



Staff Response

In the matter of the application of ZFS ITHACA, LLC, for authority to construct and operate a pipeline in Wheeler, North Star, Lafayette, and Emerson Townships of Gratiot County, Michigan.

September 30, 2019

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ZFS Ithaca, LLC 1929 PA 9, MCL 483.109, Application Background

On June 13, 2018, ZFS Ithaca, LLC (ZFS) filed an application, with supporting exhibits, pursuant to Section 9 of 1929 PA 9 (Act 9), MCL 483.109, requesting a Certificate of Public Convenience and Necessity (CPCN) to construct and operate a proposed 6.625-inch outside diameter, 0.280-inch wall steel natural gas pipeline coated with fusion-bonded epoxy, approximately 93,000 feet in total length (the West Yankee Pipeline). On July 12, 2018, ZFS amended its application. On January 10, 2019, the parties to the case submitted a settlement agreement resolving all issues in the case. On February 7, 2019, the Commission issued an order that approved the settlement agreement (February 7 order), including the map, route, and type of construction that the parties agreed to in the settlement agreement while allowing for “minor deviations.” In addition, the Commission ordered ZFS not to begin construction “until all necessary permits have been acquired.” February 7 order, p. 3.

Commission Staff's Field Inspection and Concerns

On May 23, 2019, the Commission Staff (Staff) discovered during a field inspection that the actual route of the West Yankee Pipeline differed drastically from the agreed-upon proposed route set forth in the settlement agreement and attachments of Case No. U-20198. Staff observed that eight miles of the proposed 17.6 miles of pipeline were rerouted, in some instances, more than a mile away. Staff identified a concern that ZFS may not have properly noticed landowners along this "new" route as part of its application process. Staff also had concerns that rerouting eight miles of pipeline is not a "minor deviation" of the route that the Commission approved in the February 7 order. Staff submitted to the Commission a document titled "West Yankee Alignment as seen in field.png" prepared by Mr. Rob Gregg, Staff Gas Safety Engineer, that depicted the proposed route with blue pins and the actual route of construction with a yellow line. Staff also submitted Exhibit S-4 from Staff's testimony in this instant case which depicted Staff's proposed alternate route, as well as a picture of the construction drawing viewed during the field inspection for its review.

Additionally, Staff asserts that ZFS failed to obtain all the necessary permits from the Michigan Department of Environment, Great Lakes, and Energy (EGLE) prior to constructing the West Yankee Pipeline.

Order to Show Cause and Opportunity to Show Compliance

Given the seriousness of these allegations, the Commission found, through its August 8, 2019 order (August 8 order), that ZFS was ordered to show cause why it should not be found to have acquired its CPCN to construct and operate the West Yankee Pipeline illegally. The Commission further found that ZFS was ordered to show cause why it should not be found to have violated the Commission's February 7 order and why it should not be assessed a penalty pursuant to MCL 483.115.

The Commission, therefore, found that ZFS was ordered to file a response to the August 8 order by 5:00 p.m. Eastern Time (ET) on August 22, 2019, to show cause why the authority granted to it on February 7, 2019, to construct and operate the West Yankee Pipeline in Gratiot County under Act 9, should not be revoked; why it should not be found to have violated the Commission's February 7 order approving the settlement agreement; and why a penalty should not be assessed under MCL 483.115. Furthermore, the Commission ordered that an informal conference between the parties to the case be scheduled in this matter for 10:00 a.m. ET on September 4, 2019, (September 4 Conference) for the purpose of allowing ZFS an opportunity to demonstrate compliance with all requirements of Act 9 and the Commission's February 7 order in this proceeding to Staff.

ZFS Ithaca, LLC's Response to Show Cause Order

On August 22, 2019, ZFS submitted its response to the Commission's August 8 order. In its response, ZFS explains why the Commission should not revoke the CPCN granted by its February 7 order under Act 9 to construct and operate the West Yankee Pipeline.

The following sections summarize the statements that ZFS submitted to show cause why the Act 9 CPCN granted by the Commission's February 7 order was not obtained illegally; why the Commission should not revoke the Act 9 CPCN; why it should not be found to have violated the Commission's February 7 order; and why it should not be assessed a penalty pursuant to MCL 483.115.

Deviations to the Pipeline Route Were Made with the Public Interest in Mind

ZFS asserts that "modifications that now cause the Commission concern were made to serve the same interests that the Commission serves." August 22, 2019 Response to Show Cause Order, p. 6, paragraph 14. ZFS continues that the most significant modifications to the pipeline route were in response to reducing the total number of homeowners that would be affected by the approved route, to avoid traffic disruption that would have occurred on Washington Road due to work crews working in a portion of the roadway, and to avoid wearing of the surface of Barry Road.

Furthermore, ZFS expressed that modifications to the approved pipeline route were made at the request of county officials so that hard-surfaced roads may be avoided. Additional route deviations were made in order to avoid existing utilities which were located along the Commission-approved route.

ZFS summarized its reasons for deviating from the approved route by stating the following:

Deviations to the approved route were caused by several factors, including, but not limited to: (i) the Gratiot County Drain Commission required many changes because after further review they decided the revised route minimized any effect to drains in their jurisdiction; (ii) to enable installation of the pipeline along roads with the least amount of traffic, development, and people. This increased safety during construction and while in service and minimized the potential for the pipeline to be located in a place with further development in future years; (iii) to install the pipeline in rights-of-way that had grades most even with the road and contiguous land for safe installation and grade elevations; (iv) to avoid installing the pipeline across buried high voltage electric lines connecting windmills to the electrical grid; and (v) to install the line in areas where the most landowners desired to sell private easements and the landowners were most amenable to it crossing their property along the road. [August 22, 2019 Response to Show Cause Order, p. 8, paragraph 17.]

