

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

**NST Express, LLC**  
**12-inch Crude Oil Pipeline – McKenzie County**  
**Siting Application**

**Case No. PU-15-232**

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

**October 14, 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, 314 E Thayer Avenue, Bismarck, ND 58502, on behalf of the North Dakota Public Service Commission.

Wade Mann, Administrative Law Judge, Office of Administrative Hearings, 2911 North 4th Street, Suite 303, Bismarck, North Dakota 58503, as Procedural Hearing Officer.

**Preliminary Statement**

On May 29, 2015, NST Express, LLC (NST) filed applications for a certificate of corridor compatibility and a route permit concerning approximately 23 miles of 12-inch diameter pipeline and associated facilities for the transmission of crude oil (Project). The Project is to be located in McKenzie County, North Dakota.

Also on May 29, 2015, NST filed an application for waiver of procedures and time schedules established under 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, separate notices, and separate hearings on the certificate of corridor compatibility and a route permit applications.

On July 8, 2015, the Commission found the applications for a certificate of corridor compatibility and a route permit complete, and issued a Notice of Filings and Public Hearing (Notice) 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 identified the following issues to be considered with respect to the application 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 such 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 identified the following issues to be considered with respect to the applications for 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 September 10, 2015, the hearing was held.

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

On September 28, 2015, NST 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 testimony and evidence presented, the Commission makes the following findings of fact:

### **Findings of Fact**

1. NST 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).

## Size, Type, and Preferred Location of Facility

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.
3. At the public hearing, NST presented testimony and exhibits in support of a motion to amend its applications to include nine re-routes (three within and six outside of the corridor proposed in the applications), as well as additional temporary workspace identified after filing the applications. NST testified that it incorporated the re-routes into its proposed route primarily in response to landowner requests, and that all re-routes were approved by the affected landowners. The revised proposed corridor and route are depicted in Hearing Exhibit No. 2.
4. At the public hearing, NST 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).
5. 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.
6. 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.
7. 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.
8. The Project will be designed, constructed, operated, and maintained in compliance with Code of Federal Regulations Title 49 Part 195 Hazardous Liquids Pipeline Safety Regulations.
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 \$60 million.

#### Study of Preferred Location

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

12. With the exception of the cultural resource literature search, NST evaluated a 2.3-mile-wide area 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. NST collected environmental data and information on soils, land use, wetlands, waterbody crossings, noxious weeds, trees, shrubs, and protected species and habitats in the same area.

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

14. NST 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 (Survey Area).

15. The following agencies were contacted by NST 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:

- USFWS stated that there are no existing USFWS easements or fee-title lands within the Study Area.
- USACE stated that permits would be required from the USACE, such as a Section 10 permit and a Section 404 permit.
- BOR stated that permits would be required from the USACE, such as a Section 10 permit and a Section 404 permit.
- NRCS stated that permits would be required from the USACE, such as a Section 10 permit and a Section 404 permit.

- The Minot Air Force Base stated that it has no assets near McKenzie County.
- 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.
- 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.
- 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 provided the project remains in the locations plotted, mapped, and described for SHPO. At the time of the hearing, SHPO had not yet responded to a supplemental Class III cultural resources inventory report regarding the Project re-routes.
- 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.
- NDTL confirmed the location of the Project in relation to NDTL mineral interests.
- The McKenzie County Weed Control Officer requested information for NST's Weed Management Plan.

#### Siting Criteria

16. The Commission has established criteria pursuant to North Dakota Century Code section 49-22-05.1 to guide the Commission in evaluating the suitability of granting a certificate of corridor compatibility and route permit. 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.

17. NST evaluated the Project with respect to the Exclusion, Avoidance, Selection, and Policy criteria of the Commission.

18. 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.

19. Cultural resources are present within the Survey Area, but impacts to the cultural resources will be avoided. NST 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.

20. 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 horizontal directional drilling (HDD) for the river crossing, and, therefore, no adverse impacts are anticipated.

21. Accordingly, construction, operation, and maintenance of the Project will not impact any Exclusion Areas.

22. No exclusion areas encompass more than fifty percent of the Survey Area.

23. An Avoidance Area is a geographical area that may not be considered in the routing of a transmission facility unless the applicant shows that, under the circumstances, there is no reasonable alternative. In determining whether an Avoidance Area should be designated for a transmission 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.

24. A transmission facility may not be sited within an Avoidance Area unless the applicant demonstrates that under the circumstances there are no reasonable alternatives. Economic considerations alone are not sufficient to establish no reasonable alternative.

25. Areas within five hundred feet of a residence, school, or place of business are Avoidance Areas. Pursuant to North Dakota Century Code section 49-22-05.1, 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.

26. The Project will be located within five hundred feet of two occupied residences. NST has obtained waivers from the affected landowners.

