

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

NST Express, LLC
NST Express Pipeline – McKenzie County
Siting Application

Case No. PU-15-232

[PROPOSED] FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

October __, 2015

Appearances

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

Mollie M. Smith, Attorney at Law, Fredrikson & Byron, P.A., 200 South Sixth Street, Suite 4000, Minneapolis, Minnesota 55402, on behalf of NST Express, LLC.

Zachary E. Pelham, Special Assistant Attorney General, Legal Counsel for Public Service Commission, 314 E. Thayer Avenue, Bismarck, North Dakota 58502.

Wade Mann, Administrative Law Judge, Office of Administrative Hearings, 2911 N. 14th St., Ste. 303, Bismarck, North Dakota 58503.

Preliminary Statement

On May 29, 2015, NST Express, LLC (“NST Express”) filed with the North Dakota Public Service Commission (the “Commission”) a consolidated application for a Certificate of Corridor Compatibility and Route Permit (the “Application”) for an approximately 23-mile-long, 12-inch crude oil pipeline and associated facilities to be located in McKenzie County, North Dakota (the “Project”).

Also on May 29, 2015, NST Express filed an application for waiver of certain procedures and time schedules set forth in North Dakota Century Code Sections 49-22-07.2, 49-22-08, 49-22-08.1, and 49-22-13, and North Dakota Administrative Code Chapter 69-06-06 and Section 69-06-01-02, requiring separate filings and applications for a certificate of corridor compatibility and a route permit, separate notice of such applications, separate hearings on such applications, and certain time schedules (the “Waiver Application”).

On July 8, 2015, the Commission deemed the Application complete and issued a Notice of Filings and Public Hearing scheduling a hearing for September 10, 2015, at 9:00 am CST at Teddy’s Residential Suites, 113 9th Avenue SE, Watford City, North Dakota 58854.

The Notice of Filings and Public Hearing identified the following issues to be considered with respect to the Waiver Application:

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 Public Hearing identified the following issues to be considered with respect to the Application:

1. Will the location 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 September 10, 2015, the hearing was held as scheduled. At the hearing, NST Express presented testimony and exhibits regarding modifications to the proposed corridor, route, and a valve location, which were made at the request of, or approved by, the affected landowners.

On September 14, 2015, NST Express submitted a Motion to Amend the Consolidated Application to include the revised corridor, route, and valve location presented at the hearing.

On September 25, 2015, NST Express filed the following late-filed exhibits: Late-Filed Exhibit 11: Corrected Bored Road Crossing and Foreign Pipelines Crossing Schematics; Late-Filed Exhibit 12: Municipal Water Source Documentation; and Late-Filed Exhibit 13: Waiver Agreement (Tract No. ND-MC-008.540).

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

Findings of Fact

1. 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.

2. NST Express is a Delaware limited liability company authorized to do business in the state of North Dakota since December 17, 2014, as evidenced by the corporate papers filed with the Commission on June 4, 2015 (*see* Case No. PU-15-282).

Need for Facility

3. The Project will collect crude oil at the proposed NST Express Alexander Facility, and then transport it via pipeline to an existing NST Transload Operating Company, LLC rail loading terminal (“NST Transload East Fairview Facility”), as well as other potential pipeline interconnections. From the NST Transload East Fairview Facility, crude oil will be transported via the BNSF Railway to the west, east, and potentially Gulf Coast markets.

4. NST Express concluded that the Project will allow for the efficient aggregation and transportation of volumes of crude oil from within McKenzie County and adjacent counties for shipment to major U.S. markets, thereby providing producers with greater options for markets and pricing. The Project will also help to reduce truck-related impacts to the public and area roads by reducing crude oil transportation by truck along the pipeline route.

Size and Type of Facility

5. As depicted in Hearing Exhibit No. 2, the Project will consist of approximately 23 miles of new, 12-inch diameter pipeline and associated facilities to be located in McKenzie County, North Dakota. The Project will originate at the proposed NST Express Alexander Facility, to be located approximately 9 miles north of Alexander, North Dakota, and terminate at the existing NST Transload East Fairview Facility, located approximately 0.5 mile north of East Fairview, North Dakota.

6. The maximum operating pressure for the pipeline will be 1,440 pounds per square inch gauge, and the maximum operating temperature will be 120 degrees Fahrenheit. The Project will provide a maximum flow rate of 100,000 barrels per day (“bpd”).

7. The NST Express Alexander Facility will consist of four truck offload skids, up to six pipeline connections, up to 150,000 barrels of tank working capacity, a tank booster and a mainline pump, a pig launcher, and a turbine meter run. Additional interconnection facilities will be constructed within the existing NST Transload East Fairview Facility, including a pig receiver, a turbine meter, piping to interconnect with existing tanks, and equipment and panels for supervisory control and data acquisition (“SCADA”) communications.

