

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**ONEOK Bakken Pipeline, L.L.C.
16-Inch NGL Pipeline – Williams County
Siting Application**

Case No. PU-19-368

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

April __, 2020

Appearances

Commissioners Brian Kroshus, Julie Fedorchak, and Randy Christmann.

Casey A. Furey, Attorney at Law, Crowley Fleck PLLP, 100 West Broadway, Suite 250, Bismarck, North Dakota 58501, on behalf of ONEOK Bakken Pipeline, L.L.C.

Zachary Pelham, Special Assistant Attorney General for the North Dakota Public Service Commission, 314 E. Thayer Ave., Bismarck, North Dakota 58501.

Timothy Dawson, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street, Suite 303, Bismarck, North Dakota 58503, as Procedural Hearing Officer.

Preliminary Statement

On November 25, 2019, ONEOK Bakken Pipeline, L.L.C. (“ONEOK”), filed with the North Dakota Public Service Commission (“Commission”), a consolidated application for a Certificate of Corridor Compatibility and Route Permit (“Application”) concerning a 16-inch natural gas liquids (“NGLs”) transmission pipeline, and associated facilities in Williams County, North Dakota (“Project”).

On January 22, 2020, the Commission deemed ONEOK’s Application complete and issued a Notice of Filing and Public Hearing (“Notice”) scheduling a public hearing for March 6, 2020, at 9:00 a.m. Central Time at the City of Williston Public Works and Engineering Department, 1121 5th Street East, Williston, North Dakota 58801.

The Notice identified the following issues to be considered with respect to the Application:

1. Will construction, operation, and maintenance of the facility at the proposed location produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Is the proposed facility compatible with the environmental preservation and the efficient use of resources?

3. Will construction, operation, and maintenance of the facility at the proposed location 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 March 6, 2020, the public hearing was held as scheduled. Exhibits 1 through 12 were admitted at the hearing.

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

1. ONEOK is a Delaware limited liability company. ONEOK has been authorized to do business in the State of North Dakota, as evidenced by the corporate papers filed with the Commission in Case No. PU-13-739.

Size, Type, and Preferred Location of Facility

2. The Project consists of approximately 75 miles of 16-inch diameter steel pipeline in Williams County, North Dakota. The Project will originate at the Hess Tioga Natural Gas Processing Plant and terminates at a planned interconnection near ONEOK's Stateline to Riverview NGL Pipeline (PU-11-066). The Project includes eight locations with isolation capabilities including four mainline block valves, one pig launcher facility, one pig launcher and receiver facility, and one pig receiver facility. The Project's anticipated daily operating capacity is 30,000 barrels per day ("bpd"). The Project is capable of transporting up to approximately 90,000 bpd.
3. The Project utilizes a 16-inch diameter steel pipeline with a 0.281-inch to 0.500-inch wall thickness. The Project has a maximum operating pressure of 1,480 pounds per square inch.
4. The proposed Project corridor and route are identified in Exhibit B.2 of the Application.
5. The estimated cost of the Project is approximately \$100 million dollars.
6. ONEOK anticipates a fourth quarter 2020 in-service date for the facility.

Study of Preferred Location

7. ONEOK conducted a Class I cultural resource literature review and a desktop analysis for wetlands, waterbodies, woodlands, and other sensitive environmental resources across a one-mile wide area centered on the proposed Project route ("Study Area").
8. ONEOK conducted several studies and field surveys across the proposed Project corridor consisting of an approximately 300-foot-wide area generally centered on the Project route

(“Survey Area”). ONEOK conducted a natural resources survey, which included a wetland and waterbody survey, a noxious weed survey, a threatened and endangered species habitat assessment, a tree and shrub inventory, an eagle nest survey, and a biological survey.

9. No designated critical habitat for threatened or endangered species is located within the Survey Area and no threatened or endangered species were identified within the Survey Area during field surveys.

10. ONEOK conducted a Class III cultural resource inventory across the Survey Area. The Class III reports were submitted to the North Dakota State Historic Preservation Office.

11. Section 49-22.1-13(4) of the North Dakota Century Code provides that a site shall not be designated that violates the rules of any state agency, and that compliance with an agency’s rules shall be presumed if the agency fails to present its position at the public hearing with respect to the proposed facility.

12. ONEOK initiated correspondence with federal, state and local departments, agencies, and entities as follows:

- a. Federal: U.S. Fish and Wildlife Service (“USFWS”); U.S. Army Corps of Engineers; U.S. Department of Defense; and, U.S. Department of Agriculture.
- b. State: North Dakota State Historical Preservation Office (“NDSHPO”); North Dakota Department of Parks and Recreation; North Dakota Department of Trust Lands; North Dakota Department of Environmental Quality; North Dakota Geological Society (“NDGS”); North Dakota State Water Commission; and, North Dakota Game and Fish Department.
- c. Local: Western Area Water Supply Authority; Williams County Board of Commissioners; Williams County Water Resource District; Williams County Weed Control Board; the cities of Tioga and Springbrook; Buford, Trenton, Tioga, and Sauk Valley Townships.

