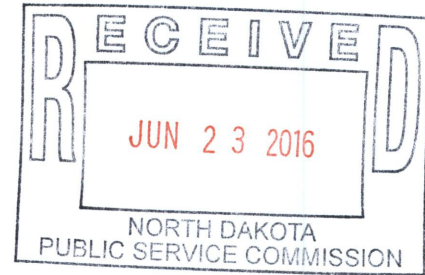


September 23, 2016

VIA E-MAIL AND FEDERAL EXPRESS

Mr. Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480



**RE: NST Express, LLC's Consolidated Application for a Certificate of Corridor Compatibility and Route Permit, and Waiver Application
Case No. PU-16-305**

Dear Mr. Nitschke:

Enclosed please find an original and ten (10) copies of the following document submitted on behalf of NST Express, LLC, in the above-referenced matter:

1. Proposed Recommended Findings of Fact, Conclusions of Law and Order.

An electronic version of the referenced document, along with this letter, were filed today with the Commission via e-mail. Also, a Word version of the proposed Recommended Findings of Fact, Conclusions of Law and Order was e-mailed to Judge Ward, John Schuh, and Sara Cardwell.

If you have any questions, please let me know.

Sincerely,

MOLLIE M. SMITH

MMS/ms/59797948
Enclosures

cc: Patrick J Ward (*with enclosure – via E-mail*)
John M. Schuh (*with enclosure – via E-mail*)
Sara J. Cardwell (*with enclosure – via E-mail*)
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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

NST Express, LLC
8-Inch Crude Oil Pipeline – McKenzie County
Siting Application

Case No. PU-16-305

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

September __, 2016

Appearances

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.

John Schuh, Legal Counsel, North Dakota Public Service Commission.

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

Preliminary Statement

On June 16, 2016, NST Express, LLC (NST Express) filed with the North Dakota Public Service Commission (Commission) a consolidated application for a Certificate of Corridor Compatibility and Route Permit (Application) for an approximately 3.6-mile-long, 8-inch crude oil pipeline and associated facilities to be located in McKenzie County, North Dakota (Project).

Also on June 16, 2016, 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 Section 69-06-01-02, insofar as they require 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 a waiver request, and certain time schedules.

On July 20, 2016, the Commission deemed the Application complete and issued a Notice of Filings and Public Hearing (Notice) scheduling a hearing for September 13, 2016, at 11:30 am Central Time 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 waiver:

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 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 13, 2016, the hearing was held.

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

Findings of Fact

1. 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 16, 2016 (*see* Case No. PU-15-282).

Size, Type, and Preferred Location of Facility

2. The Project will consist of approximately 3.6 miles of new, 8-inch diameter pipeline and associated facilities to be located in McKenzie County, North Dakota. The Project will originate at an existing Tesoro Logistics GP, LLC (Tesoro) break-out tank located approximately 6 miles north of Alexander, North Dakota, and terminate at the NST Express Alexander Facility located approximately 9 miles north of Alexander, North Dakota, which is currently under construction.

3. The maximum operating pressure for the pipeline will be 1,440 pounds per square inch gauge, and the maximum operating temperature will be 100 degrees Fahrenheit. The Project will provide a maximum flow rate of 40,000 barrels per day (bpd).

4. Within the Tesoro site, Project facilities will include a valve, a strainer, a booster pump, a modular pump, a meter, a pig launcher, 16-inch pipe between the Tesoro break-out tank and the booster pump, and supervisory control and data acquisition (SCADA) and communications equipment.

5. Within the NST Express Alexander Facility, Project facilities will include a pig receiver, a meter, piping to reach the interconnection point, and SCADA and communications equipment. The Project will interconnect to the NST Express Alexander Facility via one of the facility's six pipeline interconnections.

6. The construction right of way will typically be 50 feet wide, but will be expanded in some areas, such as at road crossings. The permanent right of way will be no more than 30 feet wide.

7. The total cost of the Project is estimated to be approximately \$6.8 million.

Study of Preferred Location

8. NST Express evaluated a 1-mile-wide corridor extending from the Tesoro break-out tank site to the point of the Project's interconnection with the NST Express Alexander Facility (Study Area). NST Express collected environmental data and information on soils, land use, cultural resources, wetlands, waterbodies, noxious weeds, trees, shrubs, and protected species and habitats in the Study Area.

9. NST Express conducted a Class III cultural resource inventory and various natural resource field surveys on the proposed corridor, which ranges from approximately 200 to 400 feet wide and covers the construction right of way, the Tesoro break-out tank site, and a portion of the NST Express Alexander Facility site.

