

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Epping Transmission Company, LLC
12.75-Inch Crude Oil Pipeline – Williams County
Siting Application

Case No. PU-16-614

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

January 18, 2017

Appearances

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

Wade C. Mann, Attorney at Law, Crowley Fleck PLLP, 100 West Broadway Avenue, Suite 250, Bismarck, North Dakota 58501, on behalf of Epping Transmission Company, LLC.

Brian Schmidt, Special Assistant Attorney General, 122 East Broadway Avenue, Bismarck, North Dakota 58501, on behalf of the North Dakota Public Service Commission.

Patrick J. Ward, Administrative Law Judge, Office of Administrative Hearings, 316 North Fifth Street, Bismarck, North Dakota 58501, as Procedural Hearing Officer.

Preliminary Statement

On August 25, 2016, Epping Transmission Company, LLC (Epping) filed applications for a certificate of corridor compatibility and a route permit concerning approximately 3.2 miles of 12-inch diameter and 0.2 miles of 8-inch diameter pipeline and associated facilities for the transmission of crude oil (Project). The Project will be located in Williams County, North Dakota.

Also on August 25, 2016, Epping 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, separate hearings on the certificate of corridor compatibility and route permit applications, and certain time schedules.

On September 21, 2016, 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 November 22, 2016 at 9:00 am Central Time at The Ernie French Center, NDSU Williston Research Extension Center, 14120 Highway 2, Williston, North Dakota 58801.

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 November 22, 2016, the hearing was held as scheduled.

On December 5, 2016, Epping filed late-filed exhibits.

On December 14, 2016, Epping filed Proposed Findings of Fact, Conclusions of Law and Order.

On December 20, 2016, the Commission held a work session concerning the Project.

On December 28, 2016, Epping filed additional information related to the late-filed exhibits.

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. Epping Transmission Company, LLC is a Delaware limited liability company authorized to do business in the State of North Dakota since May 21, 2014, as evidenced by corporate papers filed with the Commission on September 16, 2016 in Case No. PU-16-643.
2. Epping testified that it is a direct subsidiary of Bison Midstream, LLC, which is owned by Summit Midstream Partners, LP.

Size, Type, and Preferred Location of Facility

3. The Project will consist of approximately 3.2 miles of 12-inch diameter steel crude oil pipeline (Mainline), two 8-inch diameter steel connector crude oil pipelines (Connectors), each approximately 0.1 miles in length, and associated facilities. The Project will be located near the city of Epping in Williams County, North Dakota.
4. The Mainline will originate at Epping Pipeline Company, LLC's Epping Station, located approximately 0.4 miles south of the city of Epping, and will terminate at Dakota Access, LLC's Epping Station, located approximately 1.8 miles northeast of the city of Epping. The Connectors will transport crude oil between the Mainline and Meadowlark Midstream Company, LLC's Divide Lateral Pipeline, and between the Mainline and Dakota Access, LLC's valve site, located on the north side of the Crestwood COLT Hub.
5. The maximum capacity of the Mainline will be 70,000 barrels per day, with an expected initial capacity of 30,000 barrels per day. The maximum capacity of each Connector will be 50,000 barrels per day, with an expected initial capacity of 20,000 barrels per day.
6. The maximum operating pressure for the Project will be 1,440 psig, with an expected initial operating pressure of 200 psig.
7. The pipe wall thickness for the Mainline will be 0.375 inches. Where the Mainline is bored, the pipe wall thickness will be 0.500 inches. The pipe wall thickness for the Connectors will be 0.322 inches.
8. Above-ground facilities will include valves, meters, in-line tool launchers and receivers, and a control building.
9. The total anticipated cost of the Project is approximately \$7 million.

Study of Preferred Location

10. Epping evaluated a one mile wide study area centered on the proposed route (Study Area) for wetlands and waterbodies, trees and shrubs, and wildlife.
11. Epping conducted field surveys on a typically 250 foot wide area centered on the proposed route (Survey Area) to inventory wetlands and waterbodies, noxious weeds, trees and shrubs, and wildlife, including protected species, critical habitats, and raptor nests.
12. Epping conducted a Class I cultural resources literature search on the Study Area and a Class III cultural resource inventory on the Survey Area.
13. The following agencies were contacted by Epping and provided comments concerning the Project: the United States Fish and Wildlife Service; the North Dakota Department of Health (NDDOH); the North Dakota Game and Fish Department (NDGFD); the North Dakota Parks and Recreation Department (NDPRD); the North Dakota Department of Trust Lands; the North Dakota State Water Commission; the North Dakota State Historical Society, State Historic Preservation Office (NDSHPO); the Western Area Water Supply Authority; the Williams County Water Resource Board; and the Williams County Weed Control Board.
14. In a letter dated July 26, 2016, the NDSHPO concurred with a "No Significant Sites Affected" recommendation for the Project, provided that Epping follows the NDSHPO's recommendations for avoidance of two cultural resources located within the Survey Area. In a letter dated October 3, 2016, the NDSHPO indicated that Epping has made a good faith effort to identify and avoid impacts to significant sites.
15. No objections to the Project were raised by any federal or state agencies.

