

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

OE2 North LLC  
8" NGL & 20" Residue Gas Pipelines – Williams Cnty  
Siting Application

Case No. PU-20-247

AFFIDAVIT OF SERVICE BY REGULAR AND ELECTRONIC MAIL

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

Geralyn R. Schmaltz deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **28th** day of **August, 2020**, she deposited in the United States Mail, Bismarck, North Dakota, **3** envelopes by first class mail, fully prepaid, securely sealed each containing a photocopy of:

- **Findings of Fact, Conclusions of Law and Order**

The envelopes were addressed as follows:

**See attached list**

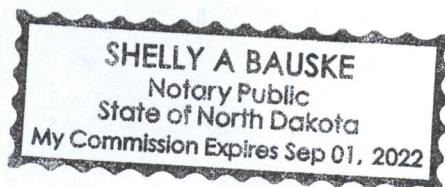
Geralyn R. Schmaltz further deposes and says that on the **28th day of August 2020**, she sent an electronic message to **41** addressees, each including an electronic copy in portable document format of the same document.

The electronic mails were addressed as follows:

**See attached list**

The addresses shown are the respective addressee's last reasonably ascertainable post office and electronic mail addresses.

Subscribed and sworn to before me  
this **28th day of August 2020**.



(SEAL)



Notary Public

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

**OE2 North, LLC**  
**8" NGL & 20" Residue Gas Pipelines – Williams Cnty.**  
**Siting Application**

**Case No. PU-20-247**

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

**August 26, 2020**

**Appearances**

Commissioners Brian Kroshus, Julie Fedorchak, and Randy Christmann.

Lawrence Bender, Attorney at Law, Fredrikson & Byron, P.A., 1133 College Drive, Suite 1000, Bismarck, North Dakota 58501, on behalf of OE2 North, LLC.

John Schuh, Special Assistant Attorney General, as Counsel for the North Dakota Public Service Commission, 600 E. Boulevard Avenue, Dept. 408, Bismarck, North Dakota 58505.

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

**Preliminary Statement**

On June 3, 2020, OE2 North, LLC (OE2), filed with the North Dakota Public Service Commission (Commission) a combined application for a certificate of corridor compatibility and route permit concerning the location of an approximately 1.28-mile long natural gas liquids (NGL) pipeline and an approximately 4.67-mile long residue gas pipeline, located in Williams County, North Dakota (Application).

Also on June 3, 2020, OE2 filed with the Commission an application for waiver or reduction of procedures and time schedules established under North Dakota Century Code chapter 49-22.1 and North Dakota Administrative Code section 69-06-01-02 and chapter 69-06-06, regarding separate notices and separate hearings on such applications and North Dakota Administrative Code section 69-06-06-01(2)(f) requiring a corridor width of ten percent of the corridor's length with a maximum width of six miles.

On June 9, 2020, the Commission provided notification of the Application to the townships with retained zoning authority, cities, and counties in which any part of the proposed pipeline corridor is located.

On June 25, 2020, OE2 filed documents with the Commission to supplement the Application.

On July 2, 2020, the Commission deemed the Application complete and issued a Notice of Filing and Public Hearing (Notice) scheduling a remote hearing for August 6, 2020, at 8:00 a.m. Central Time.

The Notice identified the following issues to be considered with respect to the application for 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 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 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 August 3, 2020, OE2 filed documents with the Commission to supplement the Application.

On August 6, 2020, the hearing was held as scheduled via live, remote communication, allowing any interested parties to present testimony via telephone. Exhibits 1 and 2 were admitted at the hearing.

The opportunity for written public comment remained open until August 13, 2020.

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

## Findings of Fact

1. OE2 North, LLC is a Delaware limited liability company authorized to do business in the State of North Dakota, as evidenced by the corporate papers filed with the Commission on February 20, 2020, in Case No. PU-20-083.

### Size, Type, and Preferred Location of Facility

2. OE2 intends to construct one approximately 1.28-mile steel NGL transmission line and one approximately 4.67-mile steel residue gas transmission line located in Williams County, North Dakota (Project). The 8-inch pipeline will transport NGLs from OE2's Bill Sanderson Gas Plant to an interconnection point with a ONEOK pipeline. The 20-inch pipeline will transport residue gas from OE2's Bill Sanderson Gas Plant to an interconnection point with a Northern Border pipeline.

3. The NGL pipeline will be 8-inch diameter steel pipe with a wall thickness of 0.250-inches and a maximum operating pressure of 1,650 pounds per square inch gauge (psig). The residue gas pipeline will be 20-inch steel pipe with a wall thickness of 0.375-inches and a maximum operating pressure of 1,650 psig. The maximum operating temperature of the NGL and residue gas pipelines will be 120 degrees Fahrenheit.

