

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Bakken Oil Express, LLC
16-Inch Crude Oil Pipeline/Dunn & Stark Counties
Siting Application

Case No. PU-13-825
OAH File No. 20130468

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

December 30, 2013

Appearances

Commissioners: Brian P. Kalk, Randy Christmann, and Julie Fedorchak

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

Sara Cardwell, Public Utility Analyst, Public Service Commission, 600 East Boulevard, Bismarck, North Dakota 58505.

Brian D. Schmidt, Legal Counsel, 122 East Broadway Avenue, Bismarck, North Dakota 58502, on behalf of Public Service Commission.

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

Preliminary Statement

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

On October 4, 2013, Bakken Oil Express, LLC (BOE), 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 for a 38-mile 16-inch diameter crude oil pipeline (Project) in Dunn and Stark Counties, North Dakota (the Application). Pursuant to NDCC § 49-22-07.2 and North Dakota Administrative Code (ND Admin. Code) §69-06-06, BOE also filed a request for waiver of procedures and time schedules.

On October 16, 2013, the Commission submitted a request for an Administrative Law Judge to the Office of Administrative Hearings. On October 21, 2013, Allen C.

Hoberg, Director of the Office of Administrative Hearings, designated Patrick J. Ward as Administrative Law Judge in the above-captioned matter.

On October 17, 2013, BOE filed with the Commission a Wetland Delineation for the Project. On October 25, 2013, BOE filed a Class III Cultural Resource Inventory for the Project.

On October 23, 2013, the Commission issued a Notice of Filings and Notice of Hearing stating that the Application was deemed complete, pending receipt of the Class III Cultural Resource Inventory and scheduling a public hearing for December 9, 2013 at 10:00 a.m. CDT at Killdeer City Hall, 165 Railroad Street SE, Killdeer, North Dakota 58640.

On November 8, 2013, BOE filed with the Commission a letter from the North Dakota State Historic Preservation Office, concurring that no significant cultural sites would be affected by the Project.

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 Application:

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 9, 2013, the public hearing was held as scheduled.

On December 19, 2013, BOE submitted a request to amend its applications for a corridor certificate and route permit to modify a 2.7 mile section of the pipeline corridor and route within the E/2E/2E/2NE/4 of Section 35, T143N, R96W as requested by the

landowner. On December 23, the Company filed a certification in support of this amendment to verify that an agreement had been made with the landowner to this effect. The relocation does not affect any exclusion or avoidance areas. On December 30, 2013, the Commission determined the amendment to the applications did not materially affect the applications and a rehearing in the proceeding was not required (ND Admin. Code §69-06-04-01.5).

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

Findings of Fact

1. BOE is a North Dakota limited liability company.
2. BOE has been authorized to do business in the State of North Dakota since September 10, 2009, 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 October 17, 2013 (see Case No. PU-13-836).

Size, Type, and Preferred Location of Facility

3. The Project consists of approximately 38 miles of crude oil pipeline that will originate at a tanker truck unloading and pumping facility currently being constructed near Killdeer, in Dunn County, North Dakota, and will terminate at an existing Rail Hub facility, owned and operated by BOE, located to the southwest of Dickinson, in Stark County, North Dakota.
4. The Project will utilize 16-inch diameter steel pipe and the maximum operating pressure will be 1,480 pounds of pressure per square inch gauge. The maximum daily output will be 165,000 barrels per day.
5. Aboveground facilities will include mainline valves, block valves, pig launching and receiving stations, rectifiers, and pipeline markers.
6. Construction is planned to start upon approval of the Certificate of Corridor Compatibility and Route Permit. Construction is planned to be completed in twelve to fourteen weeks from the start of construction. The total estimated cost of the project is \$14 million.

Need for the Facility

7. BOE concluded there is a need for the facility because the recent and significant increase in oil extraction has outpaced efficient transportation methods. Current crude oil transportation from oil wells to distribution points is primarily accomplished by tanker truck, or limited pipeline transportation. Increased production of crude oil and limited pipeline access combine to increase tanker truck traffic on North Dakota highways. In

turn this increases road damage, the need to update or repair highways, increases emissions levels and raises concern for driver safety. The construction of additional pipelines would have a positive effect on efficient transportation of crude oil and would relieve some of the impacts resulting from trucking the crude oil. Construction of the Project would provide a reliable transportation method for up to 165,000 bpd; equivalent to reducing the traffic activity from Killdeer to Dickinson via Highway 22 by up to 825 tanker trucks per day.

