



ENERGY TRANSFER

January 13, 2022

By Electronic Mail

Ms. Kristin Baldwin, Hearing Officer
Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

**Re: DAPL-ETCO Operation Management, LLC
CPF No. 3-2021-049-NOPV
Notice of Withdrawal**

Dear Ms. Baldwin:

This letter is to advise that DAPL-ETCO Operations Management, LLC (DAPL) is in agreement with the email provided by PHMSA Central Region counsel yesterday, confirming that DAPL and PHMSA have reached an agreement that resolves the above referenced NOPV in a Consent Agreement and Order executed by Alan Mayberry on January 11, 2022. As such, DAPL is in agreement that the hearing should be canceled and DAPL hereby withdraws its Request for Hearing. DAPL appreciates PHMSA's participation in the settlement discussions and consideration of the additional information provided by DAPL.

By way of background, PHMSA issued the underlying Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order (Notice) to DAPL on July 22, 2021. Prior to issuing the Notice, PHMSA expended roughly 625 field inspection days on the Dakota Access Pipeline through 2019. These inspections involved 550 days regarding pipeline construction with a major focus on the horizontal directional drill (HDD) crossing of Lake Oahe. The allegations raised in the Notice do not relate to the segment of the pipeline crossing of Lake Oahe in North Dakota and there is no allegation that there is a condition or conditions that pose a pipeline integrity risk to public safety, property, or the environment. As such, the Notice has no relevance to the United States Army Corps of Engineers federal project area at Lake Oahe. Further, there is no allegation that an unsafe condition exists on the pipeline or that an integrity threat exists that could result in the pipeline operating in an unsafe manner.

With respect to the 7 alleged violations set forth in the Notice, 2 were issued as warning items (items 4 and 5) and 2 were subject to civil penalties (items 3 and 6). Through further discussion, additional documentation, explanations, and clarifications provided by DAPL, the parties agreed that 2 items would be withdrawn in their entirety (items 4 and 6), 2 would be reduced to or remain a warning item (items 2 and 5, respectively), and only 3 would be issued as violations (items 1, 3, and 7). The proposed civil penalty of \$93,200 was substantially reduced to \$20,000, which is associated with a single item (item 3). The Consent Agreement and Order also

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acknowledges that DAPL has satisfied all proposed compliance order elements, includes two additional commitments on the part of DAPL (items 1 and 4), and recognizes the many corrective measures and improvements implemented by DAPL prior to receipt of the Notice.

With the parties' signatures to the Consent Agreement and Order, effective January 11, 2022, the items raised in the Notice have been fully resolved in their entirety by agreement between PHMSA and DAPL. Those items have no bearing on the potential environmental impacts of an easement for DAPL to cross Lake Oahe. In addition, the items raised in the Notice did not—and do not—bear on the safety of the pipeline at Lake Oahe, including the likelihood or consequences of an oil spill or leak. Further, it also remains the case, as stated in the Declaration of Alan Mayberry that was submitted by PHMSA to the United States Army Corps of Engineers on July 13, 2020, that DAPL has not had any release incidents along its mainline (of which the Lake Oahe segment is a part). *See SRST et al, v. USACE*, Case No. 20-5197, Document No. 1851466, (filed July 13, 2020).

Sincerely,



Greg McIlwain
Senior Vice President - Operations

cc: Mr. Greg Ochs (PHMSA Central Region Director)
Joseph Hainline (PHMSA Counsel)
Ryan McClure (PHMSA Counsel)
Catherine Little (Troutman)