

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Basin Transload, LLC  
10-Inch Crude Oil Pipeline – Burke County  
Siting Application

Case No. PU-12-775

ORDER


January 16, 2013

The evidence of record has been considered and appraised.

The Commission Orders:

1. The Hearing Officer's January 7, 2013 Recommended Findings of Fact, Conclusions of Law and Order, a copy of which is attached to this Order and made a part of this Order, is ADOPTED as the Public Service Commission's Findings of Fact, Conclusions of Law and Order.
2. Basin Transload, LLC's application for a waiver of procedures and time schedules is granted.
3. Certificate of Corridor Compatibility No. 141 is issued to Basin Transload, LLC designating a corridor for its proposed 10-inch crude oil pipeline and associated facilities in Burke County, North Dakota. For purposes of the Certificate, the Corridor will consist of the field survey corridor identified in the maps provided in Appendix C of Exhibit 1.
4. Route Permit No. 154 is issued to Basin Transload, LLC for the construction of a 10-inch crude oil pipeline and associated facilities in Burke County, North Dakota.
5. The December 26, 2012 Certification Relating to Order Provisions – Transmission Facility Siting (Certification), with accompanying Tree and Shrub Mitigation Specifications, is incorporated by reference and attached to this Order.
6. To the extent there are any conflicts or inconsistencies between Basin Transload, LLC's Application and the December 26, 2012 Certification, the Certification provisions control.

PUBLIC SERVICE COMMISSION



Randy Christmann  
Commissioner



Brian P. Kalk  
Chairman



Julie Fedorchak

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PU-12-775 Filed: 1/16/2013 Pages: 18  
Order adopting Hearing Officer's Recommended  
Order

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Basin Transload, LLC**  
**Lignite Pipeline Project — Burke County**  
**Siting Application**

**Case No. PU-12-775**  
**OAH File No. 20120464**

**RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

**January 7, 2013**

**Appearances**

Patrick J. Ward, Administrative Law Judge, Substantive Hearing Officer, Zuger Kirmis & Smith, PO Box 1695, Bismarck, ND 58502.

Jillian R. Rupnow, Attorney-at-Law, Fredrikson & Byron, P.A., 200 North Third Street, Suite 150, Bismarck, North Dakota 58501, on behalf of Basin Transload, LLC

Illona Jeffcoat-Sacco, Legal Counsel, Public Service Commission, 600 East Boulevard, Bismarck, North Dakota 58505.

Christopher A. Marohl, Public Utility Analyst, Public Service Commission, 600 East Boulevard, Bismarck, North Dakota 58505.

**Preliminary Statement**

Under North Dakota Century Code Section 49-22-07, a utility may not begin construction of a transmission facility in the state without first having obtained a route permit. The facility must be constructed, operated, and maintained in conformity with the permit and any terms, conditions, or modifications of the permit.

On November 9, 2012, Basin Transload, LLC (“Basin”), filed with the North Dakota Public Service Commission (“Commission”) a consolidated application for a Certificate of Corridor Compatibility and Route Permit (“Application”) to authorize construction of a crude oil pipeline (“Project”) in Burke County, North Dakota.

On November 9, 2012, Basin also filed an application requesting waiver of the following procedures and time schedules: (1) separate hearings on Basin’s waiver request, Certificate of Corridor Compatibility Application, and Route Permit Application; (2) separately filed applications for a Corridor Certificate and a Route Permit, and separate publication of notices of filing the applications; and (3) submission of mylar maps and stereo-pair aerial photographs per the Commission’s Application Guidelines for a Corridor Certificate and a Route Permit.

On November 19, 2012, the Commission appointed Allen C. Hoberg to preside as substantive hearing officer (“Hearing Officer”). However, due to caseload concerns, Patrick J. Ward was designated as hearing officer on November 27, 2012.

On November 30, 2012, Patrick J. Ward issued a Notice of Filings and Notice of Hearing stating that the Application was deemed complete and scheduling a public hearing for December 28, 2012, at 11:00 a.m. CST, at the Burke County Courthouse, 103 Main Street Southeast, Bowbells, North Dakota, 58721.

The Notice of Filings and Notice of Hearing identified the following issues to be considered with respect to the application for waiver of procedures and time schedules:

1. Are the proposed facilities of such length, design, location, or purpose that they will produce minimal adverse effects and that adherence to applicable procedures and time schedules may be waived?
2. Is it appropriate for the Commission to waive any procedures and time schedules as requested in the application?

