of the reason additional time is necessary for extension and has no objection to an extension.
34. When applicable, Company may submit the field studies from the original application for the corridor and route provided they cover the adjustment area.

Dated this 13th day of November, 2019.

DAKOTA ACCESS, LLC

By Charles A. Frey Jr.
Charles A. Frey Jr.

Its V.P. – Engineering

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