

April 29, 2022

*Via Hand Delivery & Electronic Mail*

Mr. Steve Kahl  
Executive Director  
North Dakota Public Service Commission  
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Bismarck, ND 58505-0480  
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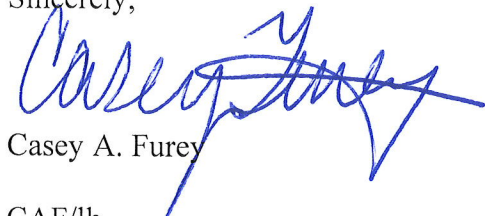
**In re: Bridger Pipeline LLC  
16-inch South Bend Crude Oil Pipeline  
Case No. PU-21-048  
OAH File No. 20220094  
Our File No. 016265-000018**

Dear Mr. Kahl:

Please find enclosed for filing five hard copies of Bridger Pipeline LLC's Response in Opposition to LIUNA's Petition for Intervention in the above-referenced matter.

Please feel free to contact me if you have any questions. Thank you.

Sincerely,



Casey A. Furey

CAF/lh

Enc.

cc: ALJ Timothy Dawson (via email & U.S. Mail)  
Kevin Pranis (via email & U.S. Mail)  
Adam Renfandt (via email)  
Brian Johnson (via email)  
Kevin Cook (via email)  
Ken Dockweiler (via email)  
Robert Stamp (via email)  
Tom Litman (via email)

34 PU-21-48 Filed 04/29/2022 Pages: 10  
Response in Opposition to LIUNA's Petition for Intervention  
Bridger Pipeline LLC  
Casey Furey, Crowley Fleck, PLLP

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

**Bridger Pipeline LLC**  
**16-inch Crude Oil Pipeline – McKenzie/Golden Valley**  
**Siting Application**

**Case No. PU-21-048**

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**BRIDGER PIPELINE LLC’S RESPONSE IN OPPOSITION TO**  
**LIUNA’S PETITION FOR INTERVENTION**

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Applicant Bridger Pipeline LLC (“Bridger”) submits this Response in Opposition to the Petition to Intervene submitted by the Laborers District Council of Minnesota and North Dakota (“LIUNA”), Docket No. 27 (“LIUNA Petition”). The Petitioner identifies as a labor organization representing construction workers and public employees in Minnesota and North Dakota. *See* LIUNA Petition, pg. 1. LIUNA’s intervention request should be denied. The LIUNA Petition fails to set forth proper grounds for intervention and instead states only vague, overly-broad interests. LIUNA has not demonstrated a statutory right or legal interest in this proceeding, or that any such right or interest would be substantially affected by this proceeding. LIUNA’s intervention request fails to meet the basic requirements set forth in N.D.C.C. § 28-32-28 and N.D. Admin. Code § 69-02-02-05. As such, LIUNA’s petition to intervene in this matter should be denied.

**I. BACKGROUND**

On January 27, 2021, Bridger submitted to the North Dakota Public Service Commission (the “Commission”) its Consolidated Application for a Certificate of Corridor Compatibility & Route Permit for the 16-inch South Bend Crude Oil Transmission Pipeline located in McKenzie and Golden Valley Counties in North Dakota (the “Project”). Docket No. 1. On March 10, 2022, Bridger filed an Amended Consolidated Application for the Project. Docket No. 9. The purpose of

the Amended Consolidated Application was “to update information previously provided in the original application regarding the status of federal permitting, and to address and include information that was previously requested from PSC staff...” Docket No. 26, Bridger’s Response to March 17, 2022 Request for Information, pg. 2. “[T]he Amended Application reflects minor route adjustments and refinements that were made since the original Project was filed” however, the Amended Application “do[es] not materially alter the nature of the Project” as initially presented. *Id.* On April 7, 2022, the Commission issued a Notice of Filing and Public Hearing scheduling a public hearing for the Project for May 5, 2022. Docket No. 21. Subsequently, on April 25, 2022, over one year after Bridger filed the Project’s application, and approximately one week prior to the public hearing, LIUNA filed its petition to intervene in this proceeding. Docket. No. 27.