ZFS concluded its response to the deviations of the pipeline route by stating that “the chief issue before the Commission is whether the February 7 Order’s authorization of “minor” deviations from the approved route covers the deviations made subsequent to issuance of the Act 9 certificate.” August 22, 2019 Response to Show Cause Order, p. 9, paragraph 19.

ZFS’ Notification of Landowners

ZFS states that good faith efforts have been made to notify all landowners whose property abuts the pipeline’s construction route throughout the planning and construction phases. Major Pipeline, LLC (Major) and Western Land Services (WLS) were contracted to notify the landowners along the pipeline route. ZFS included Exhibits B and C in their response; a map of the constructed pipeline route noting which landowners were contacted with the means of contact, and a list of the persons contacted with the means of contact, respectively.

ZFS concluded this section of their response by stating that “[t]o the extent landowners whose property abuts deviations were notified subsequent to issuance of the Act 9 certificate, ZFS is willing to submit an amended application that formally covers the deviations Commission Staff considers to be not minor.” August 22, 2019 Response to Show Cause Order, p. 10, paragraph 22.

Construction of the West Yankee Pipeline

Although not directly addressed in the Commission’s August 8 order, ZFS took the opportunity to include information regarding a construction issue brought up separately during Staff’s field inspection. As this issue was not formally included in the Commission’s August 8 order, it is Staff’s opinion that this matter should be handled outside of this case, and further expresses its opinion as such in the sections to follow.

ZFS’ Acquisition of EGLE Permits

ZFS stated that because its environmental impact statement had concluded that it fell within the wetland exemption, construction commenced under the assumption that a wetlands permit was not required. It was only brought up recently that a permit may have been necessary for approximately 200 feet of pipeline at the TransCanada interconnect site. ZFS has since been in discussion with EGLE regarding the wetland site and if a permit for construction in the 200 feet is required.

Throughout the response, ZFS attests that it is willing to address the Commission’s concerns in this matter and, if deemed appropriate, submit an amended application with supporting information for the West Yankee Pipeline. Such amendment would address the deviations from the prior-approved pipeline route, the notification of additional landowners to the prior-approved route, an amended Environmental Impact Assessment (EIA) covering the deviations from the prior approved pipeline route, and the EGLE wetland permit.

September 4 Conference

As ordered by the Commission, both parties met at the Commission's office on September 4, 2019, at 10:00 a.m. ET to discuss this matter. During the meeting, ZFS was allowed the opportunity to demonstrate its compliance with all requirements of Act 9 and the Commission's February 7 order, following an agenda that it prepared (Appendix A – Case No. U-20198 Proposed Agenda for September 4, 2019 Meeting).

The meeting started with remarks by ZFS that all deviations from the Commission's February 7 order and settlement agreement were made with constant communication between themselves and the local County Drain Commission and County Road Commission, and with the best intentions of the landowners in mind. It was also mentioned that the pipeline construction timeline was of great importance to them as they desired the pipeline to be in the ground as soon as possible so that the local farmers, whose traditionally cultivated acreage falls within the construction area, would be allowed to plant over it during the past planting season.

Two topics of primary importance were brought up by ZFS during the meeting. Perhaps the most notable was the assumption made by ZFS when considering deviations to the approved pipeline route. It was stated, many times, by ZFS that they were under the impression that it would be preferable for all involved to use private easements to construct the West Yankee Pipeline if such easements could be secured. ZFS further voiced that the only reason that private easements were secured for the deviated route is because they were under the assumption that Staff preferred the acquisition and use of private easements if secured.

The second notable topic of discussion during the meeting was in regard to the issue with the EGLE wetland permit. ZFS expressed that the issue, approximately 200 feet of pipeline at the interconnect site with TransCanada's pipeline, does not originate with the pipeline, as the construction method allows it to meet the wetlands exemption. Instead, it is the metering station that is the source of the issue. ZFS voiced that the original EIA reviewed the impact of the pipeline and the construction method to be used at the interconnect wetland area, but the assessment did not consider the metering station to be constructed within the wetland area. Although the metering station at the interconnection site will ultimately become the property of TransCanada, ZFS is responsible for securing all the necessary permits as they are the party that is constructing the facility. ZFS expressed that permit applications for the metering station to be located and constructed within the interconnection wetland area have been submitted to EGLE by both TransCanada and themselves. ZFS submitted their EGLE wetlands application on August 26, 2019, and TransCanada had submitted their application weeks prior.

It should also be noted that ZFS stated multiple times during this Conference that survey crews were not allowed to be on-site to perform preliminary work prior to the Commission's issuance of the Act 9 CPCN. ZFS neither elaborated on who prohibited survey crews from being utilized, nor why they were prohibited prior to the Commission's issuance of the Act 9 CPCN. It should be

noted that under Act 115 of 1976, a surveyor is allowed to “enter upon public or private lands or waters in this state except buildings, for the purpose of making a survey.”

