

April 19, 2023

Via Electronic Mail & Hand Delivery

Mr. Steve Kahl
Executive Director
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480
ndpsc@nd.gov

In re: ONEOK Rockies Midstream, L.L.C.
Siting Application - Amendment
Cherry Creek Lateral Pipeline Project
McKenzie County
Case No. PU-23-015
Our File No. 072530-000018

Dear Mr. Kahl:

Enclosed for filing in the above-referenced matter, please find five copies of ONEOK Rockies Midstream, L.L.C.'s Proposed Findings of Fact, Conclusions of Law and Order.

Please feel free to contact me if you have any questions. Thank you.

Sincerely,


Casey A. Furey

CAF/lh
enc.

cc: Robert Frank (via email)
Brian Johnson (via email)
Wade Mann (via email)
Michael Dailey (via email)
Rachel Grant (via email)
Kolton Burge (via email)
Maddy Krumwiede (via email)

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Proposed Findings of Fact, Conclusions of Law and Order
ONEOK Rockies Midstream, L.L.C.
Casey Furey, Crowley Fleck, PLLP

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**ONEOK Rockies Midstream, L.L.C.
Amend Certificate No. 203 and Route Permit No. 213
Siting Application - McKenzie County**

Case No. PU-23-015

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

April ____, 2023

Preliminary Statement

On April 30, 2018, in Case No. PU-17-483, the North Dakota Public Service Commission (the “Commission”) issued Findings of Fact, Conclusions of Law and Order issuing Certificate of Corridor Compatibility No. 203 and Route Permit No. 213 to ONEOK Rockies Midstream, L.L.C., (“ONEOK”) for the approximately 45-mile, 12-inch diameter natural gas liquids pipeline and associated facilities in Williams and McKenzie Counties, North Dakota, known as the Cherry Creek Pipeline Project.

On January 3, 2023, ONEOK filed an Application for Amended Corridor Certificate, and Amended Route Permit and subsequently, on January 12, 2023, ONEOK filed an Application for Waiver or Reduction of Procedures and Time Schedules (collectively, the “Application”). The Application sought an Amendment to Certificate of Corridor Compatibility No. 203 and Route Permit No. 213 for the construction of the four-mile Cherry Creek Extension Pipeline Project originating at ONEOK’s existing Lonesome Creek Gas Plant and terminating at the existing Antelope Creek pipeline junction in McKenzie County. The Application also sought a waiver of procedures and time schedules established under North Dakota Century Code sections 49-22.1-05, 49-22.1-06(4), and 49-22.1-07(4), and North Dakota Administrative Code section 69-06-01-02 and Chapter 69-06-06.

On February 8, 2023, the Commission deemed the Application complete and issued a Notice of Opportunity for Hearing (“Notice”) that provided until March 24, 2023, for comments or requests for hearing.

The Notice identified the following issues to be considered in ONEOK’s request for a waiver of procedures and time schedules:

1. Is the proposed facility of such length, design, location, or purpose that it will produce minimal adverse effects such that adherence to the 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 in ONEOK's application for amended certificate of corridor compatibility and amended route permit:

1. Will the location and operation of the proposed facility 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 the proposed facility 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 9, 2023, an informal hearing was held on the Application.

No comments or requests for hearing were docketed in response to the Notice.

Findings of Fact

1. ONEOK intends to construct a four-mile long, 12-inch diameter natural gas liquids pipeline and associated facilities in McKenzie County, North Dakota known as the Cherry Creek Extension Pipeline Project (the "Project"). The purpose of the Project is to add additional natural gas liquid (NGL) takeaway capacity to ONEOK's NGL pipeline system because of continued activity in the Bakken oil fields in North Dakota.

Size, Type and Preferred Location of Facility

2. The Project consists of an extension of the existing Cherry Creek Pipeline and originates at the Lonesome Creek Gas Plant and terminates at a tie-in to Antelope Creek Junction where the Project will have capability to deliver NGL's into the Demicks Lake Pipeline and/or the Garden Creek Pipeline. To accommodate facility interconnections, the Project will include minor facility modifications at ONEOK's Lonesome Creek Gas Plant and Antelope Creek Junction. Approximately 1,500 feet of infacility piping will be installed at the Lonesome Creek Gas Plant to connect the existing Cherry Creek Pipeline to the Project, and a new mainline valve will be installed at the Lonesome Creek Meter Site inside of the Gas Plant. To accommodate the Project's interconnection, a new trap, two leak detection skids, and two control valves will be installed within the footprint of the existing Antelope Creek Junction site.

3. The Project will increase the flow rate of the existing Cherry Creek Pipeline from approximately 50,000 barrels per day (“bpd”) of incremental throughput to up to 70,000 bpd of NGLs. The maximum design capacity of the Project is 160,000 barrels per day.

4. The preferred location for the Project is in Township 149 North, Range 100 West, Sections 5 and 8; Township 150 North, Range 100 West, Sections 31 and 32; and Township 150 North, Range 101 West, Section 36, in McKenzie County, North Dakota.