Study of Preferred Locations

8. In its Application, BOE defined a five-mile-wide study area centered on the preferred pipeline route. BOE identified a minimum 200 feet wide survey corridor for the purpose of conducting cultural resource field surveys, biological and wetland/waterbody field surveys, and other environmental field assessments. The survey corridor was widened in certain areas where needed to ensure assessments of areas that went outside the 200 foot survey corridor, such as wetlands and to meet landowner requests.

9. BOE considered two alternatives. The first was a no build option and the second was to build the pipeline. Then BOE reviewed the impact each of these alternatives would have. BOE concluded that there were more positive effects to building the pipeline than not building it.

10. A solicitation was sent to all agencies as required in ND Admin. Code §69-06-01-05 as well as additional federal agencies. The following agencies provided comments to BOE in regards to the pipeline: Western Area Power Administration, Natural Resource Conservation Service, North Dakota Department of Commerce, North Dakota Department of Transportation, North Dakota Forest Service, 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. Fish and Wildlife Service North Dakota Field Office, Army Corps of Engineers, Bureau of Indian Affairs, Bureau of Reclamation, the United States Department of Transportation- Federal Aviation Administration, and the City of Killdeer.

11. BOE conducted a Class I literature search on the study area. A Class III cultural resource inventory was completed on the survey area. BOE also reviewed available information on soils, land use, wetlands and waterbody crossings, noxious weeds, trees, saplings, and shrubs, and protected species and habitats for the study area. A field survey of the wetland and water bodies was also conducted.

12. On November 6, 2013 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 BOE follows any site avoidance measures set forth in those reports.

Siting Criteria

13. ND Admin. Code §69-06-08-02 sets forth criteria to guide and govern the preparation of the inventory of exclusion and avoidance areas, and the corridor and route suitability evaluation process for transmission facilities. The criteria set forth in ND Admin. Code §69-06-08-02 are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

14. Exclusion areas must be excluded in the consideration of a route for a transmission facility. Exclusion areas may be located within a corridor, but at no point shall such an area encompass more than fifty percent of the corridor width unless there is no reasonable alternative. A buffer zone of a reasonable width to protect the integrity of an exclusion area must be included in the siting of the transmission facility. No Exclusion Areas will be impacted by the Project.

15. 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. There are three rural residences within 500 feet of the Project Corridor. Waivers have been received from each of these residences.

16. Wetlands are also considered Avoidance Areas. A wetlands and waterbodies inventory was completed along the proposed route. Eighteen wetlands or waterbodies are present within the study area. Wetlands will be avoided to the extent possible and all wetlands that are crossed by the Project route will be bored to avoid impacts. No permanent impacts to wetlands or waterbodies are anticipated. In summary, no Avoidance Areas will be impacted by the Project.

17. In accordance with the Commission's Selection Criteria, a transmission facility route shall be approved only if it is demonstrated that no significant adverse impacts will result from the location, construction, and maintenance of the transmission facility. BOE 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.

18. Most of the land in the study area is used for grazing or crop production. No woodlands are present within the study area. If any trees or shrubs are found along the route during construction of the Project that need to be replaced, they will be replaced in accordance with the Commission's Tree and Shrub Mitigation Specifications.

19. The Project may result in temporary 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.

20. In accordance with the Commission's Policy Criteria, preference may be given to an applicant that maximized benefits resulting from the adoption of certain policies and practices.

21. BOE has demonstrated its commitment to maximizing the benefits of the proposed Project so as to meet the Policy Criteria set forth in ND Admin. Code §69-06-08-04(4) by designing and locating the Project in such a manner as to maximize operational efficiency and economic benefits while minimizing impacts on agriculture, extractable resources, health and safety, plant and animal life, communications, and the visual effect on the surrounding area.

Measures to Minimize Impact

22. BOE has made other representations and covenants as contained in the Certification Relating to Order Provisions – Transmission Facility Siting, executed on December 4, 2013 and filed with the Commission on December 9, 2013 with the accompanying Tree and Shrub Mitigation Specifications, which are incorporated into this Order.

23. BOE will implement various measures to protect the right-of-way (ROW) or mitigate the adverse impacts of ROW preparation and pipeline construction, operation, and maintenance on the human and natural environment. These measures include but are not limited to, utilizing low impact construction techniques in sensitive areas (horizontal directional drilling), installing erosion and sedimentation control measures, and restoring the ROW as closely as possible to pre-construction conditions. BOE will work closely with the landowners and applicable agencies to ensure proper restoration of the ROW is accomplished. The Project's permanent right-of-way ("ROW") will be 30 feet wide, while its temporary construction ROW will be 80 feet wide. BOE will construct temporary access roads for Project construction, which will be restored to pre-construction conditions following Project construction. No permanent roads will be constructed as part of the Project.