During the meeting, ZFS took the opportunity to reiterate its full intention to comply with all requirements of Act 9 and the Commission’s February 7 order, as well as the points which were included in its August 22 Response to Show Cause, summarized above.

On September 25, 2019, ZFS filed an application to amend the CPCN, with testimony and exhibits, in this case.

Staff’s Responses

Staff submits the following concerns and opinions that it has regarding ZFS’ response to the Commission’s August 8 order and the September 4 conference.

Alterations to the Pipeline Route Were Not “Minor” Deviations

As Staff’s view that the alterations to the pipeline route were not “minor” deviations is perhaps the most concerning aspect of the deviation, Staff’s responses below follow the format that ZFS used to summarize their reasoning for the deviation.

(i) The Gratiot County Drain Commission Required Many Changes Because After Further Review They Decided the Revised Route Minimized Any Effect to Drains in Their Jurisdiction

On August 28, 2019, Staff submitted a request to the Gratiot County Drain Commissioner, Bernard Barnes, requesting details of the Drain Commission’s involvement in the West Yankee Pipeline project. Following the claim made in ZFS’ August 22 response that the Gratiot County Drain Commission required route changes, Staff requested if the Drain Commission will dictate, or require, a route revision above and beyond preventative measures that could be implemented in order to retain a proposed pipeline route while avoiding drainage features. Drain Commissioner Barnes responded, on August 28, 2019, as follows:

The Drain Office requested no revisions to the pipeline route – rather, we were told that revisions had to be made. Furthermore, the re-routed alignment actually caused additional impacts to County Drains (not fewer). Again, the Drain Office was not concerned about the route so long as the procedures / requirements were followed. I am able to provide documentation that route changes were initiated by Major Pipeline and not the Drain Office as well as correspondences that indicate that the route was not (and could not) be finalized as of our 4/25/2019 meeting.

Refer to Appendix B for the complete request and response to the Gratiot County Drain Commissioner.

While Drain Commissioner Barnes has made it very clear that the Gratiot County Drain Commission will not dictate changes to a pipeline route, and that the deviated route in fact impacts more drainage features than the route approved in the February 7 order, and not less as ZFS claims, Staff would also like to take this opportunity to clarify the Gratiot County Road Commission's stance on route alterations. On page 20 of Exhibit A – Part 1 to ZFS' August 22 response, Matthew Wright, Assistant Engineer of the Gratiot County Road Commission, stated the following via email to Major:

The Gratiot County Road Commission will not dictate the route of the ZFS pipeline.

With statements from both the Gratiot County Drain Commission and Gratiot County Road Commission relaying the fact that neither of the local agencies will dictate pipeline route, it is clear that the route alterations originated with ZFS and Major, and not the local authorities.

Even if County Road and Drain Commissions were to dictate route revisions, local authority discussions, recommendations, and requirements, while valuable, reviewed, and taken into consideration during the evidentiary period of the application review process, are independent of the Commission order and have little bearing to the case after issuance of the CPCN. Any identified deviation to the application following issuance of the order and the CPCN, made for whatever reason, must be reviewed and approved by the Commission through an amended application if the deviation would violate Commission order.

Mr. Jerald Rushmore, on page 13 of his direct pre-filed testimony submitted to the docket for this instant case on September 25, 2019, stated the following:

[T]he Road Commission unquestionably dictated portions of the pipeline's route, because it was always clear if and when the Road Commission prohibited us from doing something in a designated area. For example, the aforementioned prohibition regarding the use of construction equipment on asphalt roads, which appeared in the Road Use Agreement labeled as Exhibit (JR-8), all but prohibited construction on certain portions of the approved route. In this regard, the Road Commission absolutely dictated where the pipeline *could not* be installed, then coordinated with Major Pipeline on approving deviations that satisfied county-level requirements.

Staff contends that while the Road Commission prohibited the use of construction equipment on asphalt roads, this requirement does not expressly prohibit the construction of the pipeline along the approved route. There are many construction techniques that may be utilized for pipeline construction; one of which is the use of the Horizontal Directional Drill (HDD) technique. HDD equipment effectively eliminates the necessity to work along expansive construction surfaces, including asphalt roads, as a drilling rig is positioned at one end of the pipeline segment and bores underground to the other end. In discovery response ZFS-ST-37 Major stated:

In the Case of HDD, there is basically no workspace required for the length of the drill.

ZFS and Major had options to choose from which would allow adherence to the Commission approved pipeline route, but instead they chose to deviate from the February 7 order and settlement agreement.

Throughout their testimony and discovery responses, ZFS and Major assured Staff that they were confident the pipeline could be constructed entirely within the road right-of-way; and that there were no issues with working space requirements. In discovery response ZFS-ST-33 Major stated:

ZFS is proposing to construct a pipeline entirely within the space allotted in the road rights-of-way. Therefore, the pipeline route, as proposed by ZFS, falls entirely within the road rights-of-way. After a more thorough review of the width of the rights-of-way, ZFS is confident that the statement regarding the pipeline's proposed route is accurate and that temporary workspace requirements will not be an issue.

Staff finds it misleading that ZFS and Major asserted, many times, that the pipeline could be, and would be, located and constructed entirely within the road right-of-way without issue, only for deviations to arise which contradict those assertions.

