

August 3, 2020

**HAND DELIVERED**

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

**RE: OE2 North LLC  
Case No. PU-20-247  
OAH File NO. 20200239  
B. Sanderson Residue Gas  
and NGL Pipelines Project**

Dear Mr. Kahl:

Please find enclosed for filing in the above-referenced matter an original and five (5) copies of the following documents:

1. Consultation Tracking Log;
2. Letter dated June 16, 2020 from ND Water Commission;
3. Letter dated June 24, 2020 from ND Game and Fish Department;
4. Tree and Shrub Mitigation Specifications;
5. Certification Relating to Order Provisions Transmission Facility Siting; and
6. Certificate of Service;

submitted on behalf of OE2 North LLC. A compact disc containing an electronic copy of the above listed documents and this letter in PDF format is also enclosed herewith.

Should you have any questions, please advise.

Sincerely,

  
LAWRENCE BENDER

LB/kl  
Enclosures  
70612558.1

Attorneys & Advisors  
main 701.221.8700  
fax 701.221.8750  
fredlaw.com

Fredrikson & Byron, P.A.  
1133 College Drive, Suite 1000  
Bismarck, North Dakota  
58501-1215

ADDRESSEE	DATE LETTER SENT	DATE RESPONSE RECEIVED
Federal Aviation Administration	05/26/20	Not yet received
Job Service of North Dakota	05/26/20	Not yet received
North Dakota Attorney General	05/26/20	Not yet received
North Dakota Department of Agriculture	05/26/20	Not yet received
North Dakota Department of Career and Technical Education	05/26/20	Not yet received
North Dakota Department of Commerce	05/26/20	Not yet received
North Dakota Department of Environmental Quality	05/26/20	06/09/20
North Dakota Department of Health	05/26/20	Not yet received
North Dakota Department of Human Services	05/26/20	Not yet received
North Dakota Department of Transportation	05/26/20	Not yet received
North Dakota Department of Trust Lands	05/26/20	06/08/20
North Dakota Energy Development Impact office	05/26/20	Not yet received
North Dakota Game & Fish Department	05/26/20	6/24/20
North Dakota Geological Survey	05/26/20	Not yet received
North Dakota Indian Affairs Commission	05/26/20	Not yet received
North Dakota Industrial Commission	05/26/20	Not yet received
North Dakota Labor Department	05/26/20	Not yet received
North Dakota Parks and Recreation Department	05/26/20	06/17/20
North Dakota Pipeline Authority	05/26/20	Not yet received
North Dakota State Soil Conservation Committee	05/26/20	Not yet received
North Dakota State Water Commission	05/26/20	6/16/20
Office of Governor	05/26/20	Not yet received
US Army Corps of Engineers	05/26/20	06/10/20
US Department of Defense	06/17/20	Not yet received
US Fish and Wildlife Service	05/26/20	Not yet received
Williams County Commission	05/26/20	Not yet received

June 16, 2020

Nan Elzinga  
Kleinfelder  
1801 California Street, STE 1100  
Denver, CO 80202

Dear Mr. Elzinga:

This is in response to your request for a review of the environmental impacts associated with the OE2 North LLC, Bill Sanderson Residue and NGL Pipelines Project located in Williams County, ND.

The proposed project has been reviewed by State Water Commission staff, and the following comments are provided:

- There are no FEMA regulatory floodplains identified and/or mapped where this proposed project is to take place. No permits relative to the NFIP are required based on the current effective FIRM and State minimum standards.
- Initial review indicates the project does not require a conditional or temporary permit for water appropriation. However, if surface water or groundwater will be diverted for construction of the project, a water permit will be required per North Dakota Century Code § 61-04-02. Please consult with the Water Appropriations Division of the Office of the State Engineer if you have any questions at (701) 328-2754 or [waterpermits@nd.gov](mailto:waterpermits@nd.gov).

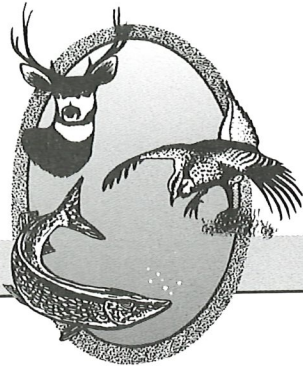
Thank you for the opportunity to provide review comments. Should you have further questions, please contact me at 701-328-4970 or [stevebest@nd.gov](mailto:stevebest@nd.gov).

Sincerely,



Steven Best  
Planner III

SB:dm/1570



"VARIETY IN HUNTING AND FISHING"

## NORTH DAKOTA GAME AND FISH DEPARTMENT

100 NORTH BISMARCK EXPRESSWAY BISMARCK, NORTH DAKOTA 58501-5095 PHONE 701-328-6300 FAX 701-328-6352

GOVERNOR, *Doug Burgum*

DIRECTOR, *Terry Steinwand*

DEPUTY, *Scott A. Peterson*

June 24, 2020

Nan Elzinga, PE  
Project Manager III  
Kleinfelder  
1801 California Street, Suite 1100  
Denver, CO 80202

Dear Ms. Elzinga:

RE: Proposed Bill Sanderson Residue & NGL Pipelines Project

OE2 North LLC is proposing to construct and operate two new pipelines, consisting of an approximately 1.28-mile 8-inch natural gas liquid pipeline and an approximately 4.67-mile 20-inch residue gas pipeline, originating from their Gas Processing Plant located in Williams County, North Dakota. The North Dakota Game and Fish Department (NDGF) has reviewed this project for wildlife concerns.