8. Five mainline valves would be located along the pipeline: one manual valve within the NST Express Alexander Facility; one manual valve within the NST Transload East Fairview Facility; two automated valves near the Yellowstone River crossing (one on each side of the river); and one manual valve along the pipeline.

9. The temporary construction right-of-way will typically be 100 feet wide, but will be expanded in some areas, such as river, road, irrigation ditch, and railroad crossings. The permanent right-of-way will be no more than 50 feet wide.

10. The total cost of the Project is estimated to be approximately \$60 million.

Preferred Location of Facility

11. At the public hearing, NST Express presented testimony and exhibits in support of a motion to amend its Application to include nine re-routes (three within and six outside of the corridor proposed in the Application), as well as additional temporary workspace identified after filing the Application. NST Express testified that it incorporated the re-routes into its proposed route primarily in response to landowner requests, and all re-routes were approved by the affected landowners. The revised proposed corridor and route are depicted in Hearing Exhibit No. 2 (hereinafter, the "proposed corridor and route").

12. At the public hearing, NST Express provided copies of Memoranda of Option, executed by the landowners affected by the re-routes, to demonstrate the landowners' approval of the re-routes (*see* Hearing Exhibit No. 4).

13. The proposed corridor and route are within the larger study areas analyzed by NST Express, and NST Express testified that all portions of the proposed corridor and route were field surveyed. NST Express provided updated field survey documentation for the re-routes (*see* Hearing Exhibit Nos. 8 and 9).

Study of Preferred Location(s)

14. With the exception of the cultural resource literature search, NST Express evaluated a 2.3-mile-wide corridor extending from the NST Express Alexander Facility to the NST Transload East Fairview Facility, which incorporated the site at the NST Transload East Fairview Facility and a 1-mile-wide radius surrounding the proposed NST Express Alexander Facility (the "Study Area"). NST Express collected environmental data and information on soils, land use, wetlands, waterbody crossings, noxious weeds, trees, shrubs, and protected species and habitats in the Study Area.

15. NST Express conducted a Class I cultural resource literature search on a 1-mile wide study area centered on the proposed pipeline centerline, which incorporated the proposed facility sites.

16. NST Express conducted a Class III cultural resource inventory and various natural resource field surveys on the proposed corridor, which includes a 200-foot-wide area centered on the proposed route, additional temporary workspaces, and the facility sites.

17. The following agencies were contacted by NST Express and provided comments regarding the Project: U.S. Fish and Wildlife Service ("USFWS"); U.S. Army Corps of Engineers ("USACE"); U.S. Department of Interior, Bureau of Reclamation ("BOR"); U.S. Department of Agriculture, Natural Resources Conservation Service ("NRCS"); Minot Air Force Base; North Dakota Game and Fish Department ("NDGF"); North Dakota Parks and Recreation Department ("NDPRD"); North Dakota State Historic Preservation Office ("SHPO"); North Dakota State Water Commission ("SWC"); North Dakota Department of Trust Lands ("NDTL");

and McKenzie County Weed Control Officer. Copies of the responses are provided in Appendix E of Hearing Exhibit No. 1. Input provided includes the following:

- (a) USFWS stated that there are no existing USFWS easements or fee-title lands within the Study Area.
- (b) USACE stated that permits would be required from the USACE, such as a Section 10 permit and a Section 404 permit.
- (c) BOR stated that the Project would cross certain BOR irrigation facilities, and that the crossings would need to follow BOR guidelines and receive BOR approval.
- (d) NRCS stated that no NRCS easements will be impacted by the Project.
- (e) The Minot Air Force Base stated that it has no assets near McKenzie County.
- (f) NDGF stated that it did not believe that the Project will have a significant adverse effect on wildlife or wildlife habitat, as long as certain recommendations were implemented where appropriate.
- (g) NDPRD recommended that the Project be accomplished with minimal impacts, all efforts be made to avoid disturbance of critical habitats, and impacted areas be revegetated with native species. NDPRD provided a list of rare species within the Study Area, all of which occur in the Yellowstone River.
- (h) With respect to the Class III cultural resources inventory report prepared for the original corridor and route, SHPO concurred with the determination that no significant sites will be affected.
- (i) SWC stated that a Sovereign Lands Permit will be required for the Yellowstone River crossing, no floodplains were identified in the Project area, the Water Appropriations Division should be contacted if gauging stations or water wells may be affected, Western Area Water Supply Authority should be contacted regarding the Project, waste materials must be disposed of properly, and no sole-source aquifers have been designated in North Dakota.
- (j) NDTL confirmed the location of the Project in relation to NDTL mineral interests.
- (k) The McKenzie County Weed Control Officer requested information for NST Express's Weed Management Plan.

