

North Dakota Pipeline Company LLC
North Dakota Public Service Commission
Case No. PU-13-848

Sandpiper Pipeline Project
Route and Corridor Adjustment Request
November 10, 2015

I. Introduction

North Dakota Pipeline Company LLC (“NDPL”) is developing a new crude oil pipeline and associated facilities known as the Sandpiper Pipeline Project (“Project”). On June 25, 2014, the North Dakota Public Service Commission (“Commission”) issued Findings of Fact, Conclusions of Law and Order (“Order”) granting Certificate of Corridor Compatibility No. 153 and Route Permit No. 165 to NDPL for the Project. The corridor and route designated by the Commission are identified in Order Paragraph No. 2 (referred to herein as the “Designated Corridor” and the “Designated Route,” respectively). Since issuance of the Order, NDPL has determined that two route adjustments over 1.5 miles in length outside the Designated Corridor are necessary for the Project to avoid U.S. Fish and Wildlife Service (“USFWS”) wetland easement basins and a Wetland Reserve Program easement acquired by the Natural Resource Conservation Service (“NRCS”), U.S. Department of Agriculture. One route adjustment is in Towner County, and the other is in Nelson County.

In accordance with North Dakota Administrative Code (“N.D.A.C.”) § 69-06-05-02(3), NDPL respectfully requests that the Commission approve the requested route and corridor adjustments. In support of its request, NDPL submits information demonstrating that the proposed adjustments comply with the requirements of North Dakota Century Code (“N.D.C.C.”) Ch. 49-22 and N.D.A.C. § 69-06-08-02. Accompanying this request is the Affidavit of David Hodek (“Hodek Affidavit”), which attests to the information provided herein and provides additional supporting documentation.

II. Description of Route Adjustments

A. Towner County Route Adjustment (Mile Post 168.7 to Mile Post 170.7)

In consultation with the USFWS, NDPL has identified a number of USFWS wetland easement basins located along the Designated Route in Sections 23 and 26, Township 157 North, Range 68 West, Towner County. In order to minimize potential impacts to USFWS wetland easement basins, NDPL proposes to adjust the Project route and corridor to the south and east of the Designated Route and Designated Corridor. The total length of the route adjustment is 11,818 feet, and the length of the route adjustment outside of the Designated Corridor is 10,114 feet. A map depicting both the Designated Route and Corridor and the proposed route and corridor adjustment in Towner County is attached as Exhibit A.1 to the Hodek Affidavit.

All affected landowners, who are identified on Exhibit B.1 to the Hodek Affidavit, have executed easements allowing NDPL to construct the Project along the route adjustment. NDPL will maintain the same construction footprint and right-of way requirements as set forth in Findings of Fact Paragraph No. 29 of the Order.

B. Nelson County Route Adjustment (Mile Post 230.4 to Mile Post 235.0)

In Nelson County, an NRCS Wetland Reserve Program easement covers portions of Section 3, Township 152 North, Range 60 West, and the easement area is crossed by the Designated Route. Based on discussions with the NRCS, construction of the Project across the Wetland Reserve Program easement is inconsistent with the terms of the easement, which prohibits alternation of vegetative cover and the installation of structures under the easement. In addition, in consultation with the USFWS, a number of USFWS wetland easement basins have been identified along the Designated Route to the east of the Wetland Reserve Program easement parcel. For these reasons, NDPL proposes to adjust the Project route and corridor to the north of the Designated Route and Designated Corridor, thereby avoiding the Wetland Reserve Program easement and reducing the number of USFWS wetland easement basins crossed by the Project. The total length of the route adjustment is 23,446 feet, and the length of the route adjustment outside of the Designated Corridor is 18,309 feet. A map depicting both the Designated Route and Corridor and the proposed route and corridor adjustment in Nelson County is attached as Exhibit A.2 to the Hodek Affidavit.

The affected landowners, who are identified on Exhibit B.2 to the Hodek Affidavit, have executed easements allowing NDPL to construct the Project along the route adjustment. NDPL will maintain the same construction footprint and right-of way requirements as set forth in Findings of Fact Paragraph No. 29 of the Order.

III. Siting Criteria Evaluation

NDPL has analyzed the proposed route and corridor adjustments in relation to the Commission's Exclusion Area, Avoidance Area, Selection, and Policy Criteria. As discussed further below, based on NDPL's analysis, the adjustments will not impact any Exclusion Areas; the Nelson County route adjustment will be within 500 feet of an occupied residence, but NDPL will obtain a written waiver from the landowner allowing placement of the Project within 500 feet of said residence, and no other Avoidance Areas will be impacted by the adjustments; in relation to the Selection Criteria, no significant adverse impact will result from the location, construction, and operation of the Project at the adjusted locations; and the adjustments will not affect NDPL's commitments with respect to the Policy Criteria.

A. Exclusion Areas

In accordance with N.D.A.C. § 69-06-08-02(1), NDPL evaluated the location of the route and corridor adjustments in relation to the Commission's Exclusion Areas. No Exclusion Areas are located within the adjusted corridor or crossed by the route adjustments.