The Notice of Filings and Notice of Hearing identified the following issues to be considered with respect to the applications for a certificate of corridor compatibility and route permit:

1. Will the location, construction, and operation of the proposed facilities produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?
3. Will the proposed facility locations minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

On December 28, 2012, the public hearing was held as scheduled.

Having allowed all interested persons an opportunity to be heard and having heard, reviewed, and considered all testimony and evidence presented, the Hearing Officer makes the following:

#### **Findings of Fact**

1. Basin is a North Dakota limited liability company.
2. Basin has been authorized to do business in the State of North Dakota since November 6, 2008, when it filed its Articles of Incorporation with the North Dakota Secretary of State, as evidenced by the corporate papers filed with the Commission on November 9, 2012 (*see* Case No. PU-12-791).

### Size, Type, and Preferred Location of Facility

3. The Project will consist of the construction of approximately 7 miles of pipeline that will originate at Tesoro's High Plains Pipeline in Section 34, Township 163 North, Range 92 West, and extend generally westward to a storage facility in Section 3, Township 162 North, Range 93 West, near Columbus, North Dakota.
4. The Project will utilize 10-inch nominal diameter steel pipe and the maximum operating pressure will be 1,480 pounds of pressure per square inch gauge. The maximum capacity will be 80,000 barrels per day.
5. Aboveground facilities include a mainline check valve, a mainline block valve, pig launching and receiving stations, cathodic protection equipment, and pipeline markers.

### Need for the Facility

6. Basin has concluded there is a need for the facility because existing pipelines for transporting crude oil in the area are at or near capacity. The Project will provide an additional means of transporting Bakken and Three Forks crude oil to an existing rail facility, from which the crude oil can be transported to key markets within the United States.

### Study of Preferred Route(s)

7. In its Application, Basin defined a one-mile-wide study area centered on the preferred pipeline route. Basin identified a survey corridor 100 feet wide for the purpose of conducting cultural resource field surveys, biological and wetland/waterbody field surveys, and other environmental field assessments. Field surveys were also conducted for all Project facility locations and temporary workspace areas. The field survey corridor for the Project, which encompasses the final proposed Project route, is identified in the maps provided in Appendix C to Exhibit 1.
8. Basin analyzed a number of alternatives and factors, including engineering, economic, and environmental factors to determine the most feasible route. The alternative considered included a trucking alternative.
9. The following agencies were contacted by Basin and provided written comments: North Dakota Department of Health, State Historical Society of North Dakota, State Historic Preservation Office ("SHPO"), North Dakota Game and Fish Department, North Dakota Geological Survey Division, North Dakota Parks and Recreation Department, North Dakota State Water Commission, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service North Dakota Field Office.
10. Basin conducted a Class I literature search on the one-mile-wide corridor, and a Class III cultural resource inventory was completed on the narrower field survey corridor. Additionally, environmental data collected included information on soils, land use, wetlands and waterbody crossings, noxious weeds, trees, saplings, and shrubs, and protected species and habitats.

11. The SHPO has concurred with the determination that no historic properties or significant sites will be affected by the Project so long as the Project remains of the nature and in the location described in the Class I and Class III Cultural Resource Inventory Report and the Addendum to the Class I and Class III Cultural Resource Inventory Report, and Plains follows any site avoidance measures set forth in those reports.

12. The Commission has established criteria pursuant to Section 49-22-05.1 of the North Dakota Century Code to guide the Commission in evaluating the suitability of granting a Certificate of Corridor Compatibility and Route Permit. The criteria, as set forth in Section 69-06-08-02 of the North Dakota Administrative Code, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

13. A transmission facility route must not be sited within an Exclusion Area. No Exclusion Areas will be impacted by the proposed route.

14. A transmission facility route must not be sited within an Avoidance Area unless the applicant shows that under the circumstances there are no reasonable alternatives. In determining whether an Avoidance Area shall be designated for a facility, the Commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative routes. No Avoidance Areas will be impacted by the Project.

