



Public Service Commission State of North Dakota

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November 3, 2021

Jodi Wilson
Corporate Counsel
1200,33 – 7th Ave. S.W.
Calgary, Alberta T2P 2Z1

RE: Request for Jurisdictional Determination
Case No. PU-21-409

Ms. Wilson:

Thank you for your letter on behalf of Steel Reef Burke LLC, requesting a jurisdictional determination regarding the applicability of N.D.C.C. Ch. 49-22.1 (Siting Act) to a proposed pipeline intending to transport natural gas liquids through the North Portal Pipeline. The line was originally used to transport natural gas and has been out of service since 2012.

On November 3, 2021, the Public Service Commission discussed your request at the administrative matters portion of its regular commission meeting and asked me to respond to you. The Commission concluded, based on the information that you provided, the 6,160-foot 8-inch carbon steel pipeline originating in Burke County at Latitude 48.982517N Longitude -102.522814W is a transmission pipeline subject to the jurisdiction of the Siting Act.

As specified in the letter, the project was originally developed under a Federal Energy Regulatory Commission (FERC) Presidential Permit for cross-border gas transportation and has been out of service since 2012. The line is a 6,160-foot 8-inch carbon steel pipeline originating in Burke County at Latitude 48.982517N Longitude -102.522814W that extends to a riser site located in Saskatchewan and will transport natural gas liquids. The company requested a determination that the line not be subject to the Siting Act.

In support of the company's requested determination, the letter references N.D.C.C. § 49-02-01.2(1) and bolds its limits to intrastate lines. However, this section of

statute establishes jurisdiction to set and enforce pipeline safety standards and does not limit the jurisdiction of the commission for purposes of siting.

The purpose of the Siting Act is to:

“[E]nsure the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the welfare of the citizens of the state by prohibiting . . . energy conversion facilities and transmission facilities from being located, constructed, or operated within this state without a . . . certificate of site compatibility or route permit . . .” See N.D.C.C. § 49-22.1-02.

Unless otherwise preempted or subject to an exception, interstate pipelines generally are subject to the jurisdiction of the commission for siting. See N.D.C.C. § 49-22.1-01(7)(a). See also *TransCanada Keystone Pipeline, LP. 30-Inch Crude Oil Pipeline/Cavalier to Sargent Counties, Siting Application*, PU-06-421 (2007); and *Dakota Gasification Company CO2 pipeline, Siting Application*, Case No. PU-07-184 (2007). As you provided in your email, the pipeline is not subject to FERC jurisdiction.

This determination is based upon the assumption that the facilities are definitionally transmission and does not set precedent, or apply to other State or Federal laws, regulations, or orders beyond the Siting Act. If there are changes in fact or operation of the facilities that warrant reconsideration, please contact the Public Service Commission for further guidance. Thank you again for your request. If we can provide further assistance, please do not hesitate to contact us.

Best Regards,

A handwritten signature in black ink, appearing to read 'B. Johnson', with a long horizontal flourish extending to the right.

Brian L. Johnson
Special Assistant Attorney General