24. The design, construction, and operation of the transmission facility will be in accordance with the United States Department of Transportation (DOT) regulations governing the transportation of natural gas, as prescribed under 49 CFR Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, and all other applicable laws.

25. BOE will participate in the North Dakota One-Call Excavation Notice System.

26. BOE's existing Emergency Response Plan will be applicable to the Project.

27. BOE committed to informing the Commission of any spills consistent with its requirement to inform other state and federal agencies.

From the foregoing Findings of Fact, the Commission now makes its:

Conclusions of Law

1. The Commission has jurisdiction over the Application, Bakken Oil Express, LLC, and over the subject matter of the Application under NDCC §49-22.
2. BOE is a utility as defined in NDCC §49-22-03(13) for the purposes of the Project.
3. The proposed pipeline, and its associated facilities, is a transmission facility as defined by NDCC §49-22-03(12).
4. The location, construction, operation and maintenance 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, as defined by NDCC §49-22-07.2.
8. It is appropriate for the Commission to waive those certain procedures and time schedules as requested in the Application and provided under NDCC §49-22-07.2.

From the foregoing Findings of Fact and Conclusions of Law, the Commission issues the following:

Order

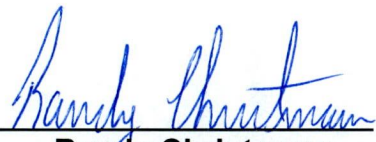
1. The Bakken Oil Express, LLC's application for a waiver of procedures and time schedules is granted.
2. Certificate of Corridor Compatibility Number 150 is issued to Bakken Oil Express, LLC, designating a corridor for the construction, operation, and maintenance of the proposed 38-mile, 16-inch crude oil pipeline and associated facilities in Dunn and Stark Counties, North Dakota. For purposes of the Certificate, the Corridor will consist of a 200-foot-wide area centered on the pipeline route for the length of the route.
3. Route Permit 161 is issued to Bakken Oil Express, LLC, granting authority to construct and operate a 38-mile, 16-inch crude oil pipeline and associated facilities in Dunn and Stark Counties, North Dakota as identified on the map shown as Exhibit 2 at

the hearing and the map provided on December 19, 2013 as part of the Company's request to amend the Application.

4. That the December 4, 2013 Certification Relating to Order Provisions – Transmission Facility Siting with the accompanying Tree and Shrub Mitigation Specifications is incorporated by reference and attached to this Order.

5. BOE will inform the Commission of any spills consistent with its requirement to inform other state and federal agencies.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner



Brian P. Kalk
Chairman



Julie Fedorchak
Commissioner

PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA

Certificate of Corridor Compatibility Number 150

This is to certify that the Commission has designated a transmission facility corridor for Bakken Oil Express, LLC's 38 mile, sixteen-inch diameter crude oil pipeline from a tanker truck unloading and pumping facility near Killdeer, ND in Dunn County and terminating at a rail loading and storage facility owned and operated by Bakken Oil Express, LLC located to the southwest of Dickinson in Stark County, North Dakota.

This certificate is issued in accordance with the Order of this Commission dated December 30, 2013 in Case No. PU-13-825 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, December 30, 2013.

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Secretary


Commissioner

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

Route Permit Number 161

This is to certify that the Commission has designated a transmission facility route for Bakken Oil Express, LLC's 38 mile, sixteen-inch diameter crude oil pipeline from a tanker truck unloading and pumping facility near Killdeer, ND in Dunn County and terminating at a rail loading and storage facility owned and operated by Bakken Oil Express, LLC located to the southwest of Dickinson in Stark County, North Dakota.

This certificate is issued in accordance with the Order of this Commission dated December 30, 2013 in Case No. PU-13-825 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, December 30, 2013.

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Secretary


Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Bakken Oil Express, LLC
16-Inch Crude Oil Pipeline/Dunn & Stark Counties
Siting Application

Case No. PU-13-825

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

I am JOHN C. WADSWORTH, a representative of Bakken Oil Express, LLC ("Company") with authority to bind it 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. 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 the facility 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 corridor approved by the Commission and the facility design specifications for the construction of the transmission facility showing the location of the transmission facility as built 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.