A primary concern with pipeline projects is the possible disturbance of native prairie and wooded draws associated with construction of the pipeline and access roads. Avoidance of native prairie areas reduces impacts to several grassland species including many of the species of conservation priority. We ask that work within these areas be avoided to the extent possible, every effort be made to prevent destruction of woody vegetation, and disturbed areas be reclaimed to pre-project conditions.

The National Wetland Inventory indicates various wetlands within the proposed project study area. Steps should be taken to protect any wetlands that cannot be avoided, no alterations should be made to existing drainage patterns, and above-ground appurtenances should not be placed in wetland areas. Unavoidable destruction or degradation of wetland acres should be mitigated in kind.

Aerial surveys should be conducted for raptor nests before construction begins. We recommend that a 1/2-mile construction buffer be implemented around active eagle nest sites (known occupied within the past 5 years). Ms. Sandra Johnson, Conservation Biologist, may be contacted at 701-328-6327 for additional information on golden eagle nest sites in the state.

We do not believe this project will have significant adverse effects on wildlife or wildlife habitat provided these recommendations are implemented where appropriate during project construction.

Sincerely,

  
Greg Link  
Chief  
Conservation & Communication Division

js

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**OE2 North LLC  
8" NGL & 20" Residue Gas Pipelines - Williams Cnty  
Siting Application**

**Case No. PU-20-247**

**Tree and Shrub Mitigation Specifications**

**Inventory**

Prior to cutting or clearing trees or shrubs for construction:

- All trees one-inch or greater in diameter at breast height must be inventoried to record the location, number, and species.
- All shrubs and all coniferous trees of any diameter must be inventoried to record the location, number, and species.

**Clearing**

The maximum width of tree and shrub removal is 50 feet, unless otherwise approved by the Commission.

**Replacement**

1. Landowners must be given the option to have trees and shrubs that are removed from their property replaced on their property. The landowner may waive this option in writing. If the landowner waives this option, the company shall plant replacement trees and shrubs in an alternate location in the same region, if practical.
2. Trees and shrubs must be replaced on a minimum two-to-one basis. The company shall develop a Tree and Shrub Mitigation Plan (Plan) in consultation with landowners who are seeking replacement trees and shrubs and in accordance with USDA-NRCS-North Dakota Field Office Technical Guide: Windbreak and Woodland Tree Care and Management. The guidelines outlined in the Technical Guide shall be followed until filing of the Plan summary outlined in number 5 below.
3. The purpose of the company's Tree and Shrub Mitigation Plan is to create sustainable plantings, appropriate for the local soil and growing conditions that will provide long-term benefit to landowners, farmers and ranchers, the community, wildlife and the environment.
4. The Plan, including the proposed number, variety, type, location, and approximate date for plantings, shall be filed with and approved by the Commission.
5. Two years after completion of the plan, the company must file a summary documenting how the plan achieved the purpose outlined in number 3 above. The summary must also report the number of surviving replacement trees and shrubs.
6. The Commission will consider, on a limited basis as conditions warrant, mitigation plans that provide long-term wildlife habitat and conservation benefits but do not involve the replanting of trees and shrubs.

**STATE OF NORTH DAKOTA**

**PUBLIC SERVICE COMMISSION**

**OE2 North LLC  
8" NGL & 20" Residue Gas Pipelines - Williams Cnty.  
Siting Application**

**Case No. PU-20-247  
OAH File No. 20200239**

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

I am Russ Kimmitt, EVP and Chief Operating Officer of OE2 North LLC ("OE2") with authority to bind OE2 to requirements to be set forth by the Commission in its Order and I certify the following:

1. OE2 understands and agrees that any 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 69-0608 of the North Dakota Administrative Code, and that OE2 shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. OE2 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. OE2 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. OE2 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. OE2 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. OE2 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. OE2 agrees to hold a preconstruction conference prior to commencement of any construction, which must include an OE2 representative, its construction supervisor, and a representative of Commission Staff, to ensure that OE2 fully understands the conditions set forth in the Commission's order.
8. OE2 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. OE2 understands and agrees that topsoil removal will begin when the Commission's third-party construction inspector is present at the Project site to observe that topsoil is properly removed and kept segregated from subsoil until replacement occurs. OE2 shall establish the date and time for the Commission's third-party construction inspector's topsoil removal oversight in the preconstruction conference.
10. OE2 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, OE2 shall keep the Commission and the Commission's third-party construction inspector updated on construction activities on a monthly basis.
11. OE2 understands and agrees that the pipeline will be buried to a minimum depth from the ground surface to the top of the pipe of 48 inches in range land, 48 inches for cultivated land, 48 inches at the bottom of the ditch for road crossings, and 72 inches across undeveloped section lines.
12. OE2 understands and agrees that all topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas where cuts will be made, must be carefully stripped and segregated from the subsoil. Any area on which excavated subsoil will be placed must also be stripped of topsoil. The stripped topsoil must not be stockpiled in natural drainages, and must be protected from water erosion. Care must be taken to protect topsoil from unnecessary compaction by heavy machinery. Unless otherwise approved by the Commission, topsoil must be removed before topsoil freezes in the late fall/ early winter to the point that frost inhibits proper soil segregation. After backfilling with subsoil is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must be replaced over areas from which it was stripped only after the subsoil is replaced.
13. OE2 understands and agrees that all buried facility crossings of graded roads must be bored unless the responsible governing agency specifically permits OE2 to open cut the road.
14. OE2 understands and agrees that staging areas or equipment shall not be located on land owned by a person other than OE2 unless otherwise negotiated with landowners.

