

NORTH DAKOTA PUBLIC SERVICE COMMISSION

<p>In the Matter of the Application by Bridger Pipeline LLC for a Certificate of Corridor Compatibility and Route Permit for a 16-inch Pipeline in McKenzie and Golden Valley Counties, North Dakota</p> <p>ND PSC Docket No. PU-21-48 OAH File No. 20220094</p>	<p>Reply to Bridger Pipeline LLC Response to Petition for Intervention by Laborers District Council of Minnesota and North Dakota</p>
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The Laborers District Council of Minnesota and North Dakota (“LIUNA”) provides this reply to the response submitted by Bridger Pipeline LLC (“Applicant”) to LIUNA’s Petition for Intervention in the above-captioned docket concerning the company’s proposal to build and operate a new 147-mile 16-inch crude oil pipeline, 81 miles of which would be sited in North Dakota.

LIUNA has sought and been granted party status as an intervenor in six prior energy facility siting cases before the North Dakota Public Service Commission (“Commission”), including two cases involving petroleum or refined product pipelines, and four involving large wind energy conversion facilities.¹ In each case, the Administrative Law Judge (“ALJ”) determined, based on substantially a similar petition, that the legal standard for intervention had been met; and in no instance did LIUNA’s participation impair the orderly and prompt conduct of the relevant proceedings.

We contend that the petition should be granted for the same reasons LIUNA was admitted to party status in each of the prior six cases in which we petitioned to intervene: first, our members’ livelihoods and safety could be substantially affected by whether, when and under what circumstances the Commission approves Applicant’s proposed project; and second, as in past dockets, our organization brings unique expertise and perspective on energy facility construction that will help to develop a complete record for the Commission’s consideration.

The only difference between this case and the aforementioned cases is the fact of the Applicant’s objection, but the Applicant’s preferences are not relevant to the statutory criteria for admitting or rejecting a petition for intervention.

¹ Merricourt Wind (PU-08-932); Sacagawea 16-Inch Lateral Pipeline (PU-15-114); Cenex 10-Inch Pipeline (PU-17-097); Ruso Wind (PU-19-28); Northern Divide Wind (PU-19-376 & 19-377); Bowman Wind (PU-21-121)

On April 7, 2022, the Commission issued a Notice of Filing and Public Hearing informing members of the public of the Applicant's proposal, and of the date, time and place of the planned May 5 Commission hearing on the matter. On April 25, 2022, a little over three weeks after issuance of the first public notice, and 10 days before the hearing, LIUNA filed a Petition to Intervene in order to protect the interests of members whose livelihoods could be substantially affected by the proposed new large pipeline project.² On April 29, 2022, the Applicant filed a response objecting our petition.

Applicant argues that LIUNA should not be accepted as a party, first, because the petition did not declare a position for or against the application or demand specific relief; second, because, in Applicant's opinion, the descriptions of LIUNA's interests were "overly-broad," and overlapped with the interests of the general public and the Commission's purview; and finally, because Applicant asserts, without evidence, that LIUNA's intervention would "impair the orderly and prompt conduct of the proceeding, unduly broaden the issues... and cause delay."

LIUNA has been accepted as an Intervenor in four recent cases in which we took the same posture as in the instant case, stating in our Petition that, "[a]t this point, we are not taking a position for or against the application", and this case should be no different.³ North Dakota statute does not, as Applicant would have us believe, require Petitioners to take a position for or against an Application or give up their legal rights. Instead, the applicable statute and rule require Petitioners to state "whether" they are taking a position for or against Applicant's requested relief.

Applicant's preferred, but incorrect, reading of the statutory requirement would do little to advance the interests of Applicants or the public, but would instead create a perverse incentive for Petitioners to arbitrarily state a position which could then be modified as soon as the Petition was accepted with no consequence to the Intervenor. Likewise, there is no statutory requirement that Petitioner present a specific request for relief in a Petition for Intervention, and no public purpose would be served by forcing would-be Intervenor to make arbitrary requests for relief.

LIUNA has been accepted as an Intervenor in all six cases in which we Petitioned for Intervention based on comparable explanations of our members' interests and how they might be affected by proposed pipeline and wind energy projects. Applicant contends that our members' interests are indistinguishable from those of the public-at-large, but this is plainly not

² LIUNA is a citizen intervenor without dedicated resources to consistently monitor Commission dockets, and like most members of the public, we often learn of projects that could substantially affect our members' interests only after hearings have been scheduled. The fact that our Petition was filed 10 days before the hearing is due to having only recently learned of the project's status.

³ Merricourt, Ruso, Northern Divide, and Bowman Wind

true. Our organization represents thousands of members whose livelihood depends largely or entirely on pipeline construction, and whose quality of life and safety are directly impacted by how area pipelines are built and maintained.

A Commission to approve or deny the Application is very likely to substantially affect the availability of pipeline construction employment, which is of direct concern to members. Such a decision could also substantially affect the health and safety of members working on the project, the financial health and reputation of the pipeline industry on which our members rely, and the standards held by pipeline companies for such projects generally.

Furthermore, the fact that our members' stated interest in the case overlaps with purview is appropriate and necessary. No Intervenor should ask the Commission to exceed the scope of its authority to take up matters that it is not authorized to consider by statute, and so intervenors should always seek to inform the Commission's decisions within its purview rather than seeking relief that the Commission could not arrive at on its own.

Finally, it is important to note that the Applicant provides no basis for the assertion that LIUNA's participation will cause disruption and delay, while our track record through six previous cases proves the contrary. Not only have proceedings involving LIUNA gone smoothly and without delay, but LIUNA has provided useful contributions to the record that have been cited by Commissioners during hearings, and in at least one occasion, resulted in the Finding of Fact that the positive socioeconomic impact of a large energy project could depend to a significant degree on use of local labor (Ruso Wind).

We ask that we be given the opportunity once again to represent the interests of our members in a manner consistent with the orderly processing of cases before the Commission. We would be happy to answer any questions Your Honor might have regarding our intended participation.

Dated: May 2, 2022

Respectfully Submitted,

LIUNA Minnesota & North Dakota



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