4. The NGL pipeline will have a flow rate capacity of up to 80,000 barrels per day, and the residue gas pipeline will have a flow rate capacity of up to 250 million cubic feet per day.

5. Aboveground facilities for the Project will be limited to valving, measurement and associated instrumentation at the terminus of the NGL and residue gas pipelines.

6. The permanent right-of-way for the co-located NGL and residue pipelines will be 125 feet wide and the permanent right-of-way for the remaining portion of the residue gas pipeline will be 50 feet wide.

7. The estimated cost of the Project is \$6 million.

8. The estimated in-service date is December of 2020.

### Study of Preferred Location

9. OE2 conducted a Class I cultural resource literature review and a desktop analysis for wetlands, waterbodies, and other sensitive environmental resources across a one-mile-wide area centered on the pipeline routes (Study Area).

10. OE2 conducted several surveys across an approximately 200-foot-wide area centered on the Project route (Survey Area). OE2 conducted surveys for wetlands, waterbodies, threatened and endangered species, critical habitats, noxious weeds, and

trees/saplings/shrubs. OE2 also conducted a .5-mile line-of-sight binocular survey for raptor nests.

11. OE2 conducted a Class III cultural resources inventory across the Survey Area. The Class III report was submitted to the North Dakota State Historic Preservation Office (SHPO). In a response dated August 4, 2020, SHPO found the report acceptable and that there has been a good faith effort to avoid impacts to significant sites. OE2 will avoid impacts to cultural resources. SHPO also requested fencing and monitoring for one site when construction is within 200 feet of the site.

12. OE2 initiated correspondence seeking comments from following federal, state and local agencies regarding the Project:

- a. Federal: (1) Federal Aviation Administration; (2) U.S. Army Corps of Engineers; (3) U.S. Fish and Wildlife Service; and (4) U.S. Department of Defense
- b. State: (1) North Dakota Attorney General; (2) North Dakota Department of Agriculture; (3) North Dakota Department of Career and Technical Education; (4) North Dakota Department of Commerce; (5) North Dakota Department of Environmental Quality; (6) North Dakota Department of Health; (7) North Dakota Department of Human Services; (8) North Dakota Department of Transportation; (9) North Dakota Department of Trust Lands; (10) North Dakota Energy Development Impact Office; (11) North Dakota Game and Fish Department; (12) North Dakota Geological Survey; (13) North Dakota Indian Affairs Commission; (14) North Dakota Industrial Commission; (15) North Dakota Labor Department; (16) North Dakota Parks and Recreation Department; (17) North Dakota Pipeline Authority; (18) North Dakota Soil Conservation Committee; (19) North Dakota State Water Commission; (20) Job Service of North Dakota; (21) SHPO; and (22) Office of the Governor
- c. Local: (1) Williams County Commission.

#### Siting Criteria

13. The Commission has established 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 Section 69-06-08-02, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

14. OE2 evaluated the Project for the Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria of the Commission.

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. A transmission facility route must not be sited within an Exclusion Area.

16. OE2's surveys did not record any Exclusion Areas within the Survey Area.

17. An Avoidance Area is a geographic 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.

18. OE2's surveys identified previously recorded historical sites which are not specifically designated as Exclusion or Avoidance Areas. OE2 testified that the Project route will not impact the historical sites identified.

19. OE2's surveys did not record any other Avoidance Areas within the Survey Area.

20. In accordance with the Commission's Selection Criteria set forth in North Dakota Administrative Code section 69-06-08-02(3), a transmission facility corridor or route shall be approved only 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 that those effects will be managed and maintained at an acceptable minimum. OE2 has analyzed the impacts of the Project in relation to all relevant Selection Criteria.

21. Wetlands are a Selection Criteria. OE2 testified that it will cross all wetlands and waterbodies using the horizontal directional drilling technique.

22. The impact upon agricultural production and family farms and ranches is a Selection Criteria. Following completion of the pipeline, OE2 will restore any right-of-way to its original, pre-construction elevation and contours, and landowners will be able to resume agricultural and ranching operations. If yield deficiencies are caused by pipeline construction, the cost of applying fertilizer to remedy soil nutrient levels will be paid to the landowner.

23. The Project will have no significant adverse effects on the Commission's Selection Criteria.

24. OE2 analyzed all of the relevant Policy Criteria set forth in Section 69-06-08-02(4) of the North Dakota Administrative Code. There is no need for the Commission to give preference to the applicant in this proceeding.