15. In accordance with the Commission's Selection Criteria, a transmission facility route shall be approved if it is demonstrated that any significant adverse impacts that will result from the location, construction, and maintenance of the transmission facility will be at an acceptable minimum or managed and maintained at an acceptable minimum. Basin has analyzed the impacts of the Project in relation to all of the relevant Selection Criteria. The Project will have no significant adverse impacts on the Commission's Selection Criteria.

16. A wetlands and waterbodies inventory was completed along the proposed route. Wetlands and waterbodies are present within the study area and will be crossed by the route. Basin will take steps to protect wetlands and waterbodies, and no permanent impacts to wetlands or waterbodies are anticipated. Some woodlands are present within the study area, and have been avoided by the route to the extent practicable. An inventory of trees and shrubs that may be affected by the Project will be completed prior to construction, and any trees or shrubs removed during construction of the Project will be replaced in accordance with the Commission's Tree and Shrub Mitigation Specifications.

17. The Project may result in modification of habitat and temporary displacement of wildlife, due to clearing and construction. The Project will have no significant impact on fish and wildlife resources and no impacts are anticipated to endangered, threatened, or sensitive plant or animal species.

18. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the transmission facility. Basin has analyzed the relevant Policy Criteria and has committed to designing, constructing, and operating the pipeline in accordance with all applicable federal, state, and local laws and regulations; energy

conservation through the facility's location, process, and design; training and utilizing available labor in the state; constructing the Project to take advantage of economies of scale; achieving transmission capacity in the most minimally intrusive and most efficient way possible; and coordinating with state and local officials. Basin submitted evidence to demonstrate its commitment to maximize the benefits of the proposed transmission facility to the extent possible so as to meet the Policy Criteria.

19. It is appropriate to authorize a corridor only for the area for which Basin performed the more thorough field surveys.

#### Measures to Minimize Impact

20. Basin has agreed to a number of steps to mitigate the impact of the Project, as indicated by the December 26, 2012 Certification Relating to Order Provisions – Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications, which is attached to this Order.

21. The Project's permanent right-of-way ("ROW") will be 70 feet wide, while its temporary ROW will generally be 125 feet wide. Additional temporary workspace may be required at certain locations (*e.g.*, road, railroad, and waterbody crossings). The construction ROW will be reduced to 50 feet wide in wooded areas. Basin will generally use existing public roads to access the ROW, but may need to construct short gravel roads to access valve sites.

22. The design, construction, and operation of the pipeline will be in accordance with the United States Department of Transportation regulations governing the transportation of crude oil.

23. Basin will participate in the North Dakota One-Call Excavation Notice System.

24. Basin's existing Emergency Response Plan will include the Project.

From the foregoing Findings of Fact, the Hearing Officer now makes the following:

#### Conclusions of Law

1. The Commission has jurisdiction over the Application, Basin Transload, LLC, and over the subject matter of the Application under Chapter 49-22 of the North Dakota Century Code.

2. Basin is a utility as defined in Section 49-22-03(13) of the North Dakota Century Code.

3. The proposed pipeline is a transmission facility as defined in Section 49-22-03(12) of the North Dakota Century Code.

4. The location, construction, and operation of the Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.

5. The location, construction, and operation of the Project are compatible with environmental preservation and the efficient use of resources.

6. The Project will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

7. The Project is of such design and location that it will produce minimal adverse effects, in accordance with Section 49-22-07.2 of the North Dakota Century Code.

8. It is appropriate for the Commission to waive those certain procedures and time schedules as requested in the Application and provided under Section 49-22-07.2 of the North Dakota Century Code.

From the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer now issues the following:

### **Recommended Order**

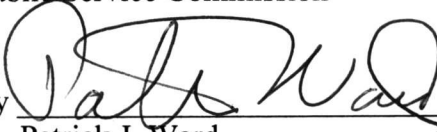
1. The Basin Transload, LLC's application for a waiver of procedures and time schedules be granted.

2. That a Certificate of Corridor Compatibility be issued to Basin Transload, LLC, designating a corridor for the construction, operation, and maintenance of a 10-inch crude oil pipeline and associated facilities in Burke County, North Dakota. For purposes of the Certificate, the Corridor will consist of the field survey corridor identified in the maps provided in Appendix C of Exhibit 1.

3. That a Route Permit be issued to Basin Transload, LLC, granting authority to construct and operate a 10-inch crude oil pipeline and associated facilities in Burke County, North Dakota.