Siting Criteria

18. The Commission established criteria pursuant to North Dakota Century Code Section 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 Section 69-06-08-02, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

19. NST Express evaluated the Project with respect to the Commission's siting criteria.

20. A transmission facility route must not be sited within an Exclusion Area. Exclusion areas may be located within a corridor, but at no given point may such an area or areas encompass more than fifty percent of the corridor unless there is no reasonable alternative.

21. Cultural resources are present within the Project's proposed corridor, but impacts to the cultural resources will be avoided. NST Express will bore beneath two cultural resources recommended eligible for listing on the National Register of Historic Places, and will reduce the construction right-of-way to avoid impacts to an unevaluated site lead.

22. Pallid sturgeon (endangered) occurs in the Yellowstone River, and the interior least tern (endangered) and piping plover (threatened) may use the shorelines of the Yellowstone River. NST Express proposes to use HDD for the river crossing, and, therefore, no adverse impacts are anticipated.

23. Accordingly, no Exclusion Areas will be impacted by the Project.

24. 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.

25. Pursuant to North Dakota Century Code Section 49-22-05.1, areas within five hundred feet of an inhabited rural residence must be designated avoidance areas. The five hundred foot avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing. In addition, North Dakota Administrative Code Section 69-06-08-02(2) designates areas within five hundred feet of a residence, school, or place of business as avoidance areas. The Project will be located within five hundred feet of two occupied residences. NST Express has obtained waivers from the affected landowners (*see* Hearing Exhibit No. 4 and Late-Filed Exhibit No. 13).

26. Accordingly, no Avoidance Areas will be impacted by the Project.

27. 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.

NST Express has analyzed the impacts of the Project in relation to all of the relevant Selection Criteria. No significant adverse impact will result from the location, construction, and operation of the Project.

28. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the transmission facility. NST Express has analyzed the relevant Policy Criteria and has 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. NST Express submitted evidence to demonstrate its commitment to maximizing the benefits of the proposed transmission facilities to the extent possible so as to meet the policy criteria.

Mitigation to Minimize Impact

29. NST Express 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 September 4, 2015, with accompanying Tree and Shrub Mitigation Specifications, which is attached to this Order.

30. NST Express testified that a SCADA system will be installed as part of the Project, which will monitor pressure, flow, and temperature 24 hours per day, 7 days per week at a control center, and the control center will have the ability to remotely shut-down the Project.

31. With respect to the Yellowstone River crossing, NST Express testified that the HDD design and installation will comply with the requirements set forth in the USACE Section 10 Permit.

32. NST Express testified that it will retain inspectors to ensure compliance with environmental and safety requirements during Project construction.

33. NST Express testified that it will participate in the North Dakota One-Call Excavation System.

34. NST Express testified that the design, construction, and operation of the Project will be in accordance with the United States Department of Transportation regulations governing the transportation of crude oil, including those set forth in 49 C.F.R. Part 195.

Conclusions of Law

1. The Commission has jurisdiction over this proceeding under North Dakota Century Code Chapter 49-22.

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

3. The Project proposed by NST Express is a transmission facility as defined in North Dakota Century Code Section 49-22-03(12).

4. NST Express's motion to amend the Application complies with the requirements of North Dakota Century Code Chapter 28-32, and North Dakota Administrative Code Sections 69-02-02-07(1) and 69-02-02-07.1.

5. 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.

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

7. 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 Project is of such design and location that it will produce minimal adverse effects and, therefore, it is appropriate for the Commission to waive certain procedures and time schedules pursuant to North Dakota Century Code 49-22-07.2, as requested in the Waiver Application.

Order

The Commission orders:

1. NST Express's motion to amend the Application is granted.
2. NST Express's application for waiver of procedures and time schedules is granted.
3. Certificate of Corridor Compatibility No. ___ is issued to NST Express designating a corridor for the construction, operation, and maintenance of an approximately 23-mile long, 12-inch crude oil pipeline and associated facilities in McKenzie County, North Dakota. For purposes of the Certificate, the designated corridor is the proposed corridor depicted in Hearing Exhibit No. 2.
4. Route Permit No. ___ is issued to NST Express, designating a route for the construction, operation, and maintenance of an approximately 23-mile-long, 12-inch crude oil pipeline and associated facilities in McKenzie County, North Dakota. For purposes of the Permit, the designated route is the proposed route depicted in Hearing Exhibit No. 2.
5. The September 4, 2015, 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 NST Express's Application and the Certification, the Certification provisions control.

7. NST Express shall file with the Commission a concurrence letter from SHPO concerning the Project's supplemental Class III cultural resources inventory report prior to beginning construction on any portions of the Project covered in the supplemental report.

8. One year after the Project is placed in service, NST Express shall file with the Commission a summary of the status of restoration activities related to the Project, including any restoration-related issues raised by landowners or identified by NST Express.

PUBLIC SERVICE COMMISSION

Randy Christmann
Commissioner

Julie Fedorchak
Chairman

Brian Kalk
Commissioner