Siting Criteria

16. The Commission has developed criteria pursuant to North Dakota Century Code section 49-22-05.1 to guide the site, 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.
17. Epping evaluated the Project with respect to the Exclusion, Avoidance, Selection, and Policy criteria of the Commission.
18. 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. A transmission facility route must not be sited within an Exclusion Area.

19. Three cultural resources are present within the Survey Area. One cultural resource has been determined to not be eligible for listing in the National Register of Historic Places (NRHP). The remaining two cultural resources are unevaluated for listing in the NRHP, and Epping testified that impacts to these resources will be avoided by the implementation of a 50-foot construction buffer zone around each resource.

20. No other Exclusion Areas are present within the Survey Area.

21. 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. A transmission facility route 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.

22. 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.

23. Eight rural residences are located within five hundred feet of the pipeline route. Epping has obtained waivers from owners of these residences and has filed them in this proceeding.

24. No other Avoidance Areas are present within the Survey Area.

25. 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.

26. Epping 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

27. Epping 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.

28. Epping participates in the North Dakota One-Call Excavation System.

29. Epping has developed an Emergency Response Plan and has filed a copy of the plan in this proceeding.

30. Epping testified that a Supervisory Control and Data Acquisition System will be installed as part of the Project, and will monitor pressure, temperature, and flow continuously at a control center located in Woodlands, Texas. Epping will have the capability to remotely shut down the pipeline from its control center.

31. Epping testified that 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.

32. Epping testified that all landowner easements necessary for construction of the pipeline with the exception of the connection site at Dakota Access, LLC's Epping Station have been obtained.

33. Epping will x-ray 100% of its pipeline welds.

34. An environmental inspector will be present on site during construction.

35. Epping will implement an equipment cleaning process to minimize the potential to spread noxious weeds.

36. Epping will consult with landowners concerning reseeding.

37. Epping will provide temporary fencing for livestock during reseeding and revegetation activities to allow for vegetative regrowth.

38. Epping testified that a conditional use permit for the Project is not required by Williams County, North Dakota.

39. Epping committed to following recommendations provided by the NDDOH, the NDGFD, and the NDPRD concerning the Project.

40. Epping committed to participating in a preconstruction call with Commission staff and the Commission's third party construction inspector, informing the Commission and its third party construction inspector of the date to begin construction, coordinating with the Commission's third party construction inspector concerning site inspections, and keeping the Commission and its third party construction inspector informed of the project status on a monthly basis.

41. In the event that construction is undertaken by Epping after topsoil has frozen to the point that frost inhibits proper soil segregation, Epping has committed to following applicable winter construction guidelines as given in the following documents: North Dakota State University Extension Service, Publication R1728, "Successful Reclamation of Lands Disturbed by Oil and Gas Development and Infrastructure Construction," August 2014; INGAA Foundation, Inc., Report No. 2013.04, "Planning Guidelines for Pipeline Construction During Frozen Conditions," December 2013; and Late Filed Exhibit 16, Epping's "LF16 Reclamation Plans for Winter Construction."

42. Concerning the ONEOK pipeline located near Epping Transmission Company, LLC's Epping Station, as shown in Late Filed Exhibit 14, Epping has committed to maintaining a minimum clearance of two feet between its pipeline and the ONEOK pipeline, utilizing hydro-evacuation to expose ONEOK's pipeline, and boring under the ONEOK pipeline with a minimum of two feet of clearance where crossing is required. Epping will also contact ONEOK to schedule a site meeting when working near the ONEOK pipeline.

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

Conclusions of Law

1. The Commission has jurisdiction over Epping Transmission Company, LLC and the subject matter of these applications under North Dakota Century Code chapter 49-22.
2. Epping is a utility as defined in North Dakota Century Code section 49-22-03(13).
3. The Project proposed by Epping 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 the 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, as defined under North Dakota Century Code section 49-22-07.2.

8. 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 and North Dakota Administrative Code chapter 69-06-06.

9. Epping will file a copy of its most recent operations and maintenance audit results prepared by the Pipeline and Hazardous Materials Administration, once finalized.

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

Order

The Commission orders:

1. Epping Transmission Company, LLC's application for a waiver of procedures and time schedules is granted.

2. Certificate of Corridor Compatibility No. 196 is issued to Epping Transmission Company, LLC designating a corridor for the construction, operation, and maintenance of approximately 3.2 miles of 12-inch diameter and 0.2 miles of 8-inch diameter pipeline and associated facilities for the transmission of crude oil in Williams County, North Dakota. For purposes of the Certificate, the designated corridor is depicted as "Environmental Survey Corridor" in Hearing Exhibit No. 12.

