

174 FERC ¶ 61,220
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
Neil Chatterjee, James P. Danly,
Allison Clements, and Mark C. Christie.

Midship Pipeline Company, LLC

Docket Nos. CP17-458-000
CP19-17-000

ORDER ON ENVIRONMENTAL COMPLIANCE

(Issued March 18, 2021)

1. Several landowners impacted by the construction of the Midcontinent Supply Header Interstate Pipeline Project (Midship Project) have asked the Commission to convene a settlement hearing before an administrative law judge or the Commission's Dispute Resolution Service to help resolve a number of outstanding environmental compliance and restoration concerns.¹ This order directs Midship Pipeline Company, LLC (Midship) to take immediate action to remedy unresolved restoration issues on certain landowner tracts, consistent with our jurisdiction, and strongly recommends that Midship engage the Commission's Dispute Resolution Service to assist in negotiations between Midship and certain landowners.

I. Background

2. On August 13, 2018, the Commission issued Midship a certificate of public convenience and necessity authorizing the construction and operation of the Midship Project (Certificate Order).² The Midship Project is an interstate natural gas

¹ See, e.g., Law Offices of Carolyn Elefant, PLLC's December 3, 2020 Notice of Intent to Not Seek Judicial Review, Update on Impacted Properties and Request for Conference to Facilitate Resolution; Central Land Consulting, LLC's December 23, 2020 Status of Restoration on the Midship Project Letter; Law Offices of Carolyn Elefant, PLLC's March 8, 2021 Request for Dispute Resolution or Settlement Judge to Resolve Outstanding Compliance Issues.

² *Midship Pipeline Co., LLC*, 164 FERC ¶ 61,103 (2018) (Certificate Order). On January 25, 2019, in Docket No. CP19-17-000, Commission staff approved Midship's uncontested amendment request for an approximate 0.8-mile reroute from milepost 195.2 to milepost 195.9 in Bryan County, Oklahoma to avoid a sensitive environmental feature

pipeline system in Oklahoma, consisting of approximately 200 miles of mainline pipeline, including three mainline compressor stations, metering and regulation stations, and appurtenant facilities, and two lateral pipelines totaling approximately 34 miles (the Chisholm and Velma Laterals). After meeting the requirements of the Certificate Order and receiving Commission approval, Midship commenced construction of the project in early 2019.³

3. On July 3, 2019, due to concerns regarding Midship's environmental compliance, Commission staff issued a stop work order, halting construction on segments of the project's North Spread where clearing and grading had not yet occurred.⁴ Commission staff directed Midship to provide evidence of corrective action for all then-pending unresolved instances of non-compliance and to file a detailed plan for restoring topsoil to pre-construction levels and grade at numerous locations on the North Spread.⁵

4. Construction was stopped for nearly a month as Midship worked to resolve the environmental compliance issues on the North Spread. On July 31, 2019, after determining that Midship had satisfied the directives set forth in the stop work order,

and mitigate stakeholder concerns. *Midship Pipeline Co., LLC*, 166 FERC ¶ 62,039 (2019).

³ See *Midship Pipeline Co., LLC*, Partial Notice to Proceed with Construction, Docket No. CP17-458-000 (Dec. 20, 2018) (delegated order) (authorizing Midship to commence construction of mainline mileposts 0.0 to 186.3, the Velma Lateral, and associated aboveground facilities); *Midship Pipeline Co., LLC*, Notice to Proceed with Construction, Docket No. CP17-458-000 (Jan. 30, 2019) (delegated order) (authorizing Midship to commence construction of the Chisolm Lateral); and *Midship Pipeline Co., LLC*, Notice to Proceed with Construction, Docket Nos. CP17-458-000 and CP19-17-000 (Feb. 27, 2019) (delegated order) (authorizing Midship to commence construction of remaining mainline facilities, including mainline mileposts 186.3 to 199.7).

