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October 26, 2023

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street NE, Room 1A  
Washington, D.C. 20426

Re: WBI Energy Transmission, Inc.  
Wahpeton Expansion Project  
Docket No. CP22-466-000  
Response to Environmental Condition of Order Issuing Certificate

Dear Ms. Bose:

On October 23, 2023, the Federal Energy Regulatory Commission (FERC or Commission) issued an Order Issuing Certificate (Order) in the above referenced docket authorizing WBI Energy Transmission, Inc. (WBI Energy) to construct and operate its Wahpeton Expansion Project (Project) in Cass and Richland Counties, North Dakota, subject to the conditions addressed in the Order.

WBI Energy herewith submits for filing its water quality certification issued by the North Dakota Department of Environmental Quality in response to Environmental Condition 14 included in Appendix A to the Order.

Should you have any questions or comments regarding this filing, please call the undersigned at (701) 530-1563.

Sincerely,

/s/ Lori Myerchin

Lori Myerchin  
Director, Regulatory Affairs and  
Transportation Services

Attachment A – 401 Water Quality Certification

Courtesy Copies:  
David Hanobic, FERC Environmental Project Manager

Dawn Ramsey, FERC Deputy Environmental Project Manager  
Official Service List

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 26th day of October, 2023.

By /s/ Lori Myerchin  
Lori Myerchin  
Director, Regulatory Affairs and  
Transportation Services  
WBI Energy Transmission, Inc.  
1250 West Century Avenue  
Bismarck, ND 58503  
Telephone: (701) 530-1563

**ATTACHMENT A**  
**401 WATER QUALITY CERTIFICATION**

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August 14, 2023

Chris Schmidt  
Senior Consultant, Project Management  
Environmental Resources Management (ERM)  
222 South 9th Street, Suite 2900, Minneapolis, MN 55402  
[Chris.Schmidt@erm.com](mailto:Chris.Schmidt@erm.com)

**Clean Water Act (CWA) Section 401 Certification for the FERC NGA Section 7 and CWA 404 permitting associated with the Wahpeton Expansion Project**

Dear Mr. Schmidt:

The North Dakota Department of Environmental Quality (department) has reviewed the construction specification Wahpeton Expansion Project (project) for Section 401 Clean Water Act Certification crossing waters of the state (North Dakota Century Code 61-28-04) and support of the North Dakota Administrative Code (NDAC) 33.1-16-02.1. Based on conversations with, and the data provided by Environmental Resources Management (ERM), pipeline project can be constructed and the water quality standards supported if certain conditions are met and grants clean water certification.

Note that linear natural gas line projects are certified under Nationwide 12 for all waters other than Class I, IA, II and class III rivers and streams listed in the Standards of Quality of Waters of the State (NDAC 33.1-16-02.1, Appendix I). Waters not certified under NWP 12 would be the Maple, Sheyenne, and Wild Rice Rivers (**Nationwide Permit 12:** *Oil and natural gas related projects in Class I, IA, II and class III rivers and streams, and classified lakes listed in Appendixes I and II of the standards are denied Section 401 Water Quality Certification*).

The crossings of the Maple, Sheyenne, and Wild Rice River will be accomplished by horizontal directional drilling (HDD). The plans place the HDD entrance and exit outside of the streambed. Ideally this method will result in a no dredge, fill, or releases into water(s) of the state. No dredge, fill, or release would preclude the need for a Section 401 Clean Water Certification unless construction plans change, a surface release from the construction zone enters the river or there is a subsurface release (Frac-out) of drilling fluid.

During construction near, under, or in waters of the state, the WQ standards must be supported (Clean Water Act (CWA) Sections 101(a)(2) and 303(c), North Dakota Century Code 61-28-04, and North Dakota Administrative Code Chapter 33.1-16-02.1-0.4 (12) (a-e)). Based on the information provided by ERM, the NDDEQ is reasonably assured that the WQ standards will be supported provided the following conditions are met.

## Prior to Construction

- 1) The Contractor or their agent acquire a stormwater construction permit, and:
  - a. Develop Stormwater Pollution Prevention Plan (SWPPP) to minimize pollution from soil erosion and other sources.
  - b. Submit an electronic Notice of Intent and mail an original signed copy no later than seven days before construction starts, or  
Submit a Notice of Intent through Electronic Reporting Systems (ERIS).
  - c. Implement the SWPPP to minimize pollution from soil erosion and other sources like fuel, oil, and waste.
  - d. Monitor the site and complete inspections.
  - e. Submit a notice of termination once final stabilization has been met.

The NDDEQ storm water permit may be accessed here:

[https://deq.nd.gov/WQ/2\\_NDPDES\\_Permits/7\\_Stormwater/stw.aspx](https://deq.nd.gov/WQ/2_NDPDES_Permits/7_Stormwater/stw.aspx)

- 2) If there is a need to de-water, the contractor or their agent will acquire a temporary dewatering permit to discharge water from sources other than storm water runoff, including contaminated groundwater. Further information on the storm water construction and temporary dewatering permits may be obtained from the department's website.

[https://deq.nd.gov/WQ/2\\_NDPDES\\_Permits/8\\_TempDischarges/TD.aspx](https://deq.nd.gov/WQ/2_NDPDES_Permits/8_TempDischarges/TD.aspx)

## During Construction in or Near Waters

- 1) The horizontal directional drill below the Maple, Sheyenne, and Wild Rice Rivers will be four (4) feet deeper than the potential for scour depth.
- 2) When working in or on the banks of any river, stream, or creek, develop and maintain a secure upland staging area or areas for the storage of equipment, fuel, petroleum products, and hazardous materials when not in use. The staging area(s) are to be located at or constructed in such a way that a spill will not enter the river. Equipment which cannot be moved to the staging area at the end of each day will be locked or secured in such a manner as to prevent vandalism.
- 3) Develop a list of fuels, lubricants, antifreeze, hydraulic fluids, petroleum products, and hazardous materials used, and have it available on request.

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Water Quality  
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- 4) When working on/near water maintain containment booms and/or absorbent materials on site. The numbers, types, and length of booms and/or absorbent materials will be in quantity sufficient to address the types and volumes of materials listed in condition 3.
- 5) If a spill of fuels, lubricants, antifreeze, hydraulic fluids, petroleum products, and hazardous and/or potentially hazardous materials occurs during construction submit an environmental incident report at:

[https://deq.nd.gov/WQ/4\\_spill\\_Investigations/IncidentReporting.aspx](https://deq.nd.gov/WQ/4_spill_Investigations/IncidentReporting.aspx).

- 6) Clean and inspect all equipment, temporary materials, watercraft, barges, and tools for aquatic nuisance species prior to being allowed on the construction site.
- 7) All exposed riparian vegetation must be revegetated.
- 8) If rip rap is used, it must be clean and free from rubbish such as rebar, wire, or wood. Must be of a size and shape appropriate to withstand the energy of the water(s).
- 9) Protect upland, riparian, and adjacent vegetation, except where it is being removed.

Should you have any questions, I may be reached at 701.328.5268 or [pwax@nd.gov](mailto:pwax@nd.gov).

Sincerely,



Peter N. Wax  
Old Scientist  
Division of Water Quality  
701-328-5268  
[pwax@nd.gov](mailto:pwax@nd.gov)

xc. Bruce Kreft, Aaron Carranza, Jason Renschler