10. The following agencies were contacted by NST Express and provided comments regarding the Project: U.S. Army Corps of Engineers (USACE); North Dakota Game and Fish Department (NDGF); State Historical Society of North Dakota (SHSND); North Dakota State Water Commission (SWC); North Dakota Department of Health (NDDH); North Dakota Department of Commerce (NDDC); North Dakota Department of Transportation (ND DOT); and McKenzie County. Input provided includes the following:

- (a) The USACE stated that a USACE permit may be required, and noted where potentially applicable permit application forms could be obtained.
- (b) The NDGF stated that it did not believe the Project will have significant adverse effects on wildlife or wildlife habitat, provided certain recommendations are implemented where appropriate. The NDGF also stated that no known eagle or other raptor nests, or other sensitive species, are located within one mile of the Project.

- (c) The SHSND concurred with the determination set forth in the Class III cultural resources inventory report that no significant sites will be affected by the Project, provided the report's monitoring, avoidance, and fencing recommendations for the unevaluated cultural resource sites identified are followed. In addition, SHSND found the Unanticipated Discovery Plan acceptable.
- (d) The NDDH stated that it believed environmental impacts from the Project will be minor and can be controlled by proper construction methods, and provided its construction comments and construction and environmental disturbance requirements.
- (e) The SWC stated that no floodplains were identified/mapped in the Project area, the Project takes place in a "No Special Flood Hazard Area," and no floodplain permits are necessary from McKenzie County; recommended contacting the Western Area Water Supply Authority (WAWSA) regarding infrastructure that may be in the Project area; noted it is NST Express's responsibility to contact local, state, and federal agencies regarding any required approvals, permits, and easements; and stated all waste materials must be disposed of properly. As a follow-up to SWC's comments, NST Express contacted WAWSA, which provided a shapefile showing the location of its water transmission line crossed by the Project.
- (f) The NDDC stated that the Project consultation letter had been reviewed through the North Dakota Federal Program Review Process and clearance had been given.
- (g) The ND DOT stated that the Project should have no adverse effect on the ND DOT highways, and permits and risk management documents will need to be obtained from the District Engineer for any work on highway right of way.
- (h) McKenzie County issued a Conditional Use Permit to NST Express for the Project.

Siting Criteria

11. The Commission has established criteria pursuant to North Dakota Century Code Section 49-22-05.1 to guide the Commission in 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.

12. NST Express evaluated the Project with respect to the Commission's Exclusion Area, Avoidance Area, Selection, and Policy Criteria.

13. 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.

14. No Exclusion Areas are located within the corridor or crossed by the route.

15. 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 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. Economic considerations alone are not sufficient to establish no reasonable alternative.

16. 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. The Project will be located within five hundred feet of four mobile home units. NST Express has obtained waivers of the avoidance area criteria from the owner of the mobile home units and from the landowner (*see* Hearing Exhibit No. 6).

17. Two cultural resource sites that remain unevaluated for National Register of Historic Places (NRHP) eligibility are present within the Project's corridor, but the sites are avoided by the route and are less than fifty percent of the corridor. NST Express will fence the site boundaries during construction and a qualified archaeological monitor will be present for ground-disturbing activities within 100 feet of the boundary of each site.

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

19. 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.

20. 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.

21. 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 facility to the extent possible so as to meet the policy criteria.

Measures to Minimize Impact

22. 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 12, 2016, with accompanying Tree and Shrub Mitigation Specifications, which is attached to this Order.

23. NST Express testified that it plans to cross wetlands using horizontal directional drilling to avoid wetlands, and no permanent impacts to wetlands are anticipated.

24. 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.

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

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

27. 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.

From the foregoing Findings of Fact, the Hearing Officer now makes the following:

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. 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.

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

6. The Project will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

7. The Project is of such design and location that it will produce minimal adverse effects, in accordance with North Dakota Century Code Section 49-22-07.2.

8. It is appropriate for the Commission to waive certain procedures and time schedules as requested in the waiver application and pursuant to North Dakota Century Code Section 49-22-07.2.

From the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer now issues the following:

Recommended Order

1. NST Express's application for waiver of procedures and time schedules is granted.

2. A Certificate of Corridor Compatibility shall be issued to NST Express, LLC designating a corridor for the construction, operation, and maintenance of an approximately 3.6-mile long, 8-inch crude oil pipeline and associated facilities in McKenzie County, North Dakota. For purposes of the Certificate, the designated corridor is the corridor depicted in Hearing Exhibit No. 3.

3. A Route Permit shall be issued to NST Express, designating a route for the construction, operation, and maintenance of an approximately 3.6-mile-long, 8-inch crude oil pipeline and associated facilities in McKenzie County, North Dakota. For purposes of the Permit, the designated route is the route depicted in Hearing Exhibit No. 3.

4. The September 12, 2016 Certification Relating to Order Provisions – Transmission Facility Siting (Certification), with accompanying Tree and Shrub Mitigation Specifications, shall be incorporated by reference and attached to the Order.

5. To the extent there are any conflicts or inconsistencies between NST Express's Application and the Certification, the Certification provisions control.

Dated at Bismarck, North Dakota this ___ day of September, 2016.

Patrick J. Ward
Administrative Law Judge
Office of Administrative Hearings