32. 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.
33. 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.
34. 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.
35. 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.
36. (For a gas or liquid pipeline) Company agrees to utilize the following procedures if Company seeks a route adjustment before or during construction of the pipeline, pursuant under N.D.C.C. §49-22-16.3:
 - a. Company will specifically identify which subsection of NDCC 49-22-16.3 it is requesting the adjustment under.
 - b. **ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED:** Before conducting any construction activities for any adjustment to the designated route within the designated corridor under NDCC 49-22-16.3(1), the Company will file:

- i. Certification and supporting documentation affirming that construction activities will be within the designated corridor, will not affect any known exclusion or avoidance areas within the designated corridor;
- ii. Supporting documentation, including a map, meeting the requirements of N.D. Admin. Code § 69-06-04-01 identifying the designated corridor, route and the route adjustment;
- iii. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

c. **ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, AVOIDANCE AREA AFFECTED:** adjusting the route of a gas or liquid transmission line under NDCC 49-22-16.3(2), within the designated corridor that may affect an avoidance area, and before conducting any construction activities for any adjustment to the designated route within the designated corridor, the Company will file:

- i. A specific description of the avoidance area expected to be impacted, including a map identifying:
 1. the designated corridor, route and the route adjustment;
 2. all exclusion and avoidance areas within the adjustment area.
- ii. Certification and supporting documentation meeting the requirements of N.D. Admin. Code § 69-06-04-01 affirming:
 1. That construction activities will be within the designated corridor;
 2. That construction activities will not affect any known exclusion area.
- iii. All field studies performed in the adjustment area;
- iv. Specific information about any mitigation measures Company will take within the adjustment area;
- v. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment;
- vi. Certification that unless the Commission previously authorized the impact to the same avoidance area, that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist;
- vii. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

Company acknowledges and agrees that:

1. Written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity.

2. The initiation of the ten working days from receipt of the Company's filing, certification, and supporting documentation will not start until all of the information required by law and has been received by the Commission and deemed complete. However, Commission reserves the right to extend the ten-day provision if Commission action is necessary.

d. ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED: Adjusting the route of a gas or liquid transmission line under NDCC 49-22-16.3(3), outside the designated corridor and not affecting any exclusion and avoidance area, before conducting any construction activities for any adjustment to the designated route outside the designated corridor, the Company will file:

- i. Certification and supporting documentation affirming that construction activities will not affect any known exclusion or avoidance areas,
- ii. Certification and supporting documents stating the length of the proposed route outside of the corridor and a map meeting the requirements of N.D. Admin. Code § 69-06-04-01 identifying the designated corridor, corridor adjustment, designated route and the route adjustment;
- iii. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment; and
- iv. Detailed field studies indicating exclusion and avoidance areas for the proposed adjustment area; and
- v. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route

e. ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, AVOIDANCE AREA AFFECTED: Adjusting the route of a gas or liquid transmission line under NDCC 49-22-16.3(4), outside the designated corridor that may affect an avoidance area, and before conducting any construction activities for any adjustment to the designated route outside the designated corridor, the Company will file:

- i. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01 identifying:
 1. the designated corridor, corridor adjustment, route and the route adjustment;
 2. all exclusion and avoidance areas within the adjustment area


- ii. Certification that construction activities will not affect any known exclusion area;
- iii. Certification that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist within the designated corridor and route;
- iv. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment;
- v. Provide specific information about any mitigation measures Company will take within the adjustment area;
- vi. Detailed field studies indicating exclusion and avoidance areas for the proposed adjustment area; and
- vii. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

Company acknowledges and agrees that:

- 1. Written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity.
 - 2. The initiation of the ten working days from receipt of the Company's filing, certification, and supporting documentation will not start until all of the information required by law has been received by the Commission and deemed complete. However, Commission reserves the right to extend the ten-day provision if Commission action is necessary.
- f. When applicable, Company may submit the field studies from the original application for the corridor and route provided they cover the adjustment area.
- g. Company certifies that it will comply with the Commission's Order and all applicable laws, rules, and regulations designating the corridor and route with respect to any adjustment.

Dated this 4 day of December, 2013.

BAKKEN OIL EXPRESS, LLC

By 
JOHN C. WABSWORTH

Its DIRECTOR OF ENGINEERING & CONSTRUCTION

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Bakken Oil Express, LLC
16-Inch Crude Oil Pipeline/Dunn & Stark Counties
Siting Application

Case No. PU-13-825

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).