3. Route Permit No. 207 is issued to Epping Transmission Company, LLC designating a route for the construction, operation, and maintenance of approximately 3.2 miles of 12-inch diameter and 0.2 miles of 8-inch diameter pipeline and associated facilities for the transmission of crude oil in Williams County, North Dakota. For purposes of the Permit, the designated route is depicted as "Proposed Alignment" in Hearing Exhibit No. 12.

4. The December 1, 2016 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.

5. To the extent that there are any conflicts or inconsistencies between Epping Transmission Company, LLC's applications in this proceeding and the Certification, as amended by paragraph 6 of this Order, the Certification provisions control.

6. Provision 12 of the Certification is amended to state the following:

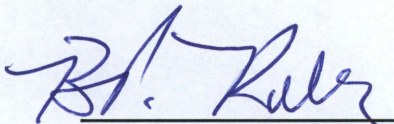
Company understands and agrees that all topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas where cuts will be made, must be carefully stripped and segregated from the subsoil.

Any area on which excavated subsoil will be placed must also be stripped of topsoil. The stripped topsoil must not be stockpiled in natural drainages, and must be protected from water erosion. Care must be taken to protect topsoil from unnecessary compaction by heavy machinery. If Company removes topsoil once topsoil freezes to the point that frost inhibits proper soil segregation, it shall follow the winter construction guidelines in the following documents: North Dakota State University Extension Service, Publication R1728, "Successful Reclamation of Lands Disturbed by Oil and Gas Development and Infrastructure Construction," August 2014; INGAA Foundation, Inc., Report No. 2013.04, "Planning Guidelines for Pipeline Construction During Frozen Conditions," December 2013; and Late Filed Exhibit 16, Epping's "LF16 Reclamation Plans for Winter Construction."

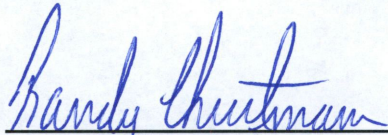
7. If a spill by Epping Transmission Company, LLC requires notification to any other state or federal agency, Epping Transmission Company, LLC will also inform the Commission of such spill within 24 hours of occurrence by leaving a message at the Commission's Toll Free Number, with a follow-up email to the Commission's Executive Secretary.

8. Epping Transmission Company, LLC 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.

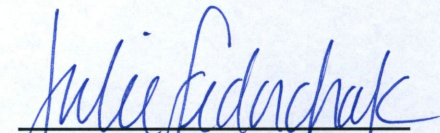
PUBLIC SERVICE COMMISSION



Brian P. Kalk
Commissioner



Randy Christmann
Chairman



Julie Fedorchak
Commissioner

PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA

Certificate of Corridor Compatibility Number 196

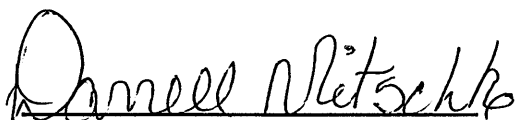
This is to certify that the Commission has designated a transmission facility corridor for Epping Transmission Company, LLC for the construction, operation, and maintenance of approximately 3.2 miles of 12-inch diameter and 0.2 miles of 8-inch diameter pipeline and associated facilities for the transmission of crude oil in Williams County, North Dakota.

This certificate is issued in accordance with the Order of the Commission dated January 18, 2017 in Case No. PU-16-614 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, January 18, 2017

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Secretary


Commissioner

**PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA**

Route Permit Number 207

This is to certify that the Commission has designated a transmission facility route for Epping Transmission Company, LLC for the construction, operation, and maintenance of approximately 3.2 miles of 12-inch diameter and 0.2 miles of 8-inch diameter pipeline and associated facilities for the transmission of crude oil in Williams County, North Dakota.

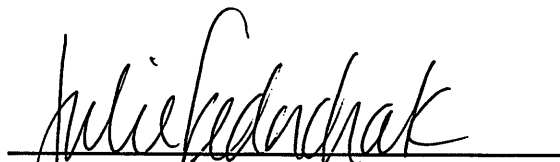
This permit is issued in accordance with the Order of the Commission dated January 18, 2017 in Case No. PU-16-614 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, January 18, 2017

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Secretary


Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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CERTIFICATION RELATING TO ORDER PROVISIONS
TRANSMISSION FACILITY SITING

I am Michael C. Smith, a representative of Epping Transmission Company, LLC ("Company") with authority to bind 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

13. 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.
14. 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.
15. 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.
16. 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.
17. Company understands and agrees that the Commission has authority to stop Project construction activities in the event of a probable violation of the siting laws, siting rules, or applicable Commission Orders if, in the opinion of the Commission, construction activities are likely to result in irreparable or significant harm.

Restoration and Maintenance:

18. 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.
19. 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.
20. Company understands and agrees that reclamation, fertilization, and reseeded is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.

32. 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.
33. 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.
34. 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:

35. 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:
36. 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.
37. **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:

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.

39. 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.

40. 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;

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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

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).