⁴ *Midship Pipeline Co., LLC*, North Spread Non-Compliances, Docket No. CP17-458-000 (July 3, 2019) (delegated order). In total, construction was halted on approximately 67 miles of the pipeline right-of-way (between mainline mileposts 66 and 119 and along the entirety of the 13.8-mile Velma Lateral).

⁵ *Id.* at 2. The Director of the Office of Energy Projects required these actions pursuant to Environmental Condition 2 of the Certificate Order, which allows the Director to take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project.

Commission staff authorized Midship to resume clearing and grading activities along the halted segments of the North Spread.⁶

5. Midship completed installation of the project facilities in March 2020. In April 2020, Commission staff authorized Midship to place the project facilities into service, based on staff's determination that restoration was proceeding satisfactorily.⁷ Midship's restoration of the right-of-way is ongoing.⁸

6. On December 22, 2020, Midship de-mobilized its restoration crews from the project right-of-way due to winter conditions.⁹ Midship stated that its crews would re-mobilize in Spring 2021 to resolve any remaining or outstanding restoration issues.

II. Discussion

7. Throughout the restoration process, Commission staff and its environmental compliance monitor have communicated frequently with Midship and its environmental inspection team regarding various issues along the project right-of-way, including issues raised by landowners and the Commission's inspection team. Commission staff's targeted inspections documented that Midship had resolved most of the landowner restoration issues prior to Midship de-mobilizing its restoration contractors in December 2020, as documented in Midship's status reports and the Commission's inspection reports. However, as identified through Commission staff's compliance monitor's inspections and recent filings from landowners, there continue to be outstanding

⁶ *Midship Pipeline Co., LLC*, Authorization to Resume Clearing and Grading Activities, Docket No. CP17-458-000 (July 31, 2019) (delegated order).

⁷ *Midship Pipeline Co., LLC*, Authorization to Commence Service, Docket No. CP17-458-000 (Apr. 16, 2020) (delegated order).

⁸ Midship's restoration activities include removing construction debris, replacing stockpiled topsoil along the construction right-of-way, seeding and mulching disturbed areas, and restoring pre-construction contours and elevations. Midship is required to file weekly status reports until all restoration activities are complete. Certificate Order, 164 FERC ¶ 61,103, Appendix A at Condition 8. Once restoration is complete, Midship will be required to submit quarterly status reports for at least two years following construction, documenting any restoration issues or landowner concerns along the entire project and how it is addressing those issues. *Upland Erosion Control, Revegetation, and Maintenance Plan*, section VII.B.2 (FERC Plan).

⁹ Midship's January 12, 2021 Weekly Report at 2. During winter conditions, most soils are frozen, which significantly impedes restoration activities such as removal of construction debris, restoration of contours, and decompaction.

restoration concerns and deficiencies.¹⁰ Midship has failed to sufficiently resolve several specific restoration issues on agricultural lands throughout the project area. Some of the restoration issues that Midship has attempted to correct have reoccurred or remain unresolved (e.g., construction debris, unrestored contours, and ponding areas) and are adversely impacting landowner agricultural operations.

8. Specifically, there are numerous parcels along the Chisholm Lateral, the Velma Lateral, the mainline North Spread, and, to a lesser extent, the mainline South Spread that have outstanding restoration issues that we believe require immediate remediation to ensure compliance with the Commission's Certificate Order. Although Midship has acknowledged Commission staff's field observations on many parcels and has committed to completing the remediation in Spring 2021 or as requested by the landowner, there are additional unresolved issues first identified in December 2020 that also require Midship's immediate attention. Because winter conditions in Oklahoma will soon cease to be a limiting factor on Midship's ability to proceed with the remaining restoration measures along the right-of-way, this order requires Midship to prepare plans for immediate resolution of all outstanding issues.

9. Appendix A of this order identifies the landowner tracts with outstanding restoration issues that require Midship's immediate attention.¹¹ The outstanding issues are primarily associated with ponding due to trench subsidence or insufficient re-established contours of the right-of-way, but also include erosion, compaction, construction debris on-site, topsoil loss, and lack of revegetation.