The process of filing an amended pipeline application for Commission review has been a precedent that was completed as recently as February 12, 2018, in Case No. U-20089. In this instance, the applicant filed an amendment to Case No. U-18422 because “[a]s the project proceeded, additional information came to light that caused Michigan Power to change two aspects of its construction plan and revised its project budget. In particular, as Michigan Power proceeded toward construction following the initial Act 9 approval it determined that for several reasons described further in [its] Application it would be preferable to conduct more of the installation using open-trench methods rather than boring the pipeline as originally proposed.” Case No. U-20089, February 12, 2018 Joint Application, pgs. 1 & 2. Clearly, the applicant to this case understood that changing an aspect of its construction plan, which was included in the Commission’s order to the case, would violate said order. Thus, the applicant took the appropriate and necessary steps to submit an amended application, which included the modified plans. Such steps should have been realized as necessary and followed by ZFS in this instant case.

(ii) To Enable Installation of the Pipeline Along Roads with the Least Amount of Traffic, Development, and People

It is Staff’s opinion that the work to determine this should have been performed prior to the application filing. ZFS and Major could have easily determined the amount of traffic, development, and people in the vicinity of the proposed pipeline route, prior to filing the application, by simply driving the area. Additionally, reviewing publicly-available maps of the area, while not necessarily able to differentiate between building types to provide the exact number of

houses along a proposed pipeline route, will provide a reasonably reliable estimate in order to narrow down the potential routes; a quick drive of the possible routes thereafter would allow ZFS and Major an ideal starting point for determining the proposed pipeline route. The application should propose the best, and least impactful, pipeline route that has been determined through preliminary survey work performed prior to filing. Such survey work should not be performed post-approval and issuance of Act 9 CPCN to determine the best and least impactful pipeline route.

Additionally, Major considered traffic volume as a design factor in its originally proposed pipeline route. In discovery response ZFS-ST-21, Major responded to Staff:

The final route was chosen primarily to minimize direct impacts on landowners and avoid right-of-way clearing. Consideration was given to the level of traffic on the proposed route as well.

Staff does not deem preliminary route analysis, including the assessment of traffic volume, development, and people, which is rejected and re-analyzed post application approval as a prudent and responsible practice. All applicable pipeline route design work should be performed prior to application filing; and to such a degree as to leave little cause, post application approval, for alterations.

(iii) To Install the Pipeline in Rights-of-Way That Had Grades Most Even with the Road and Contiguous Land for Safe Installation and Grade Elevations

This is another instance in which Staff does not understand why this work was not performed prior to filing the application. Once a potential route, or routes, was identified it would have been simple for ZFS and Major to drive along the route(s) and inspect the potential workspace. Such an easy endeavor would have immediately informed ZFS and Major of potential issues with right-of-way grade elevations.

Additionally, Major addressed procedures that would be followed which would allow for the safe installation of the pipeline. In discovery response ZFS-ST-20 Major stated:

If a situation exists where purchasing temporary workspace will facilitate safer or more economical construction, we will endeavor to acquire the temporary space.

An appropriate plan, of which Staff approved, was in place to circumvent construction areas which may be deemed unsafe. ZFS and Major should have acquired temporary working space, as they had stated they would through testimony and discovery response, instead of altering the pipeline route.

(iv) To Avoid Installing the Pipeline Across Buried High Voltage Electric Lines Connecting Windmills to the Electrical Grid

Again, this is work that should have been performed prior to filing the application to determine the best, least impactful, route for the West Yankee Pipeline. As referenced above, it was stated by ZFS and Major during the September 4 conference that survey crews were not allowed to set foot on the proposed pipeline route prior to the Commission issuing the Act 9 CPCN. It has been Staff's experience that initial survey work is traditionally and routinely performed prior to application filing so potential obstacles, such as buried high voltage electric lines, are already considered during the route selection process¹. In fact, Major stated during the September 4 conference that preliminary survey work has always been performed on their projects prior to application filing, except for this project; however, Major did not elaborate as to why this particular project would be any different from the others or why survey crews would not be allowed to perform preliminary work prior to issuance of a Commission Act 9 CPCN. Again, Act 115 of 1976 allows for surveyors to perform this work and grants their legal right of entry.

(v) To Install the Line in Areas Where the Most Landowners Desired to Sell Private Easements and the Landowners Were Most Amenable to it Crossing Their Property Along the Road

As mentioned above, ZFS stated during the September 4 conference that they were under the impression that constructing the West Yankee Pipeline within private easements would be the preferable approach and was what Staff wanted from the settlement agreement. Under this assumption, they secured several private easements from landowners whose property abuts the altered construction route of the pipeline.

Throughout testimony and discovery response, ZFS and Major stated that they would be able to, and expressly, work entirely within the public road right-of-way, or, if need be, secure temporary easements for locations in which working entirely within the public road right-of-way may be challenging; thus, it was never Staff's understanding, or preference, that private easements be secured. Instead of securing temporary easements, as was stated would be done should additional workspace need to be utilized, ZFS acquired permanent private right-of-way easements along the pipeline route. The acquisition of permanent right-of-way easements provide additional space to construct the pipeline while alleviating the need to acquire temporary workspace. While the acquisition of permanent easements essentially fulfills the need to secure additional workspace, Staff's understanding throughout this case has been that ZFS would utilize the public

¹ Prior to filing applications for pipeline siting approval, the applicant is encouraged to utilize the MISS DIG design ticket process to locate buried obstacles that may inhibit pipeline construction and affect route planning.

road right-of-way, as was testified to be done, and only secure temporary workspace should the additional working area be needed; not that ZFS would acquire permanent easements.

