

100 FERC ¶ 61, 176
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
And Nora Mead Brownell.

Northwest Pipeline Corporation

Docket No. CP01-361-002

ORDER ADDRESSING REQUESTS FOR REHEARING
AND AMENDING PRIOR ORDER TO MODIFY APPROVED PIPELINE ROUTE

(Issued August 6, 2002)

1. On May 7, 2002, Jerry Lee Dierker Jr. filed a request for rehearing of the Commission's order issued in this proceeding on April 24, 2002.¹ On May 22, 2002, landowners Morris, Wills and Munson, jointly filed an application for rehearing of that order.² The Commission's April 24 order authorized Northwest Pipeline Corporation (Northwest) to construct and operate a lateral pipeline (Grays Harbor Lateral) and related facilities to serve a new electric generating plant being constructed in Thurston and Grays Harbor Counties, Washington, subject to certain environmental conditions.
2. We are denying the requests for rehearing for the reasons discussed herein. However, based on the Morris's comments, we are modifying the approved pipeline route across the Morris property, as described herein.

Discussion

Morris Property

3. Landowners Mr. and Mrs. Morris state that Northwest has failed to establish that it is necessary for the new pipeline to cross the Morris property, which is pasture land that the Morris's plan to subdivide into residential lots. Instead, the Morris's contend

¹Northwest Pipeline Corporation, 99 FERC ¶ 61,083 (2002).

²The persons requesting rehearing are not parties to this proceedings, and their pleadings do not include motions to intervene. While section 19(a) of the Natural Gas Act provides that any aggrieved person may seek timely rehearing of a Commission order, this order addressing the petitioners' arguments does not convey party status.

that the proposed pipeline should use the same route as Northwest's existing pipeline. In a June 12, 2002, supplement, the Morrises filed a supplement to the rehearing request, stating they were not given adequate notice of Northwest's certificate application and that their rehearing request should not be denied for lack of standing.

4. In response to our September 13, 2001 data request, Northwest states that, pursuant to the Commission staff's recommendation, the Deschutes River horizontal directional drill (HDD) entry point was moved southeast to avoid impacts to tree screens at another residence. This modification required the alignment of the HDD to shift and the entry point of the Deschutes River HDD to be relocated on the Morris property. On May 30, 2002, the Commission staff sent a data request to Northwest asking about the feasibility of modifying the route or reducing the right of way and construction right of way on the Morrises' property.

5. The Commission has reviewed the record in this proceeding, including Northwest's response to that data request. We believe the certificated route on the Morris property is appropriate to avoid the impact of tree clearing raised by the adjacent neighbors. However, the Morrises have raised significant concerns that the pipeline will decrease their ability to subdivide their pasture land into residential building lots.

6. As approved in our April 24 order, the location of the entry site for Deschutes River horizontal directional drill (HDD) site would place the pipeline connection to the HDD entry point about 200 feet south of the Morris property line on parcel No. 11719310200. After reconsideration of the Morrises' interests, we find that the pipeline can reasonably be moved closer to the drainage ditch along the edge of the pasture which should largely avoid any limitations that the pipeline's location might place on the Morrises' ability to subdivide their pasture land into residential building lots.

7. Northwest's HDD entry site can remain in the same location or be moved slightly to the northeast. In either event, after the pipeline for the HDD is pulled through, we will require that Northwest connect the pipeline to the HDD pipeline segment as close as practical to Morrises' north property line, just south of the wetland drainage that runs east to west on the Morris property.

8. Based on the filed cross section HDD profile diagram, this route modification will require additional excavation to be done on the Morris property to tie-in the pipeline 25 to 30 feet below ground and northeast of the proposed HDD entry point. However, as discussed above, we believe the route modification is appropriate in order to move the

pipeline closer to the Morris property line to limit any potential of the pipeline to reduce the landowners' ability to subdivide their property. As modified by this order, the approved pipeline route over the Morris property will run west along the south side of the wetland drainage ditch. We will require Northwest construction activities avoid the wetland drainage ditch itself. After the wetland drainage ditch is crossed, the modified pipeline route will continue west to where it meets the previously approved route on the Morris property.³

9. In view of the above modification of the approved route, the Commission will direct Northwest to file a revised alignment diagram that shows the modified route on the Morris property for the review and written approval of the Director of the Office of Energy Projects (OEP) prior to construction. We will require that Northwest consult with the Washington State Historic Preservation Office and the U.S. Fish and Wildlife Service to determine whether additional cultural resources surveys of threatened or endangered species surveys, respectively, are needed in view of this route modification. Northwest will file the results of these consultations and any further surveys that are required and obtain the written approval of the Director of OEP before commencing construction on the modified portion of the route on the Morris property.

