



Public Service Commission

State of North Dakota

COMMISSIONERS

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March 26, 2007

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Larry Kotchman, State Forester
ND Forest Service
307 First St E
Bottineau ND 58318

Dear Mr Kotchman:

Commissioner Susan Wefald has indicated that she visited with you about an application before the Public Service Commission by Enbridge Pipelines (North Dakota) LLC to build a 52-mile pipeline in Williams County.

Enbridge ND has made a proposal to the Commission for the replanting of trees and shrubs that are removed during construction. A copy of Enbridge's proposal is enclosed.

The Commission's order simply states that "[t]rees or other woody vegetation must be replaced with saplings that are two or more years old at a rate of two for every one removed. Landowners shall be given the option of having replacement trees/shrubs planted off the right-of-way on the landowner's property or waiving that requirement in writing and allowing Enbridge to plant the replacement trees/shrubs elsewhere. All effected trees and shrubs must be quantified before construction activity. Enbridge shall record, and file with the Commission, the number and variety of replacement tree and shrub plantings, the specific planting area(s) and the dates of the plantings. Enbridge shall inspect tree replacements once a year for three years, on the anniversary of the plantings, and send a report on or shortly before October 1 of each year to the Commission documenting work completion and condition of woodlands planting. The Commission may order additional plantings if survival rates are less than 75%."

The Commission would appreciate the State Forester's review of Enbridge ND's woody vegetation replacement proposal and welcomes your comments and suggestions. We hope to hear from you before making a final decision about the proposal.

If you have any questions, feel free to call.

Sincerely

Patrick Fahn
Utility Analyst

c. Brian Bjella
Kris Benson

**ENBRIDGE PIPELINES (NORTH DAKOTA) LLC
TRENTON TO BEAVER LODGE LINE LOOP**

Request for Clarification of and Variances to Condition 22

January 23, 2007

On September 20, 2006, the Public Service Commission ("PSC" or "Commission") issued Corridor Certificate No. 94 and Route Permit No. 104 to Enbridge Pipelines (North Dakota) LLC ("Enbridge") for construction of a crude oil pipeline and associated facilities in Williams County, North Dakota. In conjunction, the Commission issued its Findings of Fact, Conclusions of Law and Order ("Order"). In the Order, the PSC stated in condition 22:

Trees or other woody vegetation must be replaced with saplings that are two or more years old at a rate of two for every one removed. Landowners shall be given the option of having replacement trees/shrubs planted off the right-of-way on the landowner's property or waiving that requirement in writing and allowing Enbridge to plant the replacement trees/shrubs elsewhere. All effected trees and shrubs must be quantified before construction activity. Enbridge shall record, and file with the Commission, the number and variety or replacement tree and shrub plantings, the specific planting area(s) and the dates of the planting. Enbridge shall inspect tree replacements once a year for three years, on the anniversary of the plantings, and send a report on or shortly before October 1 of each year to the Commission documenting work completing and condition of woodlands planting. The Commission may order additional plantings if survival rates are less than 75%.

Enbridge is committed to protecting the environment and meeting all regulatory requirements on this project. Toward this end, Enbridge is seeking to clarify the tree and shrub replanting requirements by better defining how trees and shrubs will be identified and inventoried in the field. Following is a list of procedures proposed by Enbridge for identifying and inventorying trees and shrubs. Enbridge consulted with the North Dakota Game and Fish Department regarding these procedures and obtain concurrence from the Department that the procedures are acceptable (see attached memos and letter).

1. Enbridge will reduce the width of the construction work area in areas of woody vegetation to 50 feet or less.¹
2. During construction, Enbridge will selectively cut and remove trees and shrubs within the construction work area, leaving mature trees and shrubs intact where practical. A minimal amount of tree and shrub removal is anticipated on this project.
3. In areas where trees are cleared, Enbridge will record the location, number, and species of trees cut that are 3 inches in diameter at breast height ("dbh")² or greater, and will replace cut trees on a 2 to 1 basis with 2-year-old saplings of the same or a similar species after construction. Trees that are less than 3-inches dbh will not be replaced.³
4. In areas where shrubs are cleared, Enbridge will cut shrubs flush with the surface of the ground, taking care to leave the naturally occurring seed bank and root stock intact. If soil disturbance is necessary, the native topsoil will be preserved and replaced after construction. Shrubs will be allowed to regenerate naturally where topsoil is preserved. Where topsoil is not preserved, Enbridge will record the location, number, and species of shrubs cleared and will replace cleared shrubs on a 2 to 1 basis with stem cuttings of the same or a similar species.
5. Trees and shrubs that are considered invasive species or noxious weeds will not be inventoried or replaced (e.g., *Caragana arborescens*, *Elaeagnus angustifolia*, *Rhamnus cathartica*, *Tamarix chinensis*, *T. parviflora*, *T. ramosissima*, *Ulmus pumila*).
6. Cut trees and shrubs will be inventoried before cutting, but only trees and shrubs actually cut will be replaced.⁴

¹ The construction right-of-way may be greater than 50 feet in areas where the entire right-of-way width is not wooded, and Enbridge shall limit the width of clear cuts through woody areas to 50 feet or less. This requirement is part of condition number 14 of the Order, but is included here because of its related nature.

² Breast height is defined as 4.5 feet above the ground on the uphill side of the tree in accordance with generally accepted forest mensuration practices.

³ Arborists and forest ecologists generally consider tree removal to mean the cutting of a tree with a minimum dbh somewhere between 3 and 12 inches. The dbh of trees may be measured for a variety of reasons, including tree conservation, forest planning, habitat monitoring, timber appraisal, and zoning. Each objective requires different information and level of detail, and there is no standard dbh for defining a tree. Enbridge selected a minimum dbh of 3 inches as a conservative approach to this issue. This approach meets or exceeds the general approach followed by state agencies involved with tree clearing, such as the North Dakota Department of Transportation.

⁴ Safety considerations dictate that Enbridge maintain a strip of land over its pipelines free of woody vegetation; therefore, tree and shrub replanting will not be conducted over the pipelines.

7. At the conclusion of the project, Enbridge will file with the PSC documentation identifying the number and variety of trees removed, as well as the number, type, location and date of the replacement plantings.
8. Landowners shall be given the option of having replacement trees/shrubs planted off the right-of-way on the landowner's property or waiving that requirement in writing and allowing Enbridge to plant the replacement trees/shrubs at alternative locations.
9. Enbridge shall inspect tree replacements once a year for three years, on the anniversary of the plantings, and send a report on or shortly before October 1 of each year to the PSC documenting work completing and condition of woodlands planting.
10. Enbridge understands that the Commission may order additional plantings if survival rates are less than 75%. However, the North Dakota Game and Fish Department recommended a 2 to 1 replanting basis in order to achieve no net loss of woody habitat while allowing for up to 50 percent sapling mortality. Enbridge respectfully requests a variance from this order pursuant to North Dakota Century Code § 49-22-08.1 and North Dakota Administrative Code § 69-06-05-02(3) such that Commission may order additional plantings additional plantings if survival rates are less than 50%. A 50% survival rate would result in no net loss of woody habitat and would be consistent with the intent of the North Dakota Game and Fish Department recommendation.