

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



North Dakota Pipeline Company LLC
24-Inch Crude Oil Pipeline – Sandpiper Project
Siting Application

Case No. PU-13-848

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

June __, 2014

Appearances

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

Brian Bjella, Attorney at Law, Crowley Fleck PLLP, 100 West Broadway, Suite 250, Bismarck, North Dakota 58501, on behalf of North Dakota Pipeline Company LLC.

Brian Schmidt, Special Assistant Attorney General, Legal Counsel for Public Service Commission, 122 East Broadway Avenue, Bismarck, North Dakota 58502, on behalf of the Public Service Commission.

Julie Prescott, Public Utility Analyst, Public Service Commission, State Capitol, Bismarck, North Dakota 58505, on behalf of the Public Service Commission.

Patrick J. Ward, Administrative Law Judge, PO Box 1065, Bismarck, North Dakota 58502.

Preliminary Statement

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

On October 30, 2013, Enbridge Pipelines (North Dakota) LLC filed with the Public Service Commission (“Commission”) applications for a certificate of corridor compatibility and a route permit (collectively, the “Application”) to authorize construction of a crude oil pipeline and associated facilities (“Project”) located in Williams, Mountrail, Ward, McHenry, Pierce, Towner, Ramsey, Nelson and Grand Forks Counties, North Dakota.

Enbridge Pipelines (North Dakota) LLC included with its Application a request for the Commission to waive and reduce certain procedures and time schedules required under North Dakota Century Code, Chapter 49-22, which requires separate filings and applications for a certificate of corridor compatibility and a route permit, separate notices of such applications,

separate hearings on such applications, mandates certain time schedules, and requires a public hearing in each of the affected counties unless the Commission holds one or more consolidated hearings.

On December 30, 2013, the Commission deemed Enbridge Pipelines (North Dakota) LLC's Application complete and issued a Notice of Filings and Notice of Hearings scheduling the following hearings:

February 19, 2014, at 8:30 a.m. CST at Baker Courtroom, University of North Dakota School of Law, 215 Centennial Drive, Grand Forks, North Dakota 58202.

February 20, 2014, at 8:30 a.m. CST at the Robert Fawcett Auditorium, Lake Region State College, 1801 College Drive North, Devils Lake, North Dakota 58301.

February 27, 2014, at 8:30 a.m. CST at the Minot City Council Chambers, 515 Second Avenue Southwest, Minot, North Dakota 58702.

The Notice of Hearings identified the following issues to be considered with respect to the request for a 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 Hearings 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 February 6, 2014, Enbridge Pipelines (North Dakota) LLC filed with the Commission certain corporate documentation evidencing that Enbridge Pipelines (North Dakota) LLC changed its name to North Dakota Pipeline Company LLC, including a Certificate of Good Standing of North Dakota Pipeline Company LLC ("NDPL") issued by the North Dakota Secretary of State on February 5, 2014.

On February 7, 2014, NDPL filed with the Commission its Supplemental Filing to its Application.

On February 11, 2014, NDPL filed with the Commission its executed Certification Relating to Order Provisions-Transmission Facility Siting, dated February 10, 2014, attached to which was the Tree and Shrub Mitigation Specifications.

On February 14, 2014, NDPL filed with the Commission the prefiled testimony of Art Haskins, Barry Simonson, Greg Schelin, Mark Curwin, and Sara Ploetz.

All public hearings were held as scheduled.

On April 8, 2014, NDPL filed the following Late-Filed Exhibits: Exhibit No. 1 – NDPL LLC Easement Form; Exhibit No. 2 – Oakville Prairie Report; Exhibit No. 3 – Enbridge letter to National Transportation Safety Board regarding progress on safety recommendations since the Kalamazoo, Michigan release; Exhibit No. 4 – Gunderson-Salmonson Reroute; Exhibit No. 5 – Devil’s Lake Water Level Study; and Exhibit No. 6 – Shapefiles of the Sandpiper Route including HDD entry/exit points. On April 22, 2014, in response to the Commission’s request for more information, NDPL supplemented Late-Filed Exhibit No. 6 by filing: (1) a diagram depicting the elevation of the Project for the entire route in North Dakota; and (2) plats depicting boring setbacks at the two Souris River (aka Mouse River) crossings. On May 23, 2014, in response to the Commission’s request for further information, NDPL supplemented Late-Filed Exhibit No. 5 by filing a Project Design Summary for the Devils Lake Area. On June 6, 2014, in response to the Commission’s request for additional information, NDPL supplemented Late-Filed Exhibit No. 5 with additional construction, design, routing and emergency response information for the Devils Lake Area.