## II. LEGAL STANDARD

The Administrative Practices Act, N.D.C.C. Ch. 28-32, addresses intervention in adjudicative proceedings and provides:

An administrative agency may grant intervention in an adjudicative proceeding to promote the interests of justice if intervention will not impair the orderly and prompt conduct of the proceeding and if the petitioning intervenor demonstrates that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of statute or rule. The agency may impose conditions and limitations upon intervention. The agency shall give reasonable notice of the intervention to all parties. An administrative agency may adopt rules relating to intervention in an adjudicative proceeding.

N.D.C.C. § 28-32-28.

The Commission has also adopted rules relating to intervention, which echo the standards set forth in N.D.C.C. § 28-32-28. Under the Commission’s rules, a petition to intervene “may be

granted if the petitioner has a statutory right to be a party to the proceeding; or the petitioner has a legal interest which may be substantially affected by the proceeding, and the intervention would not unduly broaden the issues or delay the proceeding.” N.D. Admin. Code § 69-02-02-05 (emphasis added).

In addition to establishing the party has a statutory right or a legal interest which may be substantially affected, a petitioner must also comply with the Commission’s procedural requirements which require a petition to intervene to set forth: (1) the grounds for intervention; (2) the position and interest of the petitioner in the proceeding; (3) what the petitioner would contribute to the hearing; and (4) whether the petitioner’s position is in support of or in opposition to the relief sought. N.D. Admin. Code § 69-02-02-05(1). Here, not only has LIUNA failed to establish a statutory right or legal interest which would be substantially affected by the proceeding, it has also failed to adequately describe its interest, position, and expected contribution to the hearing as required above. In addition, LIUNA’s alleged grounds for intervention are so broad, and its alleged interest in the proceeding so vague, that granting its petition would unduly broaden the issues before the Commission and/or delay the proceeding.

### III. ARGUMENT

#### **A. LIUNA’s Petition fails to establish a statutory right or a sufficient interest that will be substantially affected to warrant intervention.**

The LIUNA Petition fails to state any statutory right or legal interest that will be substantially affected in the proceeding. LIUNA’s alleged interests are insufficient to warrant admission as a party in this proceeding. LIUNA has not identified an interest of its members in this proceeding that differs from the interests of the general public. Here, LIUNA’s only stated interests in the proceeding are those shared by the public-at-large (jobs, fuel prices, and safety)

and those under the purview of the Commission itself (proper siting, construction, maintenance, and operations practices). That LIUNA's members provide labor and services for similar types of projects as that proposed by Bridger does not create a legal right or interest sufficient for intervention. Similarly, LIUNA's general interest in the broader topics of a hearing, and its claimed interest "to be an active stakeholder in public decision-making regarding energy infrastructure at both the policy and project levels" are insufficient grounds for intervention in a siting proceeding.

By LIUNA's own admission, it lacks a legal interest or right that will be substantially affected by this proceeding. On this ground alone, LIUNA's Petition fails. LIUNA expressly states "Petitioner seeks party status to . . . [d]etermine how the Project may affect [its] members" which demonstrates that any conceivable interest in this proceeding is speculative at best. LIUNA Petition pg. 3. This fact is further highlighted by LIUNA's failure to take a position on Bridger's application and LIUNA's failure to state any effect the Commission's approval or denial of the Project would have on its members.

LIUNA provides three reasons for its intervention in its Petition to Intervene: (1) to "[d]etermine how the Project may affect its members"; (2) to "explain best practices in routing and construction"; and (3) to "[e]nsure that the revised proposal will minimize adverse impacts, contribute to meeting energy needs in an orderly fashion, and support beneficial use of North Dakota's energy resources." LIUNA Petition at pg. 3. None of these reasons support intervention. Rather than identifying a right under statute or rule to be a party or pointing to a legal interest that may be substantially affected by the proceeding, LIUNA essentially claims the purpose of its intervention is to try and subsequently identify a legitimate interest in the proceeding, and to ensure the Commission does its job. The Commission, and not LIUNA, has authority under state law to determine whether an applicant has met and complied with the applicable standards governing the

proposed project. LIUNA's alleged interest in ensuring the Commission's siting criteria are complied with is an attempt to substitute its judgment for that of the Commission. But opinion testimony that is couched as a legal conclusion is not helpful to the trier of fact.<sup>1</sup> Aiding the Commission in completing its duty does not amount to a substantial interest. *LTD Broadband LLC Designated Eligible Carrier Application*, No. 20210263, 2021 WL 5233410, at \*1 (Oct. 11, 2021) (herein "*LTD Broadband*") ("The Commission has a legal duty to follow the law and conduct a hearing. If [Petitioner] has a substantial interest in aiding the Commission in completing its duty, there would be no limit to who could be an intervenor." (emphasis added)).