10. Within 10 days of this order, Midship is required to file a schedule to promptly resolve the outstanding restoration issues identified in Appendix A. In consultation with the landowners, Midship must complete the required restoration as soon as possible and

¹⁰ Commission staff's compliance monitor has documented these outstanding restoration issues in inspection reports filed to the project docket. *See, e.g.*, Commission staff's February 4, 2021 Environmental Compliance Monitoring Report (covering Jan. 22-28, 2021 reporting period); Commission staff's January 27, 2021 Environmental Compliance Monitoring Report (covering Dec. 20-26, 2020 reporting period).

¹¹ We note that although Midship recently provided the Commission with an update on its restoration progress and responded to landowner concerns regarding some of the landowner tracts identified in the appendices to this order, restoration on these properties is not yet complete. *See* Midship's March 1, 2021 Filing. Since Midship's March 1 filing, a substantial number of landowners have filed in the project docket updating the Commission on the current condition of their respective properties and providing photo documentation of issues they attribute to work performed by Midship's restoration crews. *See, e.g.*, Sandy Creek Farms' March 10, 2021 filings.

no later than 60 days from the date of this order unless Midship provides documentation of a landowner request for delayed restoration and specifies the alternative timeframe in which Midship will conduct the required restoration. Midship's weekly reports must provide a detailed description of any outstanding parcel-specific issues, specify how Midship will correct those issues, and identify expected completion dates.¹² In its reports, Midship must also identify any new restoration concerns or issues that are discovered, even if the newly discovered issues are unrelated to those identified in Appendix A.

11. Appendix B of this order identifies landowner tracts with issues that landowners have brought to the Commission's attention, but which, due to the nature of the concerns, our compliance monitoring program has been unable to confirm in the field. The Commission strongly recommends that Midship engage the Commission's Dispute Resolution Service to assist in negotiations between Midship and certain landowners.¹³

12. The Commission expects Midship to address the restoration issues identified in this order in an expeditious manner. Failure to do so could mean that Midship is out of compliance with its Certificate Order. Outstanding compliance issues may be referred to

¹² The Commission expects the expected completion dates reflected in Midship's weekly reports to be consistent with the schedule Midship is required to submit within 10 days of this order. Midship must justify any expected completion date that departs from the schedule required by this order.

¹³ Should dispute resolution prove unsuccessful, landowners should be aware that the Commission does not have the authority to direct the payment of compensation. *See S.C. Pub. Serv. Auth. v. FERC*, 850 F.2d 788, 789 (D.C. Cir. 1988) ("licensing authority granted to the Commission under the [Federal Power Act] does not include the power to displace existing state tort law with its own rules of liability for damages caused by licensees."). The courts have held that the Natural Gas Act and Federal Power Act should be interpreted consistently. *See Env't Action v. FERC*, 996 F.2d 401, 410 (D.C. Cir. 1993); *Tenn. Gas Pipeline Co. v. FERC*, 860 F.2d 446, 454 (D.C. Cir. 1988); *see also Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 577 n.7 (1981).

the Commission's Office of Enforcement for further investigation.¹⁴ We also remind Midship that it must continue to comply with the environmental conditions set forth in the Certificate Order, including all right-of-way restoration requirements.

The Commission orders:

Within 10 days of the date of this order, Midship shall file with the Secretary a schedule for resolving the outstanding restoration issues identified in Appendix A of this order. Midship shall complete the required restoration as soon as possible and no later than 60 days from the date of this order unless Midship provides documentation of a landowner request for delayed restoration and specifies the alternative timeframe in which Midship will conduct the required restoration. Midship shall complete the required restoration in consultation with the appropriate landowner and, in its weekly reports, Midship shall provide a detailed description of the outstanding parcel-specific issues, specify how Midship will correct those issues, and identify expected completion dates.