5. ONEOK has acquired easement agreements for the Project’s construction and operation.

6. The anticipated cost of the Project is approximately \$12 million.

7. The estimated in-service date of the Project is 2023/2024.

Study of Preferred Location

8. The Project is co-located parallel and within 100 feet of ONEOK affiliate ONEOK Bakken Pipeline, L.L.C.’s (ONEOK Bakken) Lonesome Creek Pipeline (Case No. PU-15-137) for the Project’s entire length between Lonesome Creek Gas Plant and Antelope Creek Junction. Areas of the Project extending outside of the existing Lonesome Creek Pipeline corridor are limited to areas of temporary construction workspace necessary for horizontal directional drilling and total approximately one-acre. The Project route consists of an area approximately 40-feet-wide (20 feet on either side) (Route) to allow for minor shifts during construction as needed to address constructability constraints. ONEOK proposes a pipeline corridor for the Project that is generally 170 feet in width (Corridor).

9. A Class I cultural resource literature review and a Class III cultural resource inventory were completed for the Project over a 103.8-acre area of potential effect (APE) that encompasses the 94.8-acre Corridor requested for the Project. A majority of the APE was previously surveyed for cultural resources in 2015 for ONEOK Bakken’s Lonesome Creek Pipeline (PU-15-137). In association with the Lonesome Creek Pipeline, the North Dakota State Historic Preservation Office (NDSHPO) previously issued a “No Significant Sites” affected determination on February 24, 2015. ONEOK conducted an additional Class III field investigation over 10.6 acres within the Project’s APE that had not been previously surveyed. No archaeological resources were identified. ONEOK submitted a report to NDSHPO documenting the full APE which included data from the 2015 survey and areas surveyed during 2022. On November 22, 2022, NDSHPO issued a concurrence that it found ONEOK’s surveying method acceptable and issued a “no significant sites affected” determination on the Project (Docket No. 1, Exhibit D).

10. ONEOK also conducted a natural resource field survey for water resource delineation, threatened/endangered species habitat, a tree and shrub inventory, and a noxious

weeds review for the Project over a 129.05-acre survey area (“Survey Area”). The 94.8-acre Corridor falls entirely within the Survey Area.

11. A water resource delineation was conducted for the Project. Four palustrine emergent wetlands are located within the Corridor, and one is crossed by the Project Route at approximate milepost (MP) 3.5. ONEOK will install the Project via horizontal direction drilling (HDD) at this location to avoid impacts. One additional wetland will be temporarily impacted by the Project workspace during construction. Temporary impacts to this wetland will be conducted in compliance with USACE’s Nationwide Permit 12 and the wetland will be restored to its pre-construction condition. One unnamed intermittent stream will be crossed by the Project at approximate MP 2.5 and ONEOK will install the Project via HDD at this location to avoid impacts to this feature.

12. The Project Corridor primarily consists of agricultural fields and rangeland. ONEOK’s surveys identified three shrubby areas totalling 0.8-acre within the Corridor. ONEOK will follow the Commission’s Tree and Shrub Mitigation Specifications for the Project to minimize impacts.

13. ONEOK’s surveys concluded the presence of noxious weed species was very low across the Survey Area. ONEOK will use best management practices to minimize the potential introduction and/or spread of invasive species and noxious weeds within the Project Corridor during construction.

14. No designated critical habitat for threatened or endangered species is present within the Survey Area.

15. Field surveys of the Survey Area identified five areas of low quality potentially suitable Dakota skipper habitat within a portion of the Corridor. ONEOK will install the Project via HDD under the five areas of potential habitat to prevent impacts. The U.S. Fish and Wildlife Service agreed with ONEOK’s analysis and confirmed there are no known Dakota skipper populations near the Project (Docket No. 1, Exhibit D.24).

16. Field surveys of the Survey Area identified potentially suitable habitat for northern-long eared bat. The Project will be installed via HDD beneath the wooded area at approximate MP 3.5, avoiding impacts to potentially suitable habitat in this area during construction. To the extent tree clearing may be needed to assist with aerial surveillance of the Project during operations, ONEOK will avoid unauthorized take of the species by conducting clearing between November 1 and March 31 while the species is in hibernation and not present on the landscape. If tree clearing cannot be conducted during this time, ONEOK will conduct surveys to determine presence/probable absence per the USFWS guidelines.

17. No eagles, raptors, or nests were observed during the natural resources field surveys of the Survey Area. In November 29, 2022 correspondence from the North Dakota Game and Fish

Department, no known eagle nests were identified within one mile of the Project.