Also on June 6, 2014, NDPL requested that the Commission issue a certificate of corridor compatibility and route permit for only the facilities to be located at the Beaver Lodge, Stanley, Berthold and Lakota Pump Station sites. The Commission agreed to grant the request and, therefore, is issuing this Order, which addresses only the facilities to be located at the station sites.

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. NDPL is a Delaware limited liability company, with offices located in Minot, North Dakota.
2. NDPL is authorized to do business in the State of North Dakota, as evidenced by the Certificate of Good Standing issued by the North Dakota Secretary of State dated February 5, 2014.

Size, Type and Preferred Location of the Pump Station Facilities

3. The Project consists of approximately 616 miles of new pipeline to be located in North Dakota, Minnesota and Wisconsin. The approximately 300-mile long North Dakota portion of the Project begins at NDPL's existing Beaver Lodge Station near Tioga, North Dakota, and extends easterly across North Dakota, exiting the state just south of the City of Grand Forks. The Project will address current and future demand for pipeline export capacity from the Williston Basin as a result of the great increase in production in the Bakken and Three Forks Formations.
4. The Project includes construction of a new pump station located in Nelson County near Lakota, and upgrades to NDPL's existing Beaver Lodge, Stanley and Berthold Pump Stations.
 - a. The new pump station near Lakota, North Dakota, will be located on approximately 46 acres. Facilities constructed will include an electrical service building, a utility and maintenance building and a retaining pond, as well as other facilities (*see* NDPL Public Hearing Exhibit No. 1).
 - b. At the Beaver Lodge Station, two new 150,000 barrel breakout and storage tanks will be constructed, as well as other facilities (*see* NDPL Public Hearing Exhibit No. 1). In addition, NDPL has purchased 40 acres of land adjacent to the station, and facilities to be constructed on this additional acreage include a firewater system pump building and electrical switchyard (*see* NDPL Public Hearing Exhibit No. 1).
 - c. At the Stanley Station, one new 80,000 barrel breakout and storage tank and one new 55,000 barrel breakout and storage tank will be constructed, along with other facilities (*see* NDPL Public Hearing Exhibit No. 1). In addition, NDPL has purchased 21 acres of land directly east of the existing station, and facilities to be constructed on this additional acreage include a fire water protection system (*see* NDPL Public Hearing Exhibit No. 1).
 - d. At the Berthold Station, one new 300,000 barrel breakout and storage tank will be constructed, along with other facilities (*see* NDPL Public Hearing Exhibit No. 1). All work will be performed within the existing Berthold Classic and Berthold West Station Sites.

Study of Pump Station Sites

5. With respect to the pump station sites, NDPL analyzed environmental data on soils, land use, wetlands, waterbody crossings, and protected plant and animal species. NDPL also conducted a Class I Literature search, a Class II/III Cultural Resource Inventory, biological and wetland/waterbody field surveys, and other environmental assessments.

6. NDPL conducted wetland delineations for the pump station sites. NDPL has submitted a request for a jurisdictional determination to the United States Army Corps of Engineers (“USACE”) to determine which of the delineated wetlands and water bodies fall within the USACE’s regulatory jurisdiction. NDPL anticipates that the USACE will authorize the Project under a Nationwide Permit 12.
7. The Commission has established criteria pursuant to North Dakota Century Code § 49-22-05.1 to guide the Commission in the corridor and route suitability evaluation and designation process. The criteria, as set forth in North Dakota Administrative Code § 69-06-08-02, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.
8. A transmission facility route must not be sited within an Exclusion Area. No Exclusion Areas are located within the pump station sites.
9. A transmission facility route must not be sited within an Avoidance Area, unless the applicant shows that under the circumstances there is no reasonable alternative. 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.
10. NDPL will avoid impacts to any cultural resource sites in accordance with North Dakota State Historic Preservation Office (“SHPO”) recommendations.
11. NDPL has identified two businesses located within 500 feet of the Station sites. The owners of the businesses have granted waivers to allow construction within 500 feet of Project facilities, and NDPL demonstrated at the hearings that there is no reasonable alternative to these locations, as other alternatives have equal or greater human, environmental and/or land use impacts. Both businesses are already located adjacent to the existing Stations and are within 500 feet of existing pipelines.
12. In accordance with the Commission’s Selection Criteria, a transmission facility shall be approved only if it is determined that any significant adverse effects that will result from the location, construction and operation of the facility as they relate to the Selection Criteria will be at an acceptable minimum, or will be managed and maintained at an acceptable minimum. NDPL has analyzed the impacts of the Project, including the facilities at the pump station sites, in relation to all of the relevant Selection Criteria. No significant adverse impact will result from the Project.
13. In accordance with the Commission’s Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the transmission facility. NDPL has analyzed the relevant Policy Criteria and has expressly committed to conducting its business in compliance with all applicable environmental 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. NDPL submitted evidence to demonstrate its commitment to maximizing the benefits of the proposed transmission facilities, including the facilities at the pump station sites, so as to meet the Policy criteria.