By the Commission. Chairman Glick is concurring with a separate statement attached

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁴ See *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156, at P 6 (2008) (Revised Policy Statement on Enforcement) (“The Commission has a number of enforcement tools at its disposal in overseeing those areas of the electric, natural gas, hydroelectric, and oil pipeline industries within our jurisdiction. These tools include imposition of compliance plans; disgorgement of unjust profits; the ability to condition, suspend, or revoke market-based rate authority, certificate authority, or blanket certificate authority; the ability to refer matters to the Department of Justice for criminal prosecution; and civil penalty authority.”).

Appendix A

Tracts with Outstanding Restoration/Repair Requirements

Pipeline Facility	Milepost	Tract	FERC Identified Deficiencies (as of February 24, 2021)
Chisholm Lateral	7.3	CL-KI-0039.000	Restore preconstruction contours. Correct erosion on east bank of Waterbody SKI-025. ¹ Remove rock debris near the County Road 2880 crossing.
Chisholm Lateral	7.8	CL-KI-0040.000	Restore preconstruction contours. Revegetate west bank of Waterbody SKI-026. Remove rock debris near the County Road 2870 crossing.
Chisholm Lateral	13.1	CL-KI-0056.000	Restore preconstruction contours at terraces retaining water and correct trench subsidence. Remove rock debris near the County Road 2820 crossing.
Chisholm Lateral	13.6	CL-KI-0058.000	Restore preconstruction contours.
Chisholm Lateral	16.0	CL-KI-0065.000, CL-KI-0067.000	Restore preconstruction contours, as waterway is eroding. ¹
Chisholm Lateral	18.3	CL-KI-0076.000	Restore preconstruction contours at the terraces retaining stormwater. Restore slope breaker at waterbody SKI-101, as it is retaining stormwater. Repair subsidence near milepost (MP) 18.5.
Chisholm Lateral	19.0	CL-KI-0077.000	Restore preconstruction contours, correct terrace ponding.
Mainline	1.0	CN-0005.000, CN-0006.000	Restore preconstruction contours, correct ponding areas.
Mainline	2.8	CN-0014.000	Correct possible terrace ponding. Tract should be monitored to verify if drainage is adequate.

Pipeline Facility	Milepost	Tract	FERC Identified Deficiencies (as of February 24, 2021)
Mainline	3.4	CN-0015.000, CN-0013.000	Restore preconstruction contours, correct terrace grade. Tract should be monitored to verify if drainage is adequate.
Mainline	7.0	CN-0030.000, CN-0032.000, CN-0034.000	Restore preconstruction contours, correct ponding areas.
Mainline	15.0	CN-0066.000	Re-seed with native grass mixture.
Mainline	27.3	CN-107.010	Correct ponding and trenchline subsidence. Remove construction debris.
Mainline	27.7	CN-107.020	Remove construction debris in the cultivated agricultural field. Debris was previously removed, however due to additional cultivation and winter wheat sowing, materials were exposed.
Mainline	32.0	GR-0119.010	Correct ponding, subsidence, and revegetate.
Mainline	34.25	GR-132.010	Correct ponding. At stream SGR-108, maintain erosion control devices.
Mainline	35.0	GR-0133.010	Remove construction debris. Correct ponding, restore preconstruction contours.
Mainline	36.0	GR-0137.010	Repair terrace ponding. Correct trenchline subsidence. Correct erosion on the north side of the mainline valve site. Revegetation varies from 10 percent up to 100 percent cover, conduct seed bed preparation and reseed.