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

28. In accordance with the Commission's Selection Criteria, a transmission facility route shall be designated if it is demonstrated that any significant adverse effects that will result from the location, construction, and maintenance of the transmission facility will be at an acceptable minimum, or will be managed and maintained at an acceptable minimum.

29. NST 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.

#### Measures to Minimize Impact

30. NST 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 with accompanying Tree and Shrub Mitigation Specifications filed in this proceeding, which is incorporated by reference and attached to this Order.

31. NST 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.

32. With respect to the Yellowstone River crossing, NST testified that the HDD design and installation will comply with the requirements set forth in the USACE Section 10 Permit. NST Hearing Exhibit 5 shows that the pipe will be installed a minimum of 50 feet below the bottom of the Yellowstone River.

33. NST provided a portion of the North Dakota Source Water Assessment Program Strategic Plan prepared by the North Dakota Department of Health, Division of Water Quality, to demonstrate that the Yellowstone River does not supply pump source water for any North Dakota public water supply system.

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

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

36. NST 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.

37. NST testified that the Project will help to reduce truck-related impacts to the public and area roads by reducing crude oil transportation by truck along the pipeline route.

From the foregoing Findings of Fact the Commission makes the following conclusions of law:

### **Conclusions of Law**

1. The Commission has jurisdiction over NST Express, LLC (NST) and the subject matter of these applications under North Dakota Century Code chapter 49-22.
2. NST is a utility as defined in North Dakota Century Code section 49-22-03(13).
3. The Project proposed by NST is a transmission facility as defined in North Dakota Century Code section 49-22-03(12).
4. NST'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 the 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, as defined under North Dakota Century Code section 49-22-07.2.
9. 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 those certain procedures and time schedules as requested in the waiver application under North Dakota Century Code section 49-22-07.2.

From the Findings of Fact and Conclusions of Law, the Commission makes the following order:

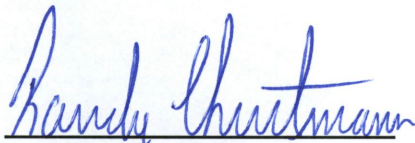
### **Order**

The Commission orders:

1. NST's motion to amend its applications for a certificate of corridor compatibility and a route permit is granted.

2. NST's application for a waiver of procedures and time schedules is granted.
3. Certificate of Corridor Compatibility No. 173 is issued to NST Express, LLC designating a corridor for the construction, operation, and maintenance of approximately 23 miles of 12-inch diameter pipeline and associated facilities for the transmission of crude oil 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. 185 is issued to NST Express, LLC designating a route for the construction, operation, and maintenance of approximately 23 miles of 12-inch diameter pipeline and associated facilities for the transmission of crude oil 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 that there are any conflicts or inconsistencies between NST's applications in this proceeding and the Certification, the Certification provisions control.
7. NST 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 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.
9. NST is required to comply with all applicable laws, rules, and/or regulations in the event it desires to construct another or a different transmission facility than was specified in the application within the corridor granted in this proceeding.

**PUBLIC SERVICE COMMISSION**

  
Randy Christmann  
Commissioner

  
Julie Fedorchak  
Chairman

  
Brian P. Kalk  
Commissioner

**PUBLIC SERVICE COMMISSION  
STATE OF NORTH DAKOTA**

**Certificate of Corridor Compatibility Number 173**

*This is to certify that the Commission has designated a transmission facility corridor for NST Express, LLC for the construction, operation, and maintenance of approximately 23 miles of 12-inch diameter crude oil pipeline and associated facilities in McKenzie County, North Dakota.*

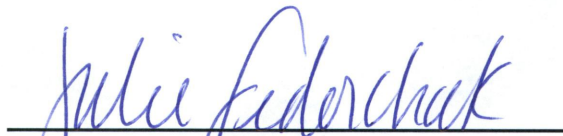
*This certificate is issued in accordance with the Order of the Commission dated October 14, 2015, in Case No. PU-15-232 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, October 14, 2015.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
**Executive Secretary**

  
**Commissioner**

**PUBLIC SERVICE COMMISSION  
STATE OF NORTH DAKOTA**

**Route Permit Number 185**

*This is to certify that the Commission has designated a transmission facility route for NST Express, LLC for the construction, operation, and maintenance of approximately 23 miles of 12-inch diameter crude oil pipeline and associated facilities in McKenzie County, North Dakota.*


*This permit is issued in accordance with the Order of this Commission dated October 14, 2015, in Case No. PU-15-232 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, October 14, 2015.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
**Executive Secretary**

  
**Commissioner**

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

**NST Express, LLC**  
**12-inch Crude Oil Pipeline – McKenzie County**  
**Siting Application**

**Case No. PU-15-232**

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

I am Terry Towner, a representative of NST Express, LLC (“Company”) with authority to bind the Company 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 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.
3. 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.
4. 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.
5. 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.
6. 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.