4. That the December 26, 2012 Certification Relating to Order Provisions – Transmission Facility Siting be incorporated by reference and attached to the Order issued by the Commission.

State of North Dakota  
Public Service Commission

By 

Patrick J. Ward  
Administrative Law Judge, Hearing Officer  
Zuger Kirmis & Smith  
Post Office Box 1695  
Bismarck, North Dakota 58502-1695  
Telephone (701) 223-2711

**PUBLIC SERVICE COMMISSION**  
**STATE OF NORTH DAKOTA**

**Certificate of Corridor Compatibility Number 141**

*This is to certify that the Commission has designated a transmission facility corridor for Basin Transload, LLC, for the construction of approximately 7 miles of 10 inch pipeline in Burke County, North Dakota, for the transmission of crude oil.*

*This certificate is issued in accordance with the Order of this Commission dated January 16, 2013 in Case No. PU-12-775 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, January 16, 2013.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
**Executive Secretary**

  
**Commissioner**

# STATE OF NORTH DAKOTA

## Route Permit Number 154

*This is to certify that the Commission has designated a transmission facility route for Basin Transload, LLC, for the construction of approximately 7 miles of 10 inch pipeline in Burke County, North Dakota, for the transmission of crude oil.*

*This permit is issued in accordance with the Order of this Commission dated January 16, 2013 in Case No. PU-12-775 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, January 16, 2013.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
**Executive Secretary**

  
**Commissioner**

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Basin Transload, LLC**  
**10-Inch Crude Oil Pipeline – Burke County**  
**Siting Application**

**Case No. PU-12-775**

**CERTIFICATION RELATING TO ORDER PROVISIONS - TRANSMISSION FACILITY SITING**

I am James R. Bennett, a representative of Basin Transload, LLC ("Company") with authority to bind Basin Transload, LLC to requirements to be set forth by the Commission in its Order, and I certify the following:

1. Company understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission will be subject to the conditions and criteria set forth in Chapter 49-22 of the North Dakota Century Code and Chapter 69-06-08 of the North Dakota Administrative Code, and that Company shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. Company agrees to hold a preconstruction conference prior to commencement of any construction, which must include a Company representative, its construction supervisor, and a representative of Commission Staff, to ensure that Company fully understands the conditions set forth in the Commission's order.
3. Company agrees to comply with the rules and regulations of all other agencies having jurisdiction over any phase of the transmission facility including all city, township, and county zoning regulations.
4. Company understands and agrees that it shall obtain all other necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission prior to construction activity associated with the transmission facility that requires said license or permit.
5. Company agrees to inform the Commission and the Commission's third-party construction inspector of its intent to start construction on the transmission facility prior to the commencement of construction. Once construction has started, Company shall keep the Commission and the Commission's third-party construction inspector updated on construction activities on a weekly basis.
6. Company understands and agrees that the pipeline will be buried to a minimum depth from the ground surface to the top of the pipe of 48 inches in range land, 48



inches for cultivated land, 48 inches at the bottom of the ditch for road crossings, and 72 inches across undeveloped section lines.

7. Company understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission is subject to suspension or revocation and may, in an appropriate and proper case, be suspended or revoked for failure to comply with the Commission's order, the conditions and criteria of the certificate or subsequent modification, or failure to comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies.
8. Company agrees to maintain records that will demonstrate that it has complied with the requirements of the Commission's order issuing a Certificate of Corridor Compatibility or Route Permit, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.
9. Company agrees to construct and operate the transmission facility in the manner described in Company's application, in any late filed exhibits, and supplemental materials (Application). To the extent there are any conflicts or inconsistencies between Company's Application and the provisions in this Certification Relating to Order Provisions, the Certification provisions control.
10. Company agrees to report promptly to the Commission the presence in the permit area of any critical habitat or threatened species, endangered species, bald eagles, or golden eagles of which Company becomes aware and which were not previously reported to the Commission.
11. Company understands and agrees that all cultural resource mitigation plans must be submitted to the North Dakota State Historic Preservation Office and approved prior to the start of any fieldwork and construction activity in the affected area.
12. Company understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made and a report of such examination is filed with the Commission and the State Historical Society and clearance to proceed is given by the Commission.
13. Company understands and agrees that all buried facility crossings of graded roads must be bored unless the responsible governing agency specifically permits Company to open cut the road.
14. Company understands and agrees that all pre-existing township and county roads and lanes used during construction must be repaired or restored to a condition that is equal to or better than the condition prior to the construction of the transmission

facility and that will accommodate their previous use, and that areas used as temporary roads or working areas during construction must be restored to their original condition.