Siting Criteria

13. The Commission has developed criteria pursuant to North Dakota Century Code section 49-22.1-03 to guide the site, corridor, and route suitability evaluation and designation process. The criteria, as set forth in North Dakota Administrative Code 69-06-08-02 are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

14. ONEOK evaluated the Survey Area and route regarding the Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

15. An Exclusion Area is a geographic area that must be excluded in the consideration of a route for a transmission facility. An Exclusion Area 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.

16. ONEOK's studies and surveys did not record any known Exclusion Areas within the Survey Area.

17. An Avoidance Area is a geographical area that may not be considered in the routing of a transmission facility unless the applicant demonstrates 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 will not justify approval of these areas.

18. Areas that are geologically unstable are an Avoidance Area. NDGS's October 16, 2019 correspondence identified five areas of potential geologic instability within the proposed corridor. ONEOK has avoided impacts to one area by shifting the Project route and will utilize horizontal directional drilling ("HDD") methods to avoid impacts to three potentially instable areas as set forth and committed to by ONEOK in December 18, 2019 correspondence to the NDGS. (Hearing Exhibit 6). In December 20, 2019 correspondence, the NDGS stated it reviewed ONEOK's proposed avoidance measures and did not note any additional concerns. With respect to the fifth area of potential geologic instability located at approximate milepost 56.4, ONEOK testified this location appears to be located outside of the Project's workspace; however, ONEOK will conduct additional review of this area and submit its findings to the NDGS. ONEOK testified it will submit updated correspondence from the NDGS to the Commission for the fifth location prior to commencing construction in this area.

19. Areas within five hundred feet of a residence, school, or place of business are an Avoidance Area. ONEOK testified that it identified 20 occupied structures, consisting of 19 distinct landowners, within five hundred feet of the Project route. ONEOK has obtained waivers for 14 of these structures and submitted copies as Hearing Exhibit 4. ONEOK testified it will obtain the remaining landowner waivers prior to constructing the Project within 500 feet of said areas or ONEOK will file a route adjustment with the Commission in accordance with North Dakota Century Code Chapter 49-22.1 to be outside 500 feet of the occupied structure(s).

20. Areas containing historical resources not specifically designated as Exclusion or Avoidance Areas are an Avoidance Area. ONEOK's Class III cultural resource survey identified 10 cultural sites that remain unevaluated for inclusion on the National Register of Historic Places within the Project corridor but are not directly crossed by the Project route. ONEOK has applied NDSHPO recommended 100-foot avoidance buffers to these sites. In December 17, 2019 correspondence to the NDSHPO, ONEOK committed to various mitigative measures for nine of the unevaluated sites where full 100-foot buffers could not be maintained. On December 31, 2019, the NDSHPO issued a letter finding ONEOK's Class III Cultural Resource Survey acceptable and concurring with a "No Significant Sites Affected" determination provided the Project remains as proposed.

21. ONEOK's surveys did not identify any other known Avoidance Areas within the Survey Area.
22. The Commission's Selection Criteria is set forth in North Dakota Administrative Code section 69-06-08-02(3). A corridor or route 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. ONEOK analyzed the effects that may result from the location, construction, and operation of the Project.
23. The Project will temporarily affect approximately 682 acres of land, of which approximately 67% consists of privately-owned cropland. Once construction is complete, ONEOK will restore land to its pre-construction contours and land use. ONEOK will also provide payments to landowners for crop loss resulting from Project construction.
24. ONEOK will minimize and/or avoid impacts to wetlands or waterbodies by employing HDD where appropriate and by following best management practices where the trenching method is utilized. The Project will cross the Little Muddy River and Beaver Creek and ONEOK will avoid impacts to these crossings by utilizing the HDD method.
25. ONEOK identified one wetland within the Survey Area with potentially suitable habitat for piping plover. To avoid potential impacts to the piping plover, ONEOK has committed to undertake certain conservation measures as set forth in its January 24, 2020 correspondence to the USFWS including additional surveys of suitable habitat and presence/absence surveys as necessary and based upon the timing of construction within the identified area. In January 24, 2020 correspondence from the USFWS, the USFWS stated it has no objections to the Project and concurs with ONEOK's proposed conservation measures. Hearing Exhibit 8.
26. During construction, a temporary increase in ambient sound will occur primarily from the use of heavy equipment and trucks. Ambient sound will be minimal during pipeline operation.
27. The Project will not have significant adverse impacts to extractive and storage resources, visual effects on adjacent areas, ground water flow patterns, or radio, television, and other communication or electronic facilities. If drainage patterns are disturbed during construction, ONEOK will restore those affected areas to their original topography. Visual effect will be minimal as the majority of the Project is located adjacent to existing linear infrastructure and the Project facilities are located primarily underground with the exception of the above-ground mainline block valve and facility locations.
28. The Commission's Policy Criteria is set forth in North Dakota Administrative Code section 69-06-08-02(4). The Commission may give preference to an applicant demonstrating certain benefits from the proposed transmission facility. ONEOK testified it has maximized the benefits that result from implementing various policies and practices set forth in the Policy Criteria applicable to the Project.