B. Avoidance Areas

In accordance with N.D.A.C. § 69-06-08-02(2), NDPL evaluated the location of the route and corridor adjustments in relation to the Commission's Avoidance Areas. The Nelson County route adjustment will be within 500 feet of an occupied residence. NDPL will obtain a written waiver from the landowner allowing placement of the Project within 500 feet of said residence. A copy of the signed waiver will be provided to the Commission upon receipt. No other Avoidance Areas are located within the adjusted corridor or crossed by the route adjustments.

C. Selection Criteria

In accordance with N.D.A.C. § 69-06-08-02(3), NDPL evaluated the location of the route and corridor adjustments in relation to the Commission's Selection Criteria. As discussed above, the adjustments will reduce the potential impacts to wetlands, and the analysis with respect to the remaining selection criteria remains consistent with the information set forth in Section B.4.c of the Application for a Route Permit. Further, NDPL has concluded that the proposed adjustments do not alter the conclusion that no significant adverse impact will result from the location, construction, and operation of the Project at the adjusted locations, as set forth in Findings of Fact Paragraph No. 25 of the Commission's Order.

D. Policy Criteria

In accordance with N.D.A.C. § 69-06-08-02(4), NDPL has analyzed the route and corridor adjustments in relation to the Commission's Policy Criteria. NDPL has concluded that the proposed adjustments will not alter any of its commitments with respect to the Policy Criteria, as set forth in Findings of Fact Paragraph No. 26 of the Commission's Order.

IV. Environmental Analysis

The proposed route and corridor adjustments will not impact the environmental analysis conducted for the Project, as described in Section B of the Application for Certificate for Corridor Compatibility, or the conclusions reached by the Commission in its Order. The route and corridor adjustments are within the 2-mile-wide study area NDPL analyzed in its Application (see D.1 of the Application for Certificate for Corridor Compatibility). In addition, NDPL performed field survey work for those portions of the route and corridor adjustments that fall outside of NDPL's Designated Corridor. The results of the surveys are provided in an October 30, 2015 letter from Merjent, Inc. ("Merjent"), attached as Exhibit C to the Hodek Affidavit, and are summarized below:

- Cultural Resources:

Cultural resource field surveys were completed on all areas within the adjusted corridors for the two route adjustments. No cultural resources were found within the adjusted corridor for either of the two route adjustments. In accordance with Order Paragraph No. 4, NDPL will

obtain and file with the Commission a copy of the North Dakota State Historic Preservation Office's concurrence that no historic properties or sites will be affected by the route adjustments prior to beginning construction in those areas.

- Wetlands and Waterbodies:

As discussed above, the route adjustments are designed to avoid a number of USFWS wetland easement basins and a Wetland Reserve Program easement parcel and, as a result, will reduce the Project's potential wetland impacts.

Wetland and waterbody field surveys were completed on all areas within the adjusted corridor for the two route adjustments. Similar types of wetlands and waterbodies were identified within the adjusted corridor as were identified within the Designated Corridor; however, there are fewer wetlands within the adjusted corridor (the number of waterbodies crossings are comparable).

In accordance with the requirements of Certificate Relating to Order Provisions – Transmission Facility Siting Paragraph No. 4, attached to the Order, NDPL will obtain and file with the Commission copies of all licenses and permits necessary for the route adjustments prior to construction of the adjustments.

- Threatened and Endangered Species:

Merjent has been assisting NDPL since early 2013 with ongoing coordination with the USFWS regarding federally listed, proposed, and candidate threatened or endangered ("T&E") species and proposed and designated critical habitat that may occur in the Project area. The T&E species that may occur in Towner and Nelson counties include the whooping crane (endangered), gray wolf (endangered), the northern long-eared bat (threatened), and the Sprague's pipit (candidate and in Towner County only).

Merjent retained Western Ecosystems Technologies, Inc. ("WEST") to conduct T&E-related surveys. WEST conducted northern long-eared bat surveys along the Project route in areas of suitable habitat and did not detect northern long-eared bats in North Dakota. Based on grassland habitat survey work WEST completed in 2013 and 2014, the adjusted corridor located in Towner County does not provide suitable habitat for the Sprague's pipit (i.e., this area crosses agricultural land). With respect to the whooping crane and gray wolf, the USFWS did not recommend species-specific surveys due to the low likelihood for these species to be present during survey work or construction. Should a whooping crane or gray wolf be sighted within 1 mile of the Project area during construction, NDPL will suspend construction at that location until the individual has left the area and contact the USFWS and the North Dakota Game and Fish Department.

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V. Conclusion

As set forth above, the requested route and corridor adjustments comply with the requirements of N.D.C.C. Ch. 49-22 and the Commission's siting criteria in N.D.A.C. § 69-06-08-02. Furthermore, the affected landowners have agreed to the adjustments. Therefore, NDPL respectfully requests that the Commission grant its request and issue an amended Route Permit and Certificate of Corridor Compatibility authorizing construction, operation, and maintenance of the Project consistent with the route and corridor adjustments requested herein.