15. Company understands and agrees that construction must be suspended when weather conditions are such that construction activities will cause irreparable damage to roads or land, unless adequate protection measures approved by the Commission are taken.
16. (For a pipeline or buried electric transmission line) Company understands and agrees that all topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas where cuts will be made, must be stripped and segregated from the subsoil. Except along segments of the line using the double ditching method, any area on which excavated subsoil will be placed must also be stripped of topsoil. After backfilling is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must be replaced over areas from which it was stripped only after the subsoil is replaced.
17. Company understands and agrees that reclamation, fertilization, and reseeding is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
18. Company understands and agrees that its obligation for reclamation and maintenance of the right-of-way will continue throughout the life of the transmission facility.
19. Company understands and agrees that its obligation for reclamation and maintenance of the transmission facility, associated facilities, and roadways will continue throughout the life of the transmission facility.
20. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
21. Company understands and agrees that it shall repair or replace all fences and gates removed or damaged during all phases of construction and operation of the transmission facility.
22. Company understands and agrees that it shall repair or replace all drainage tile broken or damaged as a result of construction and operation of the transmission facility.

23. Company understands and agrees that staging areas or equipment shall not be located on land owned by a person other than Company unless otherwise negotiated with landowners.
24. Company understands and agrees that it shall remove all waste that is a product of construction and operation, restoration, and maintenance of the site, and properly dispose of it on a regular basis.
25. Company understands and agrees that it shall, as soon as practicable upon the completion of the construction of the transmission facility, restore the area affected by the activities to as near as is practicable to the condition as it existed prior to the beginning of construction.
26. Company understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the transmission facility.
27. Company understands and agrees that it shall advise the Commission of any extraordinary events which take place at the site of the transmission facility, including injuries to any person, or the death of any threatened or endangered species on the site within five business days of such event.
28. Company understands and agrees that it shall implement a procedure for how complaints concerning the transmission facility will be handled by Company
29. Upon request, Company agrees to provide the Commission with engineering design drawings of the transmission facility prior to construction.
30. Company understands and agrees that it shall inform the Commission in writing of any plans to modify the transmission facility or of any plans to modify the site plan for the transmission facility. Company understands and agrees to obtain written approval from the Commission prior to any modifications to the site plan or the transmission facility. Approval may be granted after notice and opportunity for hearing.
31. Company agrees to provide the Commission with both an electronic and a paper copy of the corridor approved by the Commission, and will provide this information within 3 months of the Commission order approving the corridor. Company also agrees to provide an electronic version of the approved corridor that can be imported into ESRI GIS mapping software within 3 months of the Commission order approving the corridor. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in the appropriate vertical datum for the

coordinate system used. All submissions must specify the datum in which the data was developed.

32. Company agrees to provide the Commission with both an electronic and a paper copy of the design specifications for the construction of the transmission facility showing the location of the transmission facility as built, and will provide this information within 3 months of the completion of the construction. Company also agrees to provide an electronic version of the as-built facility design specifications that can be imported into ESRI GIS mapping software within 3 months of the completion of the construction. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in the appropriate vertical datum for the coordinate system used. All submissions must specify the datum in which the data was developed.
33. Company understands and agrees that the authorizations granted by any Certificate of Corridor Compatibility or Route Permit issued by the Commission for the transmission facility are subject to modification by order of the Commission if deemed necessary to protect further the public or the environment.
34. Company understands and agrees that in the event Company desires to construct, within any corridor granted by a Certificate of Corridor Compatibility in this proceeding, a transmission facility or energy conversion facility that was not included in Company's application in this proceeding, Company shall apply to the Commission for a Route Permit or Site Certificate for the facility.
35. Company shall notify the Commission, as soon as reasonably possible, if any damage, as defined by North Dakota Century Code Chapter 49-23, occurs to underground facilities during construction conducted under the certificate or permit issued in this proceeding. In the event of any damage to underground facilities, Company shall suspend construction in the vicinity of the damage until compliance with One-Call Excavation Notice System requirements under North Dakota Century Code Chapter 49-23 has been determined and clearance to proceed has been given by the Commission.
36. Company understands and agrees that the corridor certificate and route permit are subject to suspension or revocation and may, after hearing, be suspended or revoked for failure to comply with the Commission's order, requirements of the One-Call Excavation Notice System under North Dakota Century Code Chapter 49-23, the conditions and criteria of the certificate or permit or subsequent modification, or failure to comply with applicable statutes, or rules, regulations, standards, and permits of other state or federal agencies.