For many of the reasons which ZFS shared in their response as to why it was necessary to alter the approved pipeline route, much of the work could have, and should have, been performed prior to application filing. Not performing such preliminary and routine work prior to application filing is a concern of Staff and an imprudent practice.

Staff would also like to take the opportunity to note two additional details of this case. Firstly, on February 19, 2019, soon after the February 7 order and issuance of CPCN, Staff was contacted by Major requesting Staff's opinion and desired implementation process for an alternate route to the one approved in the settlement agreement and February 7 order. Major's reasoning for the desired route change was that, due to close work between themselves and the Gratiot County Drain Commission, a route had been identified which would reduce the number of homes along the route by 25%, and the number of drain crossings by 26%. Staff reviewed the proposed route and on February 22, 2019, informed Major that although the new route was generally acceptable, it was not of Staff's opinion to be considered a minor change. Staff further informed Major that the Commission's Rules of Practice and Procedure, Rule 437, provides that a party may petition for a rehearing within thirty days after a Commission Order has been filed (R 792.10437(1)); and that if ZFS wished to follow the alternate route it should file a petition for rehearing to have the alternate route approved by March 8, 2019, to meet the thirty-day deadline. On March 8, 2019, Major responded to Staff regarding the inquired route alteration as follows:

We're sticking with what [Staff] suggested – no need for a rehearing. The route is what it is. While not the best situation for all involved, it is the route the MPSC wanted; and for us, it's "6 one – half dozen another." Length is the same. Pipe is the same. Point A is the same. And Point B is the same. My inquiry was just to help out Gratiot County and a couple handfuls of residents. I'll chalk this one up as an occurrence where the adherence to the process is the enemy of the solution.

Refer to Appendix C for the complete inquiry and response to Major Pipeline, LLC Petition regarding the rehearing opinion.

It should be further noted, Staff will entertain all discussions regarding pipeline routes throughout the case timeline and, especially for cases in which it can be demonstrated that the alteration will result in less impact, express its approval of such alterations. If ZFS had chosen to petition for a rehearing as Staff had suggested, instead of performing the alterations while stating that "it's "6 one – half dozen another" and "chalk up as an occurrence where the adherence to the process is the enemy of the solution," having been fully informed that it was Staff's opinion that such route changes would not be considered as "minor" deviations, alterations to the pipeline route may not have resulted in the issue at hand.

Mr. Jerald Rushmore, on pages 7 and 8 of his amended direct pre-filed testimony submitted to the docket for this instant case on September 25, 2019, stated the following:

Q18. DID MAJOR PIPELINE CONSIDER AN ALTERNATIVE ROUTE AFTER INITIAL SURVEYING WORK WAS PERFORMED?

A18. Yes, to a certain extent. The Act 9 certificate was issued on February 7, 2019. Major Pipeline discussed a significantly modified pipeline route with both Commission Staff and Gratiot County officials at the Road Commission between approximately February 19, 2019 to February 22, 2019. When Major Pipeline was informed that the significantly modified alternative route would necessitate the refiling of an Act 9 application, it was decided that sticking to the originally approved route was the best option, primarily because of the time sensitive nature of supplying affordable and reliable natural gas to the ZFS facility as soon as possible and avoiding construction activity during the planting season.

This testimony further emphasizes Staff's opinion that ZFS and Major were fully aware that significant modifications to the pipeline route after the February 7 order would necessitate an amendment to the Act 9 application. This testimony also exemplifies that, in full awareness to the fact above, ZFS and Major commenced route modifications which deviated significantly from the route approved of in the February 7 order while cognizant of the fact that Staff would take issue with such alterations to the pipeline route. Ultimately, by proceeding with pipeline construction utilizing a significantly modified route, ZFS and Major were seemingly more interested in meeting a tight construction window instead of adhering to the February 7 order and settlement agreement. The actions disregarded the Commission's February 7 order, particularly since Staff had informed them of the correct process to follow.

Secondly, on July 20, 2019, Staff requested of Major a copy of the pipeline construction map that was used to bid and build the project. On July 12, 2019, Major responded to the request as follows:

The map that was used is the same one that was filed with the MPSC – in fact it was the map and route [Staff] created.

Refer to Appendix D for the complete audit request and response.

In its August 22 response, included as Exhibit B, and during the September 4 conference, ZFS presented to Staff the construction map for the West Yankee Pipeline. A comparison of the map provided to Staff by ZFS, and the map agreed to in the February 7 order, clearly shows that the map used to construct the current pipeline route was neither the one that was filed with the MPSC, nor the map and route that Staff created.

Major's response to Staff was misleading, as it has been established that alterations to the pipeline route approved in the February 7 order were already considered and enacted by Major as soon as February 19, 2019; as evident by the correspondence sent to Staff upon that date, and the map presented in the August 22 response and September 4 conference.

Notification of Additional Landowners

While Staff is generally pleased in learning that ZFS has taken steps to notice all new landowners along the deviated West Yankee Pipeline route, Staff maintains its position that notification of the additional landowners was not handled properly. On August 22, 2018, a motion to intervene, and proof of service, was filed to this docket by English Law Office, PLC. Said filing contained twenty-two individuals proposing to intervene in the case. Although these individuals were ultimately denied intervention into the case, they were afforded the opportunity to become a part of the application process to state their position and opinions.