18. ONEOK initiated correspondence seeking comments from the following federal, state, and local agencies and entities regarding the Project:

- a. Federal: (1) Federal Aviation Administration; (2) U.S. Army Corps of Engineers; (3) U.S. Department of Defense; (4) U.S. Department of Agriculture Natural Resources Conservation Service; (5) U.S. Fish and Wildlife Service North Dakota Ecological Services Office; (6) U.S. Forest Service; (7) U.S. Dept. of Agriculture North Dakota Farm Service Agency; (8) Bureau of Land Management; (9) Military Aviation and Installation Assurance Siting Clearinghouse; (10) Minot Air Force Base; and (11) Grand Forks Air Force Base Public Affairs Services.
- b. State: (1) North Dakota Attorney General; (2) North Dakota Department of Career and Technical Education; (3) North Dakota Department of Commerce; (4) North Dakota Department of Environmental Quality; (5) North Dakota Department of Human Services; (6) North Dakota Department of Transportation-Williston District; (7) North Dakota Department of Trust Lands (Surface and Minerals); (8) North Dakota Energy Infrastructure and Impact Office; (9) North Dakota Game and Fish Department; (10) North Dakota Indian Affairs Commission; (11) North Dakota Industrial Commission-Transmission Authority; (12) North Dakota Department of Labor and Human Rights; (13) North Dakota Parks and Recreation Department; (14) North Dakota Department of Water Resources (15) Job Service of North Dakota; (16) North Dakota State Historic Preservation Office; (17) North Dakota Office of the Governor; (18) North Dakota Geologic Survey; (19) North Dakota Aeronautics Commission; (20) North Dakota Department of Agriculture; (21) North Dakota Forest Service; (22) North Dakota Industrial Commission-Pipeline Authority; and (23) North Dakota Department of Health.
- c. Local: (1) McKenzie County Board of Commissioners; (2) McKenzie County Water Resource District; (3) McKenzie County Weed Control Board; and (4) Western Area Water Supply Authority.

Siting Criteria

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

20. ONEOK evaluated the Project with respect to the Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

21. 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.

22. No known Exclusion Areas will be impacted by the Project.

23. 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 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.

24. Areas within five hundred feet of a residence, school, or place of business are an Avoidance Area. This Avoidance Area may be waived by the owner. One residence is located within 500 feet of the Project route. ONEOK obtained a waiver from this landowner and has filed a copy with the Commission. Docket No. 1, Exhibit E.

25. No other known Avoidance Areas will be impacted by the Project.

26. In accordance with the Commission's Selection Criteria, a transmission facility 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.

27. ONEOK has analyzed the impacts of the Project in relation to all relevant Selection Criteria. No significant adverse impact will result from the location, construction, and operation of the Project.

28. In accordance with the Commission's Policy Criteria, the Commission may give preference to an applicant that will maximize the benefits that result from the adoption of certain policies and practices. ONEOK has sited the Project in a manner as to utilize and coordinate with existing facilities and the Project will be located within an existing transmission corridor.

Mitigation to Minimize Impact

29. The Project will be co-located with existing infrastructure.

30. ONEOK has several project control plans in place for the existing Cherry Creek Pipeline that will encompass the Project. To minimize and mitigate any potential impacts to environmental resources during construction and operation, ONEOK will implement these plans.

31. The Project will utilize a supervisory control and data acquisition system to monitor pressure and temperature 24 hours per day, 7 days per week, and 365 days per year by trained controls personnel.

32. ONEOK will conduct inspections, including aerial inspections and inline inspections, in accordance with the requirements of the Department of Transportation Pipeline and Hazardous Materials Safety Administration.

33. ONEOK will employ an environmental inspector during Project construction to monitor construction activities to comply with all applicable permits.

34. ONEOK will participate in the North Dakota One-Call notification system.

35. ONEOK will use best management practices to minimize the potential introduction and/or spread of invasive species and noxious weeds within the Corridor. ONEOK's Weed Management Plan has been submitted to the McKenzie County Weed Control Board and approved (Docket No. 1, Exhibit D.29).

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

Conclusions of Law

1. The Commission has jurisdiction over this proceeding 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(13).

3. The Project is a transmission facility as defined in North Dakota Century Code Section 49-22.1-01(7).

4. The location, 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 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 49-22.1-05 and it is appropriate for

the Commission to waive those certain procedures and time schedules as requested in the Application pursuant to North Dakota Century Code Section 49-22.1-05.

Therefore, the Commission issues its:

Order

The Commission orders:

1. ONEOK’s application for waiver of procedures and time schedules is granted.
2. First Amended Certificate of Corridor Compatibility No. 203 is issued to ONEOK designating a generally 170-foot-wide corridor for the construction, operation, and maintenance of the Project and associated facilities. For purposes of the Certificate, the extended Corridor is identified as the “Project Corridor” and illustrated in the map marked as Exhibit B.2 of ONEOK’s Application (Docket No. 1).
3. First Amended Route Permit No. 213 is issued to ONEOK designating a 40-foot-wide route in McKenzie County, North Dakota, for the construction, operation, and maintenance of the Project. The designated route for this purpose is identified and illustrated in the map marked as Exhibit B.2 of ONEOK’s Application (Docket No. 1).
4. The Certification Relating to Order Provisions – Transmission Facility Siting (“Certification”) executed March 8, 2023, is incorporated by reference and attached to this Order.
5. To the extent there are any conflicts or inconsistencies between ONEOK’s Application and the Certification, the Certification provisions control.
6. ONEOK is required to comply with the 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.
7. ONEOK shall comply with all the rules and regulations of all other agencies having jurisdiction over any phase of the proposed Project.

PUBLIC SERVICE COMMISSION

Julie Fedorchak
Commissioner

Randy Christmann
Chair

Sheri Haugen-Hoffart
Commissioner