

AUG 30 2011

**PUBLIC SERVICE COMMISSION**

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August 30, 2011

*Hand Delivery*

Mr. Darrell Nitschke  
Executive Director  
North Dakota Public  
Service Commission  
600 E. Boulevard, Dept. 408  
Bismarck, ND 58505-0480

Dear Mr. Nitschke:

RE: Enbridge Pipelines (North Dakota) LLC  
Bakken Pipeline Project US  
Docket No. PU-10-612  
Our File No. 31-411-004

Enbridge Pipelines (North Dakota) LLC is enclosing herewith for filing the original and ten copies of First Amended Findings of Fact, Conclusions of Law and Order.

Please feel free to call should you have any questions.

Very truly yours,



Brian R. Bjella

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Enc.

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF NORTH DAKOTA

Enbridge Pipelines (North Dakota) LLC  
Bakken Pipeline Project US -  
Ward and Burke Counties  
Siting Application

CASE NO. PU-10-612

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**FIRST AMENDED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
DATED AUGUST \_\_\_\_, 2011**

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**Preliminary Statement**

On November 5, 2010, Enbridge Pipelines (North Dakota) LLC (“Enbridge”) filed an Application for Certificate of Corridor Compatibility and Route Permit for the construction of its Bakken Pipeline Project (US) (“Project”). The Project consists of replacing approximately 11 miles of 12-inch diameter pipeline in Burke County, North Dakota, and also the construction of new pump stations near Kenaston in Ward County, North Dakota, and located near Lignite, in Burke County, North Dakota. In addition, an originating terminal will be constructed at Enbridge’s existing Berthold Station in Ward County.

On May 5, 2011, the Commission issued its Findings of Fact, Conclusions of Law and Order approving the Project, and issued Certificate of Corridor Compatibility Certificate No. 118 and Route Permit No. 128 to Enbridge.

On July 28, 2011, Enbridge filed its Application for a Waiver or Reduction of Procedures and Time Schedules and for Amended Corridor Certificate and Route Permit for deviations of the approved route for two reasons. First, the route deviation allows Enbridge to avoid engaging

unwilling landowners in the condemnation process where adjacent willing landowners who had granted Enbridge options for easement existed. Subsequently, Enbridge received easements for its route deviations from those adjacent willing landowners. Second, the route deviation allows Enbridge to avoid impacting three wetlands. The route deviation is located in Burke County.

On August 3, 2011, the Commission issued its Notice of Filings, Notice of Informal Hearing and Notice of Opportunity for Hearing, scheduling an informal hearing for August 24, 2011, at 2:30 p.m. CDT in the Commission Hearing Room on the 12<sup>th</sup> Floor of the State Capitol. The Notice further provided that comments and requests for a hearing must be received by September 6, 2011.

On August 24, 2011, the Commission held the informal hearing.

Enbridge has requested that the Commission issue an expedited order approving the deviations prior to expiration of the comment period on September 6, 2011.

#### **Findings of Fact**

1. The materials filed by Enbridge in conjunction with its Application dated July 28, 2011, state, and as was further discussed at the informal hearing, that no exclusion or avoidance areas will be impacted by the requested deviations.
2. The materials filed by Enbridge in conjunction with its Application dated July 28, 2011, state, and as was further discussed at the information hearing, that the State Historical Society of North Dakota has concurred that no historic properties are affected.
3. Pursuant to the testimony of Barry Simonson received at the informal hearing, Enbridge will incur substantial additional costs should an Order permitting Enbridge to complete the requested route deviation not be issued prior to September 6, 2011.

4. Pursuant to the testimony of Barry Simonson received at the informal hearing, Enbridge is willing to assume the risk that a formal hearing may yet be requested resulting in the temporary or permanent stay of this Order, as well as the cessation of Enbridge's construction of the requested route deviation.
5. Pursuant to the testimony of Angela Ronayne received at the informal hearing, the route deviation is compatible with the environmental preservation and the efficient use of resources, and will produce minimal adverse impacts on the environment, natural resources, and upon the welfare of the citizens of North Dakota, while ensuring continuing system reliability, integrity and ensuring that energy needs are met and fulfilled in an orderly fashion.
6. The Commission believes that Enbridge has demonstrated a need to commence construction on the deviations as soon as possible.

#### **Conclusions of Law**

1. Enbridge's Application requested a waiver or reduction of procedures and time schedules for the issuance of an amended corridor certificate and amended route permit.
2. North Dakota Century Code § 49-22-07.2, which provides for waivers of procedures and time schedules, provides in part as follows:

The Commission, after hearing and upon a finding that the proposed facility is of such length, design, location, or purpose that it would produce minimal adverse effects, or, after hearing and upon a finding that a demonstrable emergency exists which requires immediate construction and that adherence to the procedures and time schedules would jeopardize the utility's system, may issue an order waiving specified procedures and time schedules required by the chapter or by the rules adopted pursuant to this chapter, including, but not limited to, applications, notices, and hearings, and may forthwith issue a certificate of site compatibility, a

certificate of corridor compatibility, or a route permit, with such conditions as the Commission may require.

3. North Dakota Century Code § 49-22-13(2) provides in part as follows:

(T)he Commission shall not be required to hold a public hearing on an application for the transfer of a certificate or a permit, or an application for a waiver of procedures and time schedules, but shall publish a notice of opportunity for a public hearing in the official newspaper of each county in which any portion of the facility or the proposed site, corridor, or route is located. If requested by any interested person and good cause has been shown therefore, the Commission shall hold a public hearing.

4. The Notice entered in this matter provides that comments and requests for hearing must be received by September 6, 2011. The Notice further provides that “(i)f deemed appropriate, the Commission can determine the matter without a hearing.”
5. That the Commission has the authority under North Dakota Century Code Chapter 49-22 to issue an order approving the requested deviations prior to the expiration of the comment period on September 6, 2011, with such conditions as it may require.
6. The issuance of an order approving the deviations prior to September 6, 2011 will not deprive the public of the right to file comments or request a hearing on or before September 6, 2011.
7. That as the requested deviations will produce minimal adverse effects, it is appropriate for this Commission to issue this order allowing commencement of construction immediately with appropriate conditions.

### **ORDER**

The Commission orders:

1. Enbridge’s request for deviation in the permitted corridor and pipeline route are granted.

2. The authorizations granted by the Amended Corridor Certificate and Amended Route Permit are subject to modification by order of the Commission if deemed necessary to further protect the public or the environment.
3. The route deviation is subject to the conditions and limitations noted in the Findings of Fact, Conclusions of Law and Order dated May 5, 2011, and are subject to the conditions and limitations noted in this Order.
4. That Enbridge may commence construction on the requested deviation immediately, under the condition that should a formal hearing be requested by an interested person on or before September 6, 2011, and good cause is shown therefore, and the request for hearing is granted by this Commission, that the Commission will determine at that time whether this Order shall be stayed and whether Enbridge will cease construction on the deviation.
5. This order will not become final until either no comments or requests for hearing are received by September 6, or following a formal hearing should one be held.

PUBLIC SERVICE COMMISSION

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Tony Clark  
Chairman

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Kevin Cramer  
Commissioner

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Brian P. Kalk  
Commissioner