Pipeline Facility	Milepost	Tract	FERC Identified Deficiencies (as of February 24, 2021)
Mainline	39.0	GR-0147.010	Varying degrees of revegetation were observed in the rangeland area, from bare areas up to 100 percent revegetation. Conduct seed bed preparation and reseed. Thistle was observed, potential noxious weed requiring implementation of Midship's noxious weed mitigation. Correct ponding, restore preconstruction contours, and correct subsidence.
Mainline	52.5	GR-0196.010	Correct erosion and terrace ponding.
Mainline	65.2	GR-0310.000	Correct ponding still evident through right-of-way decompaction ripping. Follow-up graded areas need seeding.
Mainline	71.0	GR-0338.000	Correct ponding, restore preconstruction contours. Remove known construction debris on the right-of-way. Correct erosion at Sandy Creek. ¹
Mainline	75.0	GR-0353.000	Determine if any remaining construction debris is buried on the right-of-way and remove any material identified. Correct stormwater ponding at an agricultural terrace and several other areas. Correct erosion within a cultivated field. Prepare seed bed and reseed.
Mainline	88.0	GA-0417.010	Correct slope breaker outlet erosion; correct terrace ponding. ¹
Mainline	95.6	GA-0444.000, GA-0445.000, GA-0448.000	Restore preconstruction contours, correct ponding, remove construction debris, revegetate previously stabilized erosion.
Mainline	119.5	CR-0610.000	Correct erosion, revegetate.

Pipeline Facility	Milepost	Tract	FERC Identified Deficiencies (as of February 24, 2021)
Mainline	120.3	CR-0612.000	0 to 10 percent vegetation present. Prepare seed bed and reseed.
Mainline	121.8	CR-0617.000	Conduct final stabilization and revegetation at Waterbody SCR-108. ¹
Mainline	122.3	CR-0618.000	Revegetate and correct erosion.
Mainline	123.5	CR-0626.000	Correct erosion and prepare a seed bed and reseed a 200-foot-long bare soil area. ¹
Mainline	156.8	JO-0803.000	Repair slope breakers allowing erosion and stormwater discharge to Little Sandy Creek (SJO-019). ¹
Mainline	156.8	JO-0804.000	Repair slope breakers allowing erosion and stormwater discharge to Little Sandy Creek (SJO-019). ¹
Mainline	158.0	JO-0808.000 JO-0810.000	Correct upland erosion, repair erosion controls adjacent to waterbody SJO-035A and wetland WJO-010. Stabilize eroded waterbody banks at SJO-034/WJO-010. ¹
Mainline	158.6	JO-0812.000	Correct trench line subsidence.
Mainline	159.1	JO-0820.000	Correct upland erosion and trenchline subsidence.
Mainline	160.9	JO-0824.000, JO-0825.000	Correct trenchline subsidence.
Mainline	161.2	JO-0829.000	Correct upland erosion and waterbody SJO-077 bank subsidence. ¹
Mainline	161.5	JO-0830.000	Conduct final stabilization at wetland WJO-007. ¹
Mainline	175.2	BR-0888.000	Restore preconstruction contours.

Pipeline Facility	Milepost	Tract	FERC Identified Deficiencies (as of February 24, 2021)
Mainline	179.8	BR-0907.000, BR-0909.000	Correct trenchline subsidence. Thistle was observed, potential noxious weed requiring implementation of Midship's noxious weed mitigation.
Mainline	194.5	BR-0990.000, BR-0992.000	Restore preconstruction contours to mitigate ponding.
Mainline	198.5	Bennington Compressor Station	Maintain erosion control devices; correct spoil pile erosion.
Velma Lateral	7.6	VL-ST-0024.000	Install erosion controls at slope breaker and stabilize Waterbody SCR-231 banks. ¹
Velma Lateral	8.3	VL-ST-0026.000	Correct erosion leading off right-of-way.
Velma Lateral	13.3	VL-GA- 0045.000	Stabilize waterbodies SCR-208B and 208C banks. ¹

¹ FERC staff, through its inspection reports, previously directed Midship to take immediate corrective action on this issue.

