

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**North Dakota Pipeline Company, LLC
8-Inch Crude Oil Pipeline - Williams County
Siting Exclusion Certification**

Case No. PU-17-246

STAFF RESPONSE TO APPLICATION FOR PROTECTION OF INFORMATION

On 31 January 2018, North Dakota Pipeline Company, LLC (NDPL) filed an application to protect confidential critical energy infrastructure information required by North Dakota Administrative Code Section 69-06-05- 01(2)(q), asserting the information is exempt from North Dakota Century Code Section 44-04-18. NDPL asserts the information is protected critical energy infrastructure and is entitled to nondisclosure as Critical Energy Infrastructure Information under the USA Patriot Act of 2011 and other federal guidelines. NDPL further asserts the information qualifies as being exempt from public disclosure pursuant to North Dakota Century Code Section 44-04-24.

The application of NDPL seeks to protect from disclosure certain confidential information concerning critical energy infrastructure being filed with the North Dakota Public Service Commission (Commission) as part of its previously filed Certification for the relocation of segments of its existing 8-inch (Line 84) and 10-inch (Line 86) crude oil pipelines, located in Williams County, North Dakota (Project).

NDPL has filed a CD, which contains the detailed GIS data required by the Commission for the above-referenced Project in a sealed envelope labeled "PROTECTED INFORMATION - PRIVATE." See North Dakota Administrative Code Section 69- 02-09-02.

The information contained on the CD, and sought to be protected, includes detailed design information and aerial imagery, which shows the exact location of this Project and

other existing energy infrastructure located within a close proximity of this Project. NDPL operates an interstate common carrier pipeline, which is considered critical energy infrastructure, as it plays an important role in the distribution of vital energy supplies to the refinery markets in the Midwest and beyond. The specific and detailed information contained on the CD would be of great benefit to anyone with a desire to disrupt the economy through an attack on this infrastructure, and thus, constitutes the treatment of Critical Energy Infrastructure Information under the USA Patriot ACT of 2001 and other federal guidelines.

Accordingly, distribution of detailed maps must be controlled and not released within the public domain without good cause shown.

The information contained on the CD also qualifies as being exempt from public disclosure pursuant to North Dakota Century Code Section 44-04-24.

North Dakota Century Code Section 44-04-24 provides exemption from public disclosure for,

"all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, communications, or consultations or portions of any such plan relating directly to the physical or electronic security of a public facility, or any critical infrastructure, whether owned by or leased to the state or any of its political subdivisions, or any privately owned or leased critical infrastructure if the plan or a portion of the plan is in the possession of a public entity;"

North Dakota Century Code Section 44- 04-24 (2)(b).

Critical infrastructure is defined to include:

"Public buildings, systems, including telecommunications centers and computers, power generation plants, dams, bridges, and similar key resources, whether physical or virtual, so vital to the state that the incapacity or destruction of these systems would have a debilitating impact on security, state economic security, state public health or safety, or any combination of those matters."

North Dakota Century Code Section 44-04-24(2)(a).

All of the information sought to be protected is detailed design information and imagery pertaining to what would be classified as critical infrastructure under both state and federal law. If publically disclosed, it would provide detailed information on the precise location and design of the critical infrastructure potentially putting it at risk. Any persons seeking to disrupt the operation of the critical infrastructure would then have easily accessible information critical to implementing any such plan of disruption.

Intentional damage to NDPL's Project could impact both economic security as well as threatening public health and safety if significant amounts of crude oil were released from the pipeline due to an intentional act. Requiring NDPL to publicly disclose the GIS data and detailed design plans and aerial imagery would be contrary to state law and federal policy for the protection of such assets as set forth in the Critical Infrastructure Protection Act of 2001 (codified at 42 United States Code 5195c).

Staff believes that NDPL's application satisfies the requirements of the North Dakota Century Code for protection of the information, which is the subject of this request.

The Commission's process provides a means for interested parties to review protected documents upon signing a nondisclosure agreement.

For reasons set forth above, Staff recommends that the Commission grant the application of NDPL to protect certain information filed in this case.

Dated this 15 day of April, 2018.



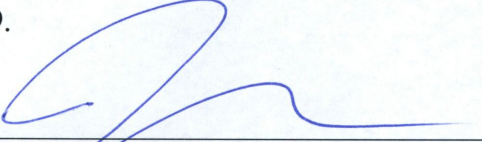
John Schuh
Legal Counsel
North Dakota Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **STAFF RESPONSE TO APPLICATION FOR PROTECTION OF INFORMATION** was, on 2 April 2019, served on the following by regular mail:

**Matt Comeaux
Enbridge
5400 Westheimer Court
Houston, TX 77056**

Dated this 2nd day of April 2019.



John Schuh
Legal Counsel