Ultimately, LIUNA has failed to identify a right under statute or rule entitling it to intervention, or a substantial interest in this proceeding justifying its petition. For this reason, LIUNA's purported interests can be expressed through the public comment portion of this proceeding, and it should have no right to intervene, call witnesses, and cross-examine witnesses. For these reasons, LIUNA's Petition should be denied.

**B. Alternatively, even if LIUNA had some cognizable interest or right to intervene, its petition is void of any information as to what it would contribute to the proceeding or its position on the Application. Thus, the petition fails to meet the requirements of intervention under statute and Commission rule, and provides yet another basis for its denial.**

LIUNA's Petition has not specified what LIUNA would contribute to the hearing or its position in the proceeding. N.D. Admin. Code § 62-02-02-05. Nor has the petition specified the

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<sup>1</sup> See *Hogan v. Am. Tel. & Tel. Co.*, 812 F.2d 409, 411 (8th Cir. 1987). Opinion testimony on legal conclusion or standards is regularly excluded as impermissible. See *In re Acceptance Ins. Companies Sec. Litig.*, 423 F.3d 899, 905 (8th Cir. 2005); *Peters v. Woodbury County, Iowa*, 979 F. Supp. 2d 901, 922-23 (N.D. Iowa 2013). This is because "[e]ach Courtroom comes equipped with a 'legal expert,' called a judge, and it is his or her province alone to instruct the [trier of fact] on the relevant legal standards." *Burkhart v. Washington Metro. Area Trans. Auth.*, 112 F.3d 1207, 1213 (D.C. Cir. 1997). The same is true here, where the Commission, and only the Commission, is the arbiter of the law equipped to determine whether or not the Application should be approved.

relief LIUNA seeks. *See id.* The Commission’s prior precedent dictates that a petition devoid of such information must be denied. *LTD Broadband; Dakota Access, LLC Dakota Access Pipeline Pump Station - Emmons Cty. Siting Application*, No. 2019-0280, 2019 WL 5788569, (Oct. 23, 2019), NDPS Case No. PU-19-204, Docket No. 35 (herein “*Dakota Access Emmons Cty.*”). In *LTD Broadband* and *Dakota Access Emmons Cty.*, intervention requests before the Commission were denied where the petitioners had “not presented sufficient information to satisfy the statutory intervention requirements set forth in N.D.C.C. § 28-32-28 and N.D. Admin. Code 69-02-02-05.” *LTD Broadband* at \*2; *Dakota Access Emmons Cty.* at \*2. Specifically, in *Dakota Access Emmons Cty.*, it was held,

Even assuming the Petitioners have a substantial interest in the proceeding, the Petition does not set forth the position and interest of the Petitioners in the proceeding. . . . The Petition does not set forth what the Petitioner would contribute to the hearing . . . In addition, the Petition does not set forth the Petitioners' position with respect to the relief sought by the applicant. The Petitioner has not presented sufficient information to satisfy the statutory intervention requirements set forth in N.D.C.C. § 28-32-28 and N.D. Admin. Code 69-02-02-05.

*Id.* at \*1-2. Likewise, a similar conclusion was reached in *LTD Broadband*,

In as much as [Petitioner’s] interest is to aid the Commission in the completion of its duty, the Petition does not set forth what the Petitioner would contribute to the hearing. There is nothing in the petition that [Petitioner] will offer anything that will exceed what the Commission will do regardless of the Petition. There is no particular relief sought in the Petition beyond the support of the Commission and the decision being in accordance with the law and the public interest.

*Id.* at \*1.