As ZFS noticed the additional landowners post-issuance of Act 9 CPCN, they were never afforded the same opportunity as the original group of landowners to be involved in the case as it progressed and, if desired, petition for intervention. It was made clear that the initial landowners petitioning for intervention were denied as the proposed route of the West Yankee Pipeline would be constructed solely within the public road right-of-way, and therefore would not impact landowner property. However, the West Yankee Pipeline has not been constructed solely within the public road right-of-way; private easements were secured. Although the private easements were voluntarily agreed to, it cannot be known what was stated during easement negotiations to persuade the landowners to agree to the easements. It is unknown if the landowners felt obligated to agree to the easements because ZFS had already been issued the Act 9 CPCN and that the pipeline would be constructed with or without their consent.

At the very least, it is Staff's opinion that the additional landowners have been disallowed the same opportunity as the original group to become involved in this case pre-approval; and, if desired, to petition for intervention as the deviated construction route of the West Yankee Pipeline no longer lay solely within the public road right-of-way.

Pipeline Welding Practices and Procedures

ZFS included in their response, and again brought up during the September 4 conference, the issue of the welding practices and procedures followed for construction of the West Yankee Pipeline. While this is still a concern of Staff, as this issue was not directly included within the Commission's August 8 order, the topic will not be further addressed by Staff in this case and there will be no recommendations made thereof in this report. This issue will be handled separately through the typical Gas Safety Non-Compliance process.

Acquisition of EGLE Permits Prior to Construction

Staff fully understands the exemption under the wetland permit for pipelines which are constructed in wetlands using the Horizontal Directional Drill technique and that the siting of the West Yankee Pipeline in this wetland location is not the origin of the recent necessity in applying for a wetland permit. The original EIA, conducted by Farrier Surveying, Inc., should have identified the necessity for such a permit to be acquired prior to the application submittal for the metering station in this location. This correlates with the information Staff has received from the Michigan Department of Environment, Great Lakes, and Energy (EGLE). On July 26, 2019, Mr. Jeff Pierce,

EGLE Environmental Quality Analyst, responded to a Staff request sent July 16, 2019, requesting the status of the permits that ZFS requested for the West Yankee Pipeline. Mr. Pierce responded as follows:

We have not yet received any applications for a permit from ZFS regarding the West Yankee Pipeline project.

Additionally, Staff sent a follow-up request to Mr. Pierce on August 27, 2019; Mr. Pierce responded as follows on the same day:

We have not received any applications from ZFS/Major since our last email. However, recently our wetland specialist was on a site in Gratiot County performing a wetland delineation and identified recent utility line activity within wetland on an adjacent parcel. The activities were traced to ZFS/Major Pipeline. We have been in contact with Jerry Rushmore from Major Pipeline and they had their wetland consultant reach out to discuss submitting an after-the-fact permit application. This occurred at N Mason Road in Gratiot County. Unclear if this is part of the same pipeline project or a different one. The consultant should be submitting a permit application soon but it may only be for activities at this one site. I speak with them to get further clarification on the project.

Refer to Appendix E for the complete request and response to the Michigan Department of Environment, Great Lakes, and Energy Response.

Staff would like to note the discrepancy between the responses of ZFS and EGLE regarding the submission of the wetland permit. ZFS, as noted above, had stated that their wetland permit was submitted on August 26, 2019; whereas EGLE states, above, that as of August 27, 2019, they had not yet received any applications from ZFS/Major.

Although Staff is appreciative that the proper measures are now being taken to secure the wetland permit, it is of the opinion that this issue should have been identified during the EIA prior to application filing. The fact that the EIA, which was conducted pre-application filing, was not detailed enough to identify such an issue does not justify the problem; beginning construction of the West Yankee Pipeline prior to securing all necessary permits is a violation of the Commission's February 7 order.

Additional Concerns

On September 20, 2019, Staff became aware of a whistleblower complaint related to the West Yankee Pipeline project. The complainant alleged that the following occurred during construction of the West Yankee Pipeline: pipe was dragged on the ground causing coating damage that was not repaired before the pipe was put in the ground, large portions of the pipe had not been jeeped, and the pipe had not been buried at an adequate depth. The complainant has stated that photos of the above issues have been taken and can be produced for review. It should be noted that receiving complaints like the one mentioned above occur extremely rarely for pipeline

construction. The record will be supplemented with additional information, such as pictures, locations, and issues identified, should Staff receive such details after submitting this report. Refer to Appendix F for the whistleblower complaint received by Staff.

All of the above allegations are highly concerning to Staff as they each pose elevated safety risks on the pipeline and to the adjacent environment and landowners. Allowing the pipeline coating to be damaged from dragging the pipe across the ground is an unacceptable construction practice that is only compounded when the pipeline is put into the ground without the coating damage being repaired. Aside from coating damage that can lead to external corrosion, dragging the pipe across the ground can also directly damage the pipe itself which leads to integrity concerns.

Jeeping is a coating integrity process by which defects in the pipeline coating are detected using equipment before the pipe is backfilled. Once these defects are identified, the proper procedure is to address and repair the identified locations to mitigate the potential of corrosion occurring. Not conducting this inspection allows potential coating damage to go unidentified, increasing the probability of corrosion damage to the pipeline.