**Construction:**

7. 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.
8. 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.
9. 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 monthly basis.
10. 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.
11. 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. 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.
12. 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.
13. 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.
14. 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.

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 are taken by Company.

**Restoration and Maintenance:**

16. 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.
17. 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.
18. 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.
19. Company understands and agrees that its obligation for reclamation and maintenance of the transmission facility right-of-way, transmission facility, associated facilities, fences and gates, drainage tile, 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 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.
22. Company understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the transmission facility.

**Communication with Landowners and PSC:**

23. Company understands and agrees that, prior to beginning construction of the transmission facility at a location, it shall send a letter to each landowner with whom an easement was executed for that location specifying the name and phone number of the company representative who is responsible for receiving and resolving landowner issues for the life of the easement.
24. Company understands and agrees that it will file with the commission the name and phone number of the current company representative who is responsible for receiving and resolving landowner issues for the transmission facility. The company will update this information whenever there is a change to the current company representative for the life of all easements for the transmission facility.
25. Upon request, Company agrees to provide the Commission with engineering design drawings of the transmission facility prior to construction.
26. Company understands and agrees that it shall advise the Commission as soon as reasonably possible of any extraordinary events which take place at the site of the transmission facility, including injuries to any person,.
27. Company agrees to report to the Commission, as soon as reasonably possible, the presence in the permit area of any critical habitat or threatened or endangered species of which Company becomes aware and which were not previously reported to the Commission.
28. 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.
29. 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.

30. 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.

**Route Adjustments Before or During Construction:**

31. 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:
32. Company will specifically identify which subsection of NDCC 49-22-16.3 it is requesting the adjustment under. Company will file the name and contact information for a key contact person for the purposes of notice and communication during the adjustment application.
33. **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:
  - a. 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;
  - b. Certification and supporting documentation, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, route and the route adjustment;
  - c. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.
34. **ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, AVOIDANCE AREA AFFECTED:** Before 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:
  - a. 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(2)(n) identifying:
    - i. the designated corridor, route and the route adjustment;
    - ii. all exclusion and avoidance areas within the portion of the designated corridor containing the route adjustment

- b. Certification and supporting documentation affirming:
  - i. That construction activities will be within the designated corridor
  - ii. That construction activities will not affect any known exclusion area
- c. All field studies performed on the portion of the designated corridor containing the route adjustment;
- d. Specific information about any mitigation measures Company will take within the adjustment area;
- e. 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;
- f. 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;
- g. 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 unless the Commission fails to act within ten working days of receipt of filing a complete adjustment application, in which case the adjustment is deemed approved.
- 2. The initiation of the ten working days begins upon receipt of a complete filing, to include Company's certifications, supporting documentation and maps. However, Commission may extend the ten working day provision if Company, in the person of the key contact referenced above, is informed of the reason additional time is necessary for extension and has no objection to an extension.

35. **ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED:** Before 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:

- a. Certification and supporting documentation affirming that construction activities will not affect any known exclusion or avoidance areas,
- b. 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(2)(n) identifying the designated corridor, corridor adjustment, designated route and the route adjustment;
- c. 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

- d. Detailed field studies indicating exclusion and avoidance areas for the proposed adjustment area; and
- e. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route

36. **ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, AVOIDANCE AREA AFFECTED:** Before 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:

- a. 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(2)(n) identifying:
  - i. the designated corridor, corridor adjustment, route and the route adjustment;
  - ii. all exclusion and avoidance areas within the adjustment area
- b. Certification that construction activities will not affect any known exclusion area;
- c. 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;
- d. 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;
- e. Provide specific information about any mitigation measures Company will take within the adjustment area;
- f. Detailed field studies indicating exclusion and avoidance areas for the proposed adjustment area; and
- g. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

Company acknowledges and agrees that:

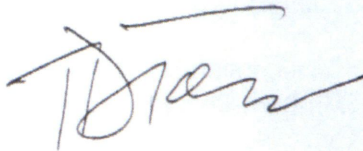
1. Written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity unless the Commission fails to act within ten working days of receipt of filing a complete adjustment application, in which case the adjustment is deemed approved.
2. The initiation of the ten working days begins upon receipt of a complete filing, to include Company's certifications, supporting documentation and maps. However, Commission may extend the ten working day provision if Company, in the person of the key contact referenced above, is informed of the reason additional time is necessary for extension and has no objection to an extension.

37. When applicable, Company may submit the field studies from the original application for the corridor and route provided they cover the adjustment area.

Dated this 4th day of September 2015.

NST EXPRESS, LLC

By



Its: President and CEO

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

**NST Express, LLC**  
**12-inch Crude Oil Pipeline – McKenzie County**  
**Siting Application**

**Case No. PU-15-232**

**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).