Dated this 26<sup>th</sup> day of December, 2012

**Basin Transload, LLC**

By   
James K. Bennett

Its Treasurer

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Basin Transload, LLC**  
**10-Inch Crude Oil Pipeline – Burke County**  
**Siting Application**

**Case No. PU-12-775**

**Tree and Shrub Mitigation Specifications**

**Inventory**

1. Trees and shrubs anticipated to be cleared, including those that are considered invasive species or noxious weeds (e.g., *Caragana arborescens*, *Elaeagnus angustifolia*, *Rhamnus cathartica*, *Tamarix chinensis*, *T. parviflora*, *T. ramosissima*, *Ulmus pumila*), must be inventoried before cutting. The inventory must record the location, number, and species of trees and shrubs.
2. In windbreaks, shelterbelts and other planted areas, trees or shrubs anticipated to be cleared, regardless of size, must be inventoried for replacement.
3. In native growth areas, trees anticipated to be cleared that are 1 inch diameter at breast height (dbh) or greater must be inventoried for replacement.
4. In native growth areas, shrubs anticipated to be cleared in the permanent right-of-way must be inventoried for replacement.
5. In native growth areas outside the permanent right-of-way, shrubs must be cut 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 must be preserved and replaced after construction. Shrubs must be allowed to regenerate naturally where native topsoil is preserved and replaced. Where native topsoil is not preserved and replaced, shrubs anticipated to be cleared must be inventoried for replacement.
6. In native growth areas, trees and shrubs may be inventoried by actual count or by a sampling method that will properly represent the woody vegetation

population. A sampling plan developed by the company, filed with the North Dakota Public Service Commission (Commission) and approved prior to the start of construction must define the sampling method to be used for trees, for tall shrubs and for low shrubs. The data from the sample plots must be extrapolated to the total acreage of the wooded area to be cleared to determine the species and quantity of trees and shrubs to be replaced.

#### **Clearing for Construction**

7. Trees and shrubs must be selectively cleared, leaving mature trees and shrubs intact where practical.
8. The maximum width of clear cuts through windbreaks, shelterbelts and all other wooded areas is 50 feet, unless otherwise approved by the Commission.
9. If the area of trees or shrubs actually cleared differs from the area inventoried, the difference in number of trees and shrubs to be replaced must be noted on the inventory.

#### **Replacement**

10. Prior to tree and shrub replacement, documentation identifying the number and variety of trees and shrubs removed, as well as the mitigation plan for the proposed number, variety, type, location and date of replacement plantings, must be filed with the Commission for approval.
11. Two 2-year-old saplings must be planted for every one tree removed. Two shrubs (stem cuttings) must be planted for every one shrub removed.
12. Except in the case of invasive or noxious species, trees and shrubs must be replaced by the same species or similar species, suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service. Invasive or noxious species must be replaced by similar non-invasive or non-

**noxious species suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.**

- 13. Tree and shrub replacement must not be conducted within a 20 to 30 foot wide path over the pipeline to facilitate visual inspections of the right-of-way in accordance with U.S. Department of Transportation safety regulations.**
- 14. Landowners must be given the option of having replacement trees and shrubs planted on the landowner's property, either on or off the right-of-way. The landowner must also be given the opportunity to waive those options in writing in order to have replacement trees and shrubs planted off the landowner's property.**
- 15. At the conclusion of the project, documentation identifying the actual number, variety, type, location and date of the replacement plantings must be filed with the Commission.**
- 16. Tree and shrub replacements must be inspected annually, in September, for three years. The first annual inspection must be at least one year from the anniversary date of the original plantings. A report of each annual inspection must be submitted to the Commission by October 1 of each year, documenting the condition of plantings and any woodlands work completed as of September of each year. If after the third annual report the survival rate is less than 75%, the Commission may order additional planting(s).**