### Additional Measures to Minimize Impact

25. OE2 has agreed to a number of steps to mitigate the impact of the Project, as indicated by the executed Certification Relating to Order Provisions – Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications, which is incorporated by reference and attached to this Order.
26. The Project will be designed, constructed, and operated in accordance with U.S. Department of Transportation regulations governing the transportation of natural gas and hazardous liquids by pipeline, which are set forth in 49 CFR Parts 192 and 195, respectively.
27. OE2 testified that it will follow a written manual of procedures for conducting normal operation and maintenance activities and for handling abnormal operations and emergencies in accordance with U.S. Department of Transportation pipeline safety standards. The Bill Sanderson Gas Plant is equipped with relief valves and pressure shutdowns to protect the pipelines from overpressure. A leak detection and monitoring system will be employed for the Project.
28. OE2 will have third-party construction inspectors on site during construction who will oversee the Project's environmental mitigation measures, and the construction inspectors will have the authority to stop construction activities and to require corrective mitigation.
29. OE2 will coordinate with local emergency response officials to discuss emergency response coordination and will conduct emergency deployment drills on an annual basis.
30. The entire Project is co-located with existing infrastructure and utility corridors.
31. OE2 has developed several project control documents that will be utilized in connection with the construction and operation of the Project including a Storm Water Pollution Prevention Plan, Spill Contingency Plan, HDD Contingency Plan, Weed Management Plan, Dust Control Plan, Emergency Action Plan, and Unanticipated Discovery Plan.
32. OE2 will conduct regular pipeline monitoring, periodic inspection, internal inspections, and foot patrol inspections as required by the U.S. Department of Transportation regulations. Foot patrols will be conducted at least annually.
33. Prior to the beginning of construction, OE2 will clean contractor vehicles and equipment of soil and debris capable of spreading noxious weeds. Furthermore, OE2 will ensure that seed mixes are certified weed free from approved certified sources as recommended by the county weed agency. During topsoil stripping, stockpiles that contain noxious weeds will be identified with signs and be maintained adjacent to the areas from which the topsoil was obtained to eliminate the transport of soil-borne noxious weed propagules to other areas within the Project Area.

34. OE2 will participate in the North Dakota One-Call notification system.
35. OE2 will comply with all applicable safety laws and standards.

From the foregoing Findings of Fact, the Commission now makes its:

#### **Conclusions of Law**

1. The Commission has jurisdiction over the applicant, OE2 North, LLC, and the subject matter of the Application under Chapter 49-22.1 of the North Dakota Century Code.
2. OE2 is a utility as defined in Section 49-22.1-01(12) of the North Dakota Century Code.
3. The Project is a gas or liquid 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 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.
7. The proposed facility at the proposed location will produce minimal adverse effects, and it is appropriate for the Commission to waive applicable procedures and time schedules as requested in the application for waiver of procedures and time schedules pursuant to North Dakota Century Code Section 49-22.1-05 and North Dakota Administrative Code Chapter 69-06-06.

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

#### **Order**

1. OE2's application for a waiver of procedures and time schedules is granted.
2. Certificate of Corridor Compatibility No. 218 is issued to OE2 North, LLC designating a corridor for the construction, operation, and maintenance of approximately 1.28 miles of 8-inch diameter NGL pipeline in Williams County, North Dakota. For the purposes of this certificate, the corridor is 200-foot-wide for the length of the pipeline, centered on the pipeline route.

3. Route Permit No. 228 is issued to OE2 North, LLC designating a route for the construction, operation, and maintenance of approximately 1.28 miles of 8-inch diameter NGL pipeline in Williams County, North Dakota, as depicted on Figure 1 of Hearing Exhibit 1, Project Overview Map.
4. Certificate of Corridor Compatibility No. 219 is issued to OE2 North, LLC designating a corridor for the construction, operation, and maintenance of approximately 4.67 miles of 20-inch diameter residue gas pipeline in Williams County, North Dakota. For the purposes of this certificate, the corridor is 200-foot-wide for the length of the pipeline, centered on the pipeline route.
5. Route Permit No. 229 is issued to OE2 North, LLC designating a route for the construction, operation, and maintenance of approximately 4.67 miles of 20-inch diameter residue gas pipeline in Williams County, North Dakota, as depicted on Figure 1 of Hearing Exhibit 1, Project Overview Map.
6. The Certification Relating to Order Provisions – Transmission Facility Siting (Certification), with accompanying Tree and Shrub Mitigation Specifications, executed July 31, 2020, is incorporated by reference and attached to this Order.
7. To the extent there are any conflicts or inconsistencies between OE2's Application and the Certification, the Certification provisions control.
8. OE2 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 of such licenses and permits to the Commission prior to construction.
9. OE2 shall follow the North Dakota State Historic Preservation Office's August 4, 2020 letter regarding the fencing and monitoring for site 32W11179 when construction is within 200 feet.
10. OE2 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 designated in this proceeding.