Wills Property

10. Landowners Mr. and Mrs. Wills state that Northwest has not shown that a 60-foot easement over the Wills property is necessary. The Wills state that a 40- or 50-foot easement would reduce the number of screen trees that would have to be removed from the property.

11. The Wills property is located on the portion of the approved route that uses Northwest's existing right of way immediately adjacent to Northwest's existing Olympia-to-Sheldon line. The Commission has reviewed the record in this proceeding regarding the affected areas along that portion of the route. In this regard, we note that Northwest has taken several steps to reduce the necessary construction right of way in areas east and west of this parcel: (a) it has eliminated a temporary extra work area; (b) it has narrowed the north side of the construction right of way immediately west of Springer Hill Lane

³The Commission notes that Environmental Condition 5 in Appendix A to the April 24 order allows Northwest to make minor field realignments at landowners' requests so long as such changes do not affect other landowners or sensitive environmental areas.

SE for over 500 feet to avoid disturbance of tree screens; (c) it has shifted the construction right of way 20 feet to the south between Springer Hill Lane SE and Wetland 19 to utilize more of the existing maintained easement; (d) it will work over the existing pipeline route; and (e) it has reduced the construction right of way at both Wetland 20 and 21 and immediately east of the Wills property. Based on our review, we conclude that Northwest's position that further reductions in the width of the construction right of way in this area are not feasible is supported by the record presented in this proceeding.

Munson Property

12. Landowners Mr. and Mrs. Munson state that the approved route requiring an easement across the Munson property will require the destruction of numerous landscape trees and a fence, and will prevent the Munsons from using a turn-around area between their barn and the road. The Munsons state that a narrower easement would prevent this damage.

13. During an August 2001 field trip, Northwest and Commission staff identified a need to protect tree screens to minimize residential impacts in this area. In response to a September 13, 2001 data request, Northwest proposed to eliminate a temporary extra work area located on the Munson property. Northwest's June 6, 2002 response to a further data request indicates that the Munson property is at the northern end of Wetland 18. The alignment of the approved route over the Munson property is located in Northwest's existing right of way. Northwest states it is not feasible to modify this alignment without increasing other landowner impacts. Since the pipeline trench does not cross the turn-around area, and the construction right of way would impinge only minimally, if at all, upon it, the access concerns raised by Munson will exist only during construction and should not affect the long-term operation of their horse ranch.

14. Based on our review of the record in this proceeding, we conclude that Northwest has taken adequate actions to minimize adverse impacts on the Munson property, and that the record supports Northwest's position that reduction of the proposed ROW is not feasible.

Dierker's Request for Rehearing

15. Mr. Dierker contends that Northwest's Grays Harbor pipeline project, the existing Quality Rock Products gravel plant, the inactive Cascade Pole recycling plant, and the Satsop power plant being constructed in Thurston County are "connected actions" as

contemplated by the National Environmental Policy Act (NEPA), and that the Commission failed to properly address impacts to the biological diversity of the affected area. Mr. Dierker also requests that he be provided with copies of all public documents related to Northwest's project.

16. Mr. Dierker objects that the Commission did not prepare a joint document with the State of Washington, which has its own State Environmental Policy Act. Neither NEPA, nor the Council on Environmental Quality's (CEQ) regulations for implementing the procedural provisions of NEPA, however, require environmental documents to be prepared jointly with state agencies. The Commission staff conducted scoping meetings on the project and invited the participation of affected Federal, state, and local agencies by issuing a Notice of Intent (NOI) to prepare an environmental assessment (EA) for Northwest's Grays Harbor project and request for comments on environmental issues. In response to our NOI, we received comments from various state and Federal agencies. We received no comments from the State of Washington regarding any interest to prepare a joint environmental document for the project. Further, the CEQ regulations state that scoping should identify and eliminate from detailed study the issues that have been covered by prior environmental review.

17. As explained in the EA, the Satsop power plant and about 77 percent of Northwest's pipeline route had previously undergone environmental review in an Environmental Impact Statement prepared by the Bonneville Power Administration and the Washington State Energy Facility Site Evaluation Council. We found in our April 24 order, the connection between Northwest's proposed facilities and the Satsop power plant is not sufficient for them to be considered "related" facilities, as contemplated by the Commission's policy regarding the scope of review of non-jurisdictional facilities.