Appendix B

Landowner Concerns¹

Pipeline Facility	Milepost	Tract	Landowner Concerns
Mainline	28.1	CN-107.030	Landowner claims dewatering killed trees (about 730 feet east of a horizontal directional drill exit workspace) and allowed beaver access to impact an off-right-of-way pond.
Mainline	34.25 36.0	GR-132.010, GR-0137.010	Landowner claims drain tiles were not restored appropriately. Landowner wants compensation for relocating 840 head of cattle; crop damage; power and waterline for Center Pivot northeast of Buggy Creek Crossing. Midship states that an offer has been made to landowner, landowner states that no offer was received.
Mainline	35.0 35.3	GR-0133.010, GR-0134.010	Landowner claims the drain tile is not functioning off right-of-way. Further, there is a discrepancy between the landowner and Midship on other drain tile repairs, ponding terraces, compaction, and contours. Commission staff's compliance monitor did not identify any needed corrective actions beyond the required drain tile repairs. Midship states that an offer has been made to the landowner, landowner states that no offer was received.
Mainline	65.2	GR-0310.000	Landowner wants compensation for moving 400 head of cattle, 90 bulls, and 160 calves; 4 dead cows; vet bills; and fencing costs. Landowner claims that off-right-of-way impacts on the banks of the Washita River occurred (approximately 900 feet downstream of the Project crossing).
Mainline	71.0	GR-0336.000, GR-0338.000, GR-0340.000	Landowner wants compensation for loss of trees, water table alteration, and electric line repair.

Mainline	75.0	GR-0353.000, GR-0355.000	Landowner wants off-right-of-way reservoir dredged to remove sediment, and timber mat off right-of-way in waterbody SGR-018 retrieved. Midship states that an offer has been made to landowner, landowner states that no offer received.
Mainline	195.8	BR-0994.000, BR-0995.000, BR-0996.000	Landowner claims erosion causing discharge into Sulphur Creek. Landowner claims that the right-of-way contains vegetation species not in its landowner approved seed mix.
<p>¹ This list, which includes issues raised in the record as of March 11, 2021, is not exhaustive nor is it intended to foreclose the addition of subsequently raised landowner concerns.</p>			

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midship Pipeline Company, LLC

Docket No. CP17-458-000

(Issued March 18, 2021)

GLICK, Chairman, *concurring*:

1. I concur in today's order requiring Midship Pipeline Company, LLC (Midship) to expeditiously resolve the outstanding restoration issues along the pipeline route. I write separately to express my deep frustration with the disregard that Midship has shown for landowners and communities along the route of the Midcontinent Supply Header Interstate Pipeline Project (Project). As explained in today's order, Midship has failed to adequately restore nearly 50 parcels of land, notwithstanding extensive efforts made to remedy the situation by Commission staff and the affected landowners. These ongoing restoration issues and landowner disputes—identified in Appendices A and B to this order—require Midship's immediate attention and remediation. It is past time for Midship to promptly resolve these issues and allow the landowners to move on with their lives.

2. On a broader note, we cannot forget that while a certificate of public convenience and necessity provides the holder with significant rights and privileges, it also imposes on the holder concomitant responsibilities, including the responsibility to satisfy every condition in the certificate. There must be consequences when the certificate holder fails to adequately fulfill those responsibilities. For instance, we can refer the matter to the Office of Enforcement for civil penalties.¹ We can also consider whether to revoke the certificate of public convenience and necessity itself.² In my opinion, both options

¹ See *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156, at P 6 (2008) (Revised Policy Statement on Enforcement) (“The Commission has a number of enforcement tools at its disposal in overseeing those areas of the electric, natural gas, hydroelectric, and oil pipeline industries within our jurisdiction. These tools include imposition of compliance plans; disgorgement of unjust profits; the ability to condition, suspend, or revoke market-based rate authority, certificate authority, or blanket certificate authority; the ability to refer matters to the Department of Justice for criminal prosecution; and civil penalty authority.”).

² See *Trunkline LNG Co.*, 22 FERC ¶ 61,245, at 61,444 (1983) (“[T]here can be no question that the Commission has the authority to revoke a certificate for violation of its terms or where the parties refuse to uphold the terms of the original contract on which the

should be on the table if Midship fails to promptly resolve its outstanding obligations to landowners.

For these reasons, I respectfully concur.

Richard Glick
Chairman

certificate was predicated.”).