



NEWS RELEASE
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PSC Reaches Settlement Agreement with Dakota Access

BISMARCK, ND – The North Dakota Public Service Commission (PSC) has reached a settlement agreement with Dakota Access, LLC, regarding various potential violations that occurred during construction.

“Our job at the Commission is to hold the company responsible for fulfilling the obligations and commitments of their permit,” Commissioner Julie Fedorchak, who holds the pipeline siting portfolio, said. “This settlement addresses all of the problems raised during construction in a meaningful and appropriate way and provides immediate resolution to these cases without further costly and unproductive legal delays.”

Unanticipated Discovery Notification

In Oct. 2016, Dakota Access encountered an unanticipated cultural site in the pipeline route. The company immediately notified the environmental inspector for the project, the area was flagged off from construction, and the State Historic Preservation Office (SHPO) was notified. After an inspection and consultation with SHPO, the pipeline was rerouted around the site and it was left undisturbed, but the company failed to notify the PSC about the re-route or the discovery until after the reroute occurred, which is a violation of the siting order issued by the Commission. In the settlement, Dakota Access agrees to:

- Develop, in coordination with SHPO and the Commission, an industry reference manual outlining steps to manage unanticipated discoveries and route changes during construction. The manual will include a model unanticipated discovery plan and an explanation of the importance of communication and transparency with the Commission. The manual will be completed by Dec. 31, 2017.
- Distribute the manual to registered pipeline companies in the state.
- Conduct training programs on unanticipated discoveries and the Commission’s route change process at the 2018 Williston Basin Petroleum Conference and at one other key industry function by Dec. 31, 2018.
- Pay the expenses to bring a speaker of national or international renown to present to SHPO staff in Bismarck on a topic agreed to between SHPO and Dakota Access by Dec. 31, 2018.

Other Issues identified in Commission Investigation

In May 2017, the Commission opened an investigation to look into possible siting violations discovered by a third-party construction inspector hired by the PSC. In July 2017, advocacy staff

provided the Commission a memo outlining possible violations. The alleged violations and details of how the settlement addresses each are as follows:

1. Inspection reports show that Dakota Access filed three additional reroutes outside of the sited corridor without proper notification to the Commission. The settlement agreement addresses this issue with the manual and training programs outlined above for the unanticipated discovery.
2. Inspection reports showed tree removal extended beyond the areas approved in the Commission's order. In the settlement, Dakota Access agrees to replace the trees and shrubs on a 3 to 1 replacement ratio for the areas of concern (all other areas of the project will remain on a 2 to 1 replacement ratio). The company also agrees that it will plant, or pay for planting, an additional 20,000 trees in consultation with the county soil conservation districts in counties the pipeline crosses. These trees will be at least 2-year-old trees and the planting will be completed by Dec. 31, 2018, unless an extension is approved by the Commission.
3. Inspection reports noted inadequate subsoil and topsoil segregation. The settlement agreement outlines that Dakota Access will inspect, with the participation of Commission staff, any areas of concern raised by landowners and will investigate and address any issues identified. Dakota Access agrees to pay for the inspection costs of the Commission.

“This settlement resolves these issues in a way that will benefit the impacted counties environmentally and also help the Public Service Commission and the State Historic Preservation Office better fulfill our legal obligations of protecting the environment and cultural resources in the future,” said Commission Chairman Randy Christmann.

“After considerable discussion and thoroughly vetting the issue, it’s good to have reached a settlement agreement in the case,” said Commissioner Brian Kroshus. “The agreement accomplishes several key objectives, including increasing awareness and positively influencing behavior for future infrastructure development in the state.”

A hearing that was scheduled to start Oct. 3 to further investigate these issues was canceled as part of the motion approved during yesterday’s Commission meeting.

The North Dakota Public Service Commission is a constitutionally created state agency with authority to permit, site and regulate certain business activities in the state including electric and gas utilities, telecommunications companies, power plants, electric transmission lines, pipelines, railroads, grain elevators, auctioneers, commercial weighing devices, pipeline safety and coal mine reclamation. For more information, contact the Public Service Commission at (701) 328-2400 or www.psc.nd.gov.

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