18. We further find that the planned Satsop power plant, the Quality Rock Products gravel plant and the Cascade Pole recycling plant are not "connected actions" that must be studied by the Commission as part of the environmental review of Northwest's Grays Harbor pipeline project. No gas will be delivered to either of these plants from the pipeline project.

19. Although Mr. Dierker alleges that construction of the pipeline would cause hazardous waste landfill on the property of the 54-acre gravel plant to have adverse environmental impacts on the Black River National Wildlife Refuge, neither of these facilities was identified as hazardous waste sites by any local, state, or federal agency or by anyone else in response to the Commission's July 26, 2001 notice of intent to

prepare an environmental assessment or and in response to the Commission's request for comments on the environmental assessment issued on March 4, 2002.

20. In order to prepare for the possibility that contamination may exist, the OEP Director's June 11, 2002 letter order authorizing Northwest to commence construction included a requirement that Northwest consult with Thurston County, Washington, and the appropriate Washington Department of Natural Resources hazardous waste agency. The Director's June 11 letter order also required Northwest to prepare a plan to follow in the event that any hazardous wastes are discovered during construction through or adjacent to the Quality Rock Products property approximate mileposts 18.1 to 18.

21. Mr. Dierker states the pipeline would impact the biological diversity of this area and diminish resident populations of various species. Although our EA did not specifically address the issue of biological diversity, it did address the effects on both vegetation and wildlife and found the impact to be insignificant. Mr. Dierker does not provide sufficient evidence to cause us to change this conclusion.

22. Impacts from construction are temporary, except for the permanently maintained right of way required for the new pipeline. The EA identifies the acreage of the long term impact resulting from the conversion of forested vegetation to herbaceous and shrub cover along the new permanent right of way. In addition, the biological assessment evaluates impacts to the threatened and endangered species referenced by Mr. Dierker.

23. Further, on May 24, 2002, the U.S. Fish and Wildlife Service (FWS) prepared a Biological Opinion on the project which addresses impacts on federally listed and threatened and endangered species and designated critical habitat under the Endangered Species Act. FWS's Biological Opinion also addresses direct, indirect, and cumulative effects the project would have on wildlife and critical habitat. The FWS found that the project is not likely to result in the destruction or adverse modification of critical habitat and provides conservation recommendations.

24. In his pleading, Mr. Dierker states that he requests all "public documents" relating to this proceeding under, *inter alia*, the Freedom of Information Act (FOIA). The FOIA pertains to requests for non-public documents. Requests for non-public documents must follow the procedures set forth in the Commission's regulations regarding requests under

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FOIA.⁴ Mr. Dierker included his request among others in a pleading filed in a specific case, which does not satisfy the Commission's FOIA regulations. Those regulations require that a requester direct his request to the Office of External Affairs, and clearly mark the request as a Freedom of Information Act request.

25. However, public documents are available in the Commission's Public Reference Room at 888 First Street NE, Washington, DC. The Commission also has several online systems that provide access to documents the Commission receives and documents the Commission issues, including the Commission Issuance Posting System (CIPS), the Records Information Management System (RIMS), Docket Sheets, and Service Lists. Mr. Dierker may gain access to the public documents related to Northwest's proposed project in the Public Reference Room or through the online systems at the Commission's website at www.ferc.fed.us/documents/documents.htm.

The Commission orders:

(A) The Commission's order issued on April 24, 2002, in Docket No. CP01-361-001 and Northwest's certificate authority are amended to modify the approved pipeline route on the Morris property, as described herein.

(B) Northwest shall consult with Thurston County and the appropriate Washington Department of Natural Resources hazardous waste agency and prepare a plan to follow in the event that any hazardous wastes are discovered during construction through or adjacent to the Quality Rock Products property.

(C) Northwest shall file with the Secretary a revised alignment diagram (drawing number 2495.29-010, sheet 10 of 41) that shows the modified route on the Morris' property for the review and written approval of the Director of the Office of Energy Projects (OEP) **prior to construction**; and

(D) Northwest shall consult with the Washington State Historic Preservation Office and the U.S. Fish and Wildlife Service to determine whether additional cultural resources surveys of threatened or endangered species surveys, respectively, are needed for this construction modification, and file the results of these consultations and surveys, if needed with the Secretary, for the review and written approval of the Director of OEP, **prior to construction**.

⁴See 18 C.F.R. § 388.108.

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(E) The requests for rehearing are denied.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.