LIUNA’s Petition suffers the same fatal flaws as the petitioners in *Dakota Access Emmons Cty.* and *LTD Broadband*, because it (1) fails to set forth LIUNA’s interest in the proceeding; (2) fails to set forth what LIUNA would contribute to the hearing; and (3) fails to set forth what position LIUNA takes with respect to Bridger’s siting application. To approve LIUNA’s Petition would require a finding that LIUNA could intervene without satisfying the requirements for party

intervention. Granting LIUNA's intervention request would effectively render the Commission's intervention rules meaningless and signal that any person or entity may intervene in Commission proceedings based on generalities alone without actually having a legitimate stake in the outcome.

**C. Finally, LIUNA's intervention into this proceeding would unduly harm Bridger.**

Even if a substantial legal right or interest exists that would be substantially affected by this proceeding, intervention is not warranted if it will "impair the orderly conduct of the proceeding," "unduly delay the proceeding," or "unduly broaden the issues." Because LIUNA has failed to define any concise interest in the proceeding, LIUNA's intervention would impair the orderly and prompt conduct of the proceeding, unduly broaden the issues in this proceeding, and cause delay. *See* N.D.C.C. § 28-32-28; N.D. Admin. Code § 69-02-02-05.

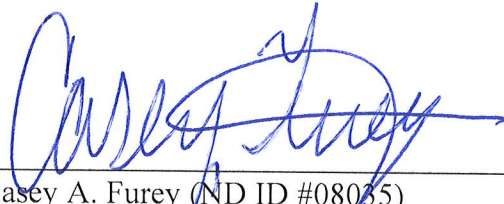
LIUNA seeks intervention to "be an active stakeholder in public decision-making regarding pipeline [and energy] infrastructure at both policy and the project levels." LIUNA Petition at pg. 2. LIUNA's interest to engage in public policy considerations and decisions does not constitute an interest in this proceeding warranting intervention. To the extent LIUNA seeks to present public policy positions, such considerations are more appropriate for the legislative process or administrative rulemaking proceedings. As previously explained, by LIUNA's express admission, it seeks intervention to ensure the Commission's siting considerations are properly considered. *See* LIUNA Petition p. 3, ("The Petitioner seeks party status in order to . . . Ensure that the revised proposal will minimize adverse impacts, contribute to the meeting energy needs in an orderly fashion, and support beneficial use of North Dakota's energy resources."). Allowing LIUNA to intervene based on such broad and vague grounds will inevitably expand the scope of the proceeding, causing delay, and ultimately, harm to Bridger.

Because LIUNA fails to state any substantial interest in the proceeding, its intervention request appears to be an attempt to steer the proceeding and use the intervention process as a vehicle to promote its policy objectives, which should not be permitted.

#### IV. CONCLUSION

For all of the reasons set forth herein, LIUNA's Petition to Intervene should be **DENIED**.

Dated this 29th day of April, 2022.



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BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF NORTH DAKOTA

In the Matter of the Application of Bridger Pipeline LLC for a Certificate of Corridor Compatibility and Route Permit for an 80-Mile Long 16-Inch Crude Oil Transmission Pipeline in McKenzie and Golden Valley Counties, North Dakota

Case No. PU-21-048

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**CERTIFICATE OF SERVICE**

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[¶1] I hereby certify that on the 29<sup>th</sup> day of April, 2022, the following document:

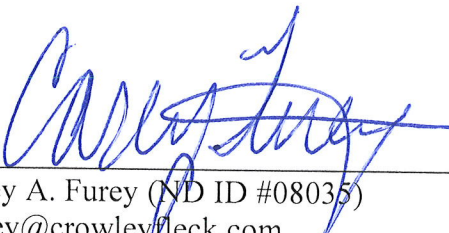
**1. Bridger Pipeline LLC's Response in Opposition to LIUNA's Motion for Intervention**

was filed with the North Dakota Public Service Commission and served via electronic mail and U.S. Mail, postage prepaid, directed to the persons to be served at their last known post office address as follows:

Timothy J. Dawson, Director  
Office of Administrative Hearings  
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Kevin Pranis  
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Dated this 29<sup>th</sup> day of April, 2022.

  
\_\_\_\_\_  
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