**PUBLIC SERVICE COMMISSION**

  
**Julie Fedorchak**  
Commissioner

  
**Brian Kroshus**  
Chairman

  
**Randy Christmann**  
Commissioner

**PUBLIC SERVICE COMMISSION  
STATE OF NORTH DAKOTA**

**Certificate of Corridor Compatibility Number 218**

*This is to certify that the Commission has designated a transmission facility corridor for OE2 North LLC for the construction, operation, and maintenance of approximately 1.28 miles of 8-inch diameter natural gas liquids pipeline and associated facilities in Williams County, North Dakota.*

*This certificate is issued in accordance with the Order of the Commission dated August 26, 2020, in Case No. PU-20-247 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, August 26, 2020*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
\_\_\_\_\_  
**Executive Secretary**

  
\_\_\_\_\_  
**Commissioner**

**PUBLIC SERVICE COMMISSION  
STATE OF NORTH DAKOTA**

**Certificate of Corridor Compatibility Number 219**

*This is to certify that the Commission has designated a transmission facility corridor for OE2 North LLC for the construction, operation, and maintenance of approximately 4.67 miles of 20-inch diameter residue gas pipeline and associated facilities in Williams County, North Dakota.*

*This certificate is issued in accordance with the Order of the Commission dated August 26, 2020, in Case No. PU-20-247 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, August 26, 2020*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
\_\_\_\_\_  
**Executive Secretary**

  
\_\_\_\_\_  
**Commissioner**

**PUBLIC SERVICE COMMISSION  
STATE OF NORTH DAKOTA**

**Route Permit Number 228**

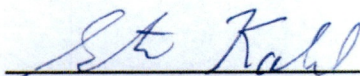
*This is to certify that the Commission has designated a transmission facility route for OE2 North LLC for the construction, operation, and maintenance of approximately 1.28 miles of 8-inch diameter natural gas liquids pipeline and associated facilities in Williams County, North Dakota.*

*This permit is issued in accordance with the Order of this Commission dated August 26, 2020, in Case No. PU-20-247 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, August 26, 2020.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
\_\_\_\_\_  
**Executive Secretary**

  
\_\_\_\_\_  
**Commissioner**

**PUBLIC SERVICE COMMISSION  
STATE OF NORTH DAKOTA**

**Route Permit Number 229**

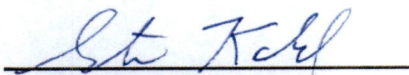
*This is to certify that the Commission has designated a transmission facility route for OE2 North LLC for the construction, operation, and maintenance of approximately 4.67 miles of 20-inch diameter residue gas pipeline and associated facilities in Williams County, North Dakota.*

*This permit is issued in accordance with the Order of this Commission dated August 26, 2020, in Case No. PU-20-247 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, August 26, 2020.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
\_\_\_\_\_  
**Executive Secretary**

  
\_\_\_\_\_  
**Commissioner**

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**OE2 North LLC  
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**Case No. PU-20-247**

**Tree and Shrub Mitigation Specifications**

**Inventory**

Prior to cutting or clearing trees or shrubs for construction:

- All trees one-inch or greater in diameter at breast height must be inventoried to record the location, number, and species.
- All shrubs and all coniferous trees of any diameter must be inventoried to record the location, number, and species.

**Clearing**

The maximum width of tree and shrub removal is 50 feet, unless otherwise approved by the Commission.

**Replacement**

1. Landowners must be given the option to have trees and shrubs that are removed from their property replaced on their property. The landowner may waive this option in writing. If the landowner waives this option, the company shall plant replacement trees and shrubs in an alternate location in the same region, if practical.
2. Trees and shrubs must be replaced on a minimum two-to-one basis. The company shall develop a Tree and Shrub Mitigation Plan (Plan) in consultation with landowners who are seeking replacement trees and shrubs and in accordance with USDA-NRCS-North Dakota Field Office Technical Guide: Windbreak and Woodland Tree Care and Management. The guidelines outlined in the Technical Guide shall be followed until filing of the Plan summary outlined in number 5 below.
3. The purpose of the company's Tree and Shrub Mitigation Plan is to create sustainable plantings, appropriate for the local soil and growing conditions that will provide long-term benefit to landowners, farmers and ranchers, the community, wildlife and the environment.
4. The Plan, including the proposed number, variety, type, location, and approximate date for plantings, shall be filed with and approved by the Commission.
5. Two years after completion of the plan, the company must file a summary documenting how the plan achieved the purpose outlined in number 3 above. The summary must also report the number of surviving replacement trees and shrubs.
6. The Commission will consider, on a limited basis as conditions warrant, mitigation plans that provide long-term wildlife habitat and conservation benefits but do not involve the replanting of trees and shrubs.