29. ONEOK testified it has obtained easement agreements for all but 3.75 miles, or five percent of the Project right-of-way. ONEOK testified it will obtain all remaining necessary landowner easements prior to constructing the Project in said areas. ONEOK further testified that if it is unable to obtain the remaining required easement agreements, ONEOK will reroute the Project and comply with the applicable filing requirements contained in North Dakota Century Code Chapter 49-22.1.

Additional Measures to Minimize Impact

30. ONEOK has agreed to a number of measures to mitigate potential Project impacts, as indicated by the attached Certification Relating to Order Provisions – Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications.

31. NDSHPO has approved ONEOK's Unanticipated Discoveries Plan, which provides response measures to be followed in the event of a discovery of cultural or human remains.

32. ONEOK has developed several project control documents that will be utilized during construction activities to minimize and mitigate impacts on environmental resources including a: Construction Mitigation and Restoration Plan; Migratory Bird Plan; Storm Water Pollution Prevention Plan; Spill Prevention, Control and Countermeasure Plan; Unanticipated Discoveries Plan; Revegetation Plan; Weed Management Plan; and Dust Control Plan which are included in Exhibit H to the Application.

33. ONEOK will employ environmental inspectors and third-party inspectors to monitor construction activities and ensure activities are in compliance with company processes and practices and applicable permits.

34. ONEOK is reducing the Project's environmental disturbance by co-locating approximately 58 percent of the Project with existing linear infrastructure.

35. The Project will have a leak detection system comprised of transmitters that monitor temperature, pressure, and density, among other things. A Supervisory Control and Data Acquisition (SCADA) system will allow ONEOK to monitor the pipeline's operation 24 hours a day, seven days a week, 365 days a year by trained controls personnel. The system will allow ONEOK to identify and respond to situations outside normal operating conditions.

36. ONEOK testified it has annual meetings to educate local emergency response officials and sends mailings to local response officials providing emergency contact information and details regarding leak identification and response procedures. ONEOK further testified its emergency response group is actively coordinating with the Williams County Emergency Officials to discuss emergency preparedness and response with respect to the Project. ONEOK testified that it will comply with all applicable safety laws and standards.

37. ONEOK will participate in the North Dakota One-Call Excavation Notice System.

From the foregoing Findings of Fact, the Commission makes the following:

Conclusions of Law

1. The Commission has jurisdiction over ONEOK and over the subject matter of the Application under North Dakota Century Code chapter 49-22.1.
2. ONEOK is a utility as defined in North Dakota Century Code section 49-22.1-01(12).
3. The Project is a transmission facility as defined in North Dakota Century Code section 49-22.1-01(7).
4. The construction, operation, and maintenance of the Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
5. The Project is compatible with the environmental preservation and the efficient use of resources.
6. The construction, operation, and maintenance of the Project minimizes 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.

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

Order

The Commission orders:

1. Certificate of Site Compatibility No. ___ is issued to ONEOK Bakken Pipeline, L.L.C., designating a corridor for the construction, operation, and maintenance of approximately 75 miles of 16-inch diameter natural gas liquids pipeline and associated facilities in Williams County, North Dakota. For purposes of this Certificate, the designated corridor consists of an approximately 300-foot-wide-area generally centered on the designated route as depicted in Exhibit B.2 of the Application, Hearing Exhibit 1.
2. Route Permit No. ___ is issued to ONEOK Bakken Pipeline, L.L.C., designating a route for the construction, operation, and maintenance of approximately 75 miles of 16-inch diameter natural gas liquids pipeline and associated facilities in Williams County, North Dakota. For purposes of this Permit, the designated route is the route of the Project as depicted in Exhibit B.2, Hearing Exhibit 1.
3. The Certification Relating to Order Provisions – Transmission Facility Siting with accompanying Tree and Shrub Mitigation Specifications executed February 25, 2020 (Docket No. 48), is incorporated by reference and attached to this Order.

4. To the extent there are any conflicts or inconsistencies between ONEOK's Application and the Certification, the Certification provisions control.
5. ONEOK shall conduct additional review on the one remaining area of potential geologic instability within the Project corridor and consult with the NDGS regarding its review and proposed avoidance measures. ONEOK shall submit its consultation with the NDGS to the Commission prior to commencing construction in this area.
6. ONEOK shall obtain all remaining landowner easements and 500-foot setback waiver(s) prior to constructing the Project in said areas. If ONEOK is unable to obtain the required easement agreements and waivers, ONEOK shall change the Project route and comply with the applicable filing requirements contained in North Dakota Century Code Chapter 49-22.1.
7. ONEOK shall obtain all other necessary licenses and permits prior to commencing construction on such portion of the Project for which the license and/or permit is required and shall provide copies to the Commission prior to beginning construction in said areas.
8. ONEOK is required to comply with all applicable laws, rules, and regulations in the event it desires to construct another or a different transmission pipeline facility than was specified in the Application within the corridor designated in this proceeding.

PUBLIC SERVICE COMMISSION

Julie Fedorchak
Commissioner

Brian Kroshus
Chairman

Randy Christmann
Commissioner