Measures to Minimize Impact

14. NDPL has agreed to a number of steps to mitigate the impact of the Project as indicated by the Certification Relating to Order Provisions-Transmission Facility Siting dated February 10, 2014, with accompanying Tree and Shrub Mitigation Specifications, which is attached to this Order.
15. NDPL has developed an Environmental Protection Plan, which outlines construction-related environmental policies, procedures and general mitigation measures for construction of the Project, including the facilities at the pump station sites. NDPL has also developed an Emergency Response Plan in consultation with the federal Department of Transportation Pipeline and Hazardous Materials Safety Administration (“PHMSA”).
16. The design, construction and operation of the transmission facility, including the facilities at the pump station sites, will be in accordance with the United States Department of Transportation regulations governing the transportation of crude oil, as prescribed under 49 Code of Federal Regulations Parts 194 and 195.
17. North Dakota Century Code Chapter 49-23 established the One-Call Excavation Notice System and sets forth requirements for excavators as well as operators of underground facilities for the avoidance of damage to underground facilities. NDPL is a member of and will participate in the North Dakota One-Call System.

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

Conclusions of Law

1. The Commission has jurisdiction over NDPL and the subject matter of this application under North Dakota Century Code Chapter 49-22.
2. NDPL is a utility pursuant to North Dakota Century Code § 49-22-03(13) solely for purposes of this Project.
3. The proposed pipeline and associated facilities are collectively a transmission facility as defined in North Dakota Century Code § 49-22-03(12)(b).
4. The location, construction, and operation of the facilities at the proposed Project’s pump station sites will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.

5. With respect to the location of the Beaver Lodge and Stanley Stations within 500 feet of certain businesses from whom waivers have been obtained, there are no reasonable alternatives.
6. The location, construction, and operation of the facilities at the proposed Project's pump station sites are compatible with environmental preservation and the efficient use of resources.
7. With respect to the facilities at the pump station sites, 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.
8. The facilities at the Project's pumping station sites are of such design and location that they will produce minimal adverse effects, pursuant to North Dakota Century Code § 49-22-07.2.
9. It is appropriate for the Commission to waive those certain procedures and time schedules as requested in the Application pursuant to North Dakota Century Code § 49-22-07.2.

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

Order

The Commission orders:

1. With respect to the facilities at the Project's pump station sites, NDPL's application for a waiver of procedures and time schedules is granted.
2. With respect to the facilities at the Project's pump station sites, Certificate of Corridor Compatibility No. ___ is issued to NDPL designating the Beaver Lodge, Stanley, Berthold and Lakota Station sites, located in Williams, Mountrail, Ward and Nelson Counties, North Dakota, as described in NDPL Public Hearing Exhibit No. 1, as the corridor.
3. Route Permit No. ___ is issued to NDPL granting authority to construct and operate facilities at the Beaver Lodge, Stanley, Berthold and Lakota Station sites, located in Williams, Mountrail, Ward and Nelson Counties, North Dakota, as described in NDPL Public Hearing Exhibit No. 1.
4. The February 11, 2014, Certification Relating to Order Provisions-Transmission Facility Siting with accompanying Tree and Shrub Mitigation Specifications as executed by NDPL is incorporated by reference and attached to this Order.

PUBLIC SERVICE COMMISSION

Randy Christmann
Commissioner

Brian P. Kalk
Chairman

Julie Fedorchak
Commissioner