15. OE2 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.
16. OE2 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 OE2.
17. OE2 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:**

18. OE2 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.
19. OE2 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.
20. OE2 understands and agrees that reclamation, fertilization, and reseedling is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
21. OE2 will fulfill its obligation for reclamation and maintenance of the approved transmission facility right-of-way, transmission facility, and associated facilities continuing throughout the life of the transmission facility.
22. OE2 will repair all fences and gates removed or damaged during all phases of construction and operation of the transmission facility.
23. OE2 will repair or replace all drainage tile broken or damaged as a result of construction and operation of the transmission facility.
24. OE2 agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
25. OE2 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.

26. OE2 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:**

27. OE2 understands and agrees that, prior to beginning construction of the transmission facility at a location, it shall send a letter to each landowner with whom an easement was executed for that location specifying the name and phone number of the OE2 representative who is responsible for receiving and resolving landowner issues for the life of the easement.
28. OE2 understands and agrees that it will file with the commission the name and phone number of the current OE2 representative who is responsible for receiving and resolving landowner issues for the transmission facility. OE2 will update this information whenever there is a change to the current OE2 representative for the life of all easements for the transmission facility.
29. Upon request, OE2 agrees to provide the Commission with engineering design drawings of the transmission facility prior to construction.
30. OE2 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.
31. OE2 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 OE2 becomes aware and which were not previously reported to the Commission.
32. OE2 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.
33. OE2 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. OE2 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.

34. OE2 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, OE2 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:**

35. OE2 agrees to utilize the following procedures if OE2 seeks a route adjustment before or during construction of the pipeline, pursuant under N.D.C.C. §49-22.1-15.
36. OE2 will specifically identify which subsection of NDCC 49-22.1-15 it is requesting the adjustment under. OE2 will file the name and contact information for a key contact person for the purposes of notice and communication during the adjustment application.
37. **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), OE2 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 OE2 will comply with the Commission's order, law and rules designating the corridor and route.
38. **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, OE2 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 OE2 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 OE2 will comply with the Commission's order, law and rules designating the corridor and route.

OE2 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 OE2's certifications, supporting documentation and maps. However, Commission may extend the ten working day provision if OE2, 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.

39. **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, OE2 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 OE2 will comply with the Commission's order, law and rules designating the corridor and route.

40. **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, OE2 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.
41. 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 31<sup>st</sup> day of July, 2020.

OE2 North LLC

By:   
Russ Kimmitt

Its: EVP and Chief Operating Officer

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

**OE2 North LLC  
B. Sanderson Residue Gas and NGL Pipelines Project**

**Case No. PU-20-247  
OAH File No. 20200239**

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**CERTIFICATE OF SERVICE**

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I, the undersigned, hereby certify that the Letter to Mr. Steve Kahl, at the North Dakota Public Service Commission forwarding true and correct copies of the following documents:

1. Consultation Tracking Log;
2. Letter dated June 16, 2020 from ND Water Commission;
3. Letter dated June 24, 2020 from ND Game and Fish Department;
4. Tree and Shrub Mitigation Specifications; and
5. Certification Relating to Order Provisions Transmission Facility Siting;

were, on August 3rd, 2020, filed in the above-referenced case, by hand delivery to the North Dakota Public Service Commission and served by placing the same in the United States mail, postage prepaid, and properly addressed to the following:

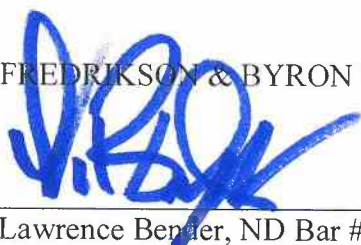
Hope L. Hogan  
ND Office of Administrative Hearings  
2911 N 14th Street  
Bismarck, ND 58503

Brian L. Johnson  
ND Public Service Commission  
600 E. Boulevard Ave., Dept. 408  
Bismarck, ND 58505-0480

**DATED** this 3rd day of August, 2020.

FREDRIKSON & BYRON P.A.

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

  
Lawrence Bender, ND Bar #03908  
1133 College Drive, Suite 1000  
Bismarck, ND 58501-1215  
701.221.8700  
lbender@fredlaw.com

*Counsel for OE2 North LLC*