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

**OE2 North LLC**  
**8" NGL & 20" Residue Gas Pipelines - Williams Cnty.**  
**Siting Application**

**Case No. PU-20-247**  
**OAH File No. 20200239**

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

I am Russ Kimmitt, EVP and Chief Operating Officer of OE2 North LLC ("OE2") with authority to bind OE2 to requirements to be set forth by the Commission in its Order and I certify the following:

1. OE2 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 49-22.1 of the North Dakota Century Code and Chapter 69-0608 of the North Dakota Administrative Code, and that OE2 shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. OE2 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. OE2 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. OE2 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. OE2 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. OE2 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. OE2 agrees to hold a preconstruction conference prior to commencement of any construction, which must include an OE2 representative, its construction supervisor, and a representative of Commission Staff, to ensure that OE2 fully understands the conditions set forth in the Commission's order.
8. OE2 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. OE2 understands and agrees that topsoil removal will begin when the Commission's third-party construction inspector is present at the Project site to observe that topsoil is properly removed and kept segregated from subsoil until replacement occurs. OE2 shall establish the date and time for the Commission's third-party construction inspector's topsoil removal oversight in the preconstruction conference.
10. OE2 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, OE2 shall keep the Commission and the Commission's third-party construction inspector updated on construction activities on a monthly basis.
11. OE2 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.
12. OE2 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. Unless otherwise approved by the Commission, topsoil must be removed before topsoil freezes in the late fall/ early winter to the point that frost inhibits proper soil segregation. After backfilling with subsoil 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.
13. OE2 understands and agrees that all buried facility crossings of graded roads must be bored unless the responsible governing agency specifically permits OE2 to open cut the road.
14. OE2 understands and agrees that staging areas or equipment shall not be located on land owned by a person other than OE2 unless otherwise negotiated with landowners.

15. OE2 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. OE2 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 OE2.
17. OE2 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. OE2 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. OE2 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. OE2 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.
21. OE2 will fulfill its obligation for reclamation and maintenance of the approved transmission facility right-of-way, transmission facility, and associated facilities continuing throughout the life of the transmission facility.
22. OE2 will repair all fences and gates removed or damaged during all phases of construction and operation of the transmission facility.
23. OE2 will repair or replace all drainage tile broken or damaged as a result of construction and operation of the transmission facility.
24. OE2 agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
25. OE2 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.

26. OE2 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:**

27. OE2 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 OE2 representative who is responsible for receiving and resolving landowner issues for the life of the easement.
28. OE2 understands and agrees that it will file with the commission the name and phone number of the current OE2 representative who is responsible for receiving and resolving landowner issues for the transmission facility. OE2 will update this information whenever there is a change to the current OE2 representative for the life of all easements for the transmission facility.
29. Upon request, OE2 agrees to provide the Commission with engineering design drawings of the transmission facility prior to construction.
30. OE2 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.
31. OE2 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 OE2 becomes aware and which were not previously reported to the Commission.
32. OE2 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. OE2 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. OE2 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. OE2 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, OE2 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. OE2 agrees to utilize the following procedures if OE2 seeks a route adjustment before or during construction of the pipeline, pursuant under N.D.C.C. §49-22.1-15.
36. OE2 will specifically identify which subsection of NDCC 49-22.1-15 it is requesting the adjustment under. OE2 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 49-22.1-15(1), OE2 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 OE2 will comply with the Commission's order, law and rules designating the corridor and route.
38. **ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, AVOIDANCE AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22.1-15(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, OE2 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 OE2 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 OE2 will comply with the Commission's order, law and rules designating the corridor and route.

OE2 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 OE2's certifications, supporting documentation and maps. However, Commission may extend the ten working day provision if OE2, 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 49-22.1-15(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, OE2 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 OE2 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 49-22.1-15(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, OE2 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.
41. 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 31<sup>st</sup> day of July, 2020.

OE2 North LLC

By:   
Russ Kimmitt

Its: EVP and Chief Operating Officer

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