Not burying the pipeline to the required depth not only violates the provisions of the February 7 order and settlement agreement, but it is cause for elevated safety concerns for portions of the pipeline which are constructed in agricultural areas. As the majority of the area in which the pipeline route is constructed is located in agricultural land, it is expected that large tilling equipment is used to condition the soil for crops. Paragraph 8 of the settlement agreement was included expressly to mitigate the risk of the pipeline being struck by agricultural equipment during soil conditioning. The settlement agreement provides that the pipeline will be buried to "48 inches for the minimum depth of cover that aligns with the standard outlined in Exhibit S-9 for pipeline depth if the land in the right-of-way is to be returned to agricultural use, 36 inches if not." Burying the pipeline shallower than the above minimum depths increases the probability that the pipe will be struck by agricultural equipment which can result in damage to the pipeline and/or an incident.

Staff's Recommendations to the Commission

Staff recommends that the following documents be filed to the docket by ZFS once the concerning issues have been rectified:

- Letter to, and response from, EGLE that there are no outstanding permit issues;
- Letter to, and response from, the Gratiot County Road Commission that there are no outstanding damage issues and that all penalties amassed thereof have been paid;
- Letter to, and response from, the Gratiot County Drain Commission that there are no outstanding damage issues and that all penalties amassed thereof have been paid; and
- Formal notification to all landowners on the constructed pipeline route and responses regarding any outstanding clean-up or damage issues.

Considering the additional concerns identified by the complainant, Staff recommends that the following be required of ZFS, in addition to what is prescribed in the settlement agreement that was approved in the February 7 order:

- Prior to the in-service date of the West Yankee Pipeline, require an in-line inspection of the pipeline to be conducted. Specifically, the inspection shall consist of a geometry tool capable of detecting dents or other anomalous conditions that may have arisen during construction of the pipeline, and an inertial measurement unit shall be included that will be capable of performing a whole-line bending strain analysis. Require ZFS to obtain the bending strain analysis from the in-line inspection vendor and remediate any pipeline areas that indicate total bending strain greater than 0.3%, or criteria based on the in-line inspection vendor's recommended practices. In addition to the geometry tool and the inertial measurement unit, require ZFS to inspect the pipeline using an axial magnetic flux leakage tool that would be capable of identifying any defects that are present in the girth welds.
- Prior to the in-service date of the West Yankee Pipeline, require a close interval survey (CIS) and direct current voltage gradient (DCVG) survey to be conducted. Any location on the pipeline where the severity of the amplitude change exceeds the following parameters is to be exposed and remediated before the pipeline is placed into service:
 - CIS – any reading less negative than -0.850 V with the cathodic protection off
 - DCVG – any indication greater than 35% IR
- Prior to the in-service date of the West Yankee Pipeline, require ZFS to conduct a depth-of-cover survey. Results of the survey are to be reported to the MPSC, and locations where the depth of cover does not meet the required minimum depth shall be remediated prior to the in-service date. As part of the pre-in-service depth-of-cover survey, if remediations are necessary to meet the requirements of the Commission February 7 order, ZFS shall prepare a remediation plan, which is to be sent for approval to the Gratiot County Drain Commission, Gratiot County Road Commission, and the MPSC Staff.
- Prior to the in-service date of the West Yankee Pipeline, require ZFS to file a work plan with the MPSC for all surveys and inspections that are included in the settlement agreement approved in the February 7 order, and all other surveys and inspections that the Commission deems appropriate from the recommendations in this report. The work plan that ZFS files with the MPSC shall include the following: work procedures, repair and remediation procedures, contractor name(s), and employee certifications/qualifications. Require ZFS to seek approval from the MPSC Gas Operations Staff prior to commencing with these work plans and allow the Staff 10 business days to review and approve these submissions.
- Prior to all surveys and inspections required of ZFS which are included in the settlement agreement approved in the February 7 order, and all other surveys and inspections that the Commission deems appropriate from the recommendations in this report, require ZFS

to provide notification to Staff as to when surveys and inspections will be conducted so that Staff may be present on-site during while the work is being performed.

- Lastly, require Commission approval prior to the pipeline being placed into service.

Furthermore, Staff recommends to the Commission that the following penalties be assessed for violating provisions of the February 7 order:

- \$20,000 for not acquiring the EGLE wetland permit for the metering station and interconnection location; and
- \$20,000 for deviating from the Commission-approved pipeline route.

The Commission's jurisdiction in this matter is pursuant to Public Act 9 of 1929, MCL 483.115 Penalties; civil liability.

Sec. 15.

Any corporation, association or person, violating any provision of this act or any order or regulation of the commission made pursuant thereto, shall be deemed guilty of an unlawful act and shall be liable to a penalty of not less than 100 dollars, nor more than 20,000 dollars. Any officer, agent, representative, employee or servant of any corporation or association or any person who causes, aids or assists, or participates in any such unlawful act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be liable to a fine of not less than 100 dollars, nor more than 1,000 dollars, or to imprisonment in the county jail not less than 30 days, nor more than 1 year, or to both such fine and imprisonment in the discretion of the court. Said penalty shall be exclusive of civil liability.

History: 1929, Act 9, Imd. Eff. Mar. 19, 1929; - CL 1929, 11646; - CL 1948, 483.115

Conclusion

ZFS' August 22 response, and discussion during the September 4 conference, has not swayed Staff's concerns over the violations of the Commission's February 7 order. It is Staff's opinion that the lack of research, surveying, and planning prior to application filing, coupled with the expedited timeline to get the pipeline constructed and in the ground before the recent planting season, led to the deviations that are now an issue. While it is understandable that ZFS wished to be a good neighbor to the local farmers, perhaps if they focused their efforts towards adhering to the Commission's February 7 order instead of expediting the construction timeline to accommodate the recent planting season, and fully comprehending Staff's stated opinion of what constituted "minor" deviations, amendments to the application could have been made in a regulatory-conscious manner.

Additionally, the recent whistleblower complaint brought to Staff's attention regarding the West Yankee Pipeline project emphasizes the lack of care and hurried nature of the pipeline project;

and further validates Staff's concerns. The issues raised by this individual can manifest themselves into legitimate safety concerns.

Staff recommends the assessment of the aforementioned penalty fees for violating provisions of the Commission's February 7 order and that ZFS file the aforementioned documents to this docket to demonstrate proof of the rectification of the concerning issues. Additionally, Staff recommends that ZFS be mandated to adhere to the aforementioned surveys, inspections, and reporting provisions, in addition to those that have been approved in the Commission's February 7 order and settlement agreement.

Appendices

Appendix A

Case No. U-20198
Proposed Agenda – September 4, 2019 Meeting

- I. MPSC Show Cause Order & ZFS Written Response:
 - a. MPSC order and what is required
 - b. ZFS written response
 - c. Staff involvement and expectations

- II. Act 9 Certificate and Construction Activities:
 - a. Certificate obtained legally; good faith actions, no intentional misrepresentation
 - b. Dynamic process; activities mitigated landowner impact; increased cost to ZFS
 - c. Coordination with county officials and route deviations
 - d. Continuous landowner notification
 - e. Welding practices and procedures

- III. Status Updates:
 - a. Pipeline construction
 - b. Communication with county officials
 - c. Interconnect parcel and TransCanada infrastructure (i.e., metering station)
 - d. Permitting and expert consultation (EGLE)

- IV. Staff Questions or Comments

- V. Identify and discussion areas of mutual understanding and potential resolutions:
 - a. Amended application with updated EIS
 - b. Follow-up tasks and timeline

Appendix B

From: [Bernie Barnes](#)
To: [Spence, Kevin \(LARA\)](#)
Subject: Re: ZFS Ithaca, LLC West Yankee Pipeline Project
Date: Wednesday, August 28, 2019 1:58:43 PM

Good Afternoon Kevin – Here are my responses in red.

- Did ZFS Ithaca, LLC and/or its contractor, Major Pipeline, LLC, meet with the Gratiot County Drain Commission to discuss the proposed pipeline route for the West Yankee Pipeline prior to the MPSC order approving settlement issued on February 7th, 2019?

Yes, the Drain Office did meet with Major Pipeline on a couple different occasions prior to construction. The first meeting was to establish the Drain Commissioner’s requirements for crossing County Drains. The route was not discussed. A meeting was held on 4/25/2019 to clarify the Drain Office’s requirements for working within drain right of way - Major Pipeline, Drain Office staff, their engineer (LRE) and their attorney (FSBR) were in attendance or on conference call. A hand drawn map of the proposed route was provided ahead of this meeting. When discussing the route and Major Pipeline’s ability to provide required information in a timely manner, it was expressed that the alignment was somewhat “pliable”. There was no discussion regarding a MPSC approved alignment.

- If yes, did the Gratiot County Drain Commission approve the proposed route as represented by ZFS Ithaca, LLC and/or Major Pipeline, LLC at that time?

At the time of our 4/25/2019 meeting it was indicated that the Drain Office really wasn’t concerned with the route of the pipeline – we just needed to have our procedures and requirements followed.

- In response to the MPSC’s Show Cause Order, issued August 8th, 2019, ZFS Ithaca, LLC stated “[d]eviations to the approved route were caused by several factors, including, but not limited to: (i) the Gratiot County Drain Commission required many changes because after further review they decided the revised route minimized any effect to drains in their jurisdiction....” (U-20198, Response to Order to Show Cause, page 8, paragraph 17)
 - Will the Gratiot County Drain Commission dictate, or require, a route revision above and beyond preventative measures that could be implemented (i.e. HDD) in order to preserve a proposed pipeline route and drainage features?
 - If yes, did the Gratiot County Drain Commission dictate, or require, ZFS Ithaca, LLC and/or Major Pipeline, LLC to make a revision to the proposed West Yankee Pipeline route following issuance of the MPSC order approving settlement on February 7th, 2019?
 - If yes, please provide correspondence between the Gratiot County Drain Commission and ZFS Ithaca, LLS and Major Pipeline, LLC which corroborates this required alteration in pipeline route for the West Yankee Pipeline.

The Drain Office requested no revisions to the pipeline route – rather, we were told that revisions had to be made. Furthermore, the re-routed alignment actually caused additional impacts to County Drains (not fewer). Again, the Drain Office was not concerned about the route so long as the procedures / requirements were followed. I am able to provide documentation that route changes were initiated by Major Pipeline and not the Drain Office as well as correspondences that indicate that the route was not (and could not) be finalized as of our 4/25/2019 meeting.

I hope this clarified our involvement in this project if i can be any other assistance let me know. Bernie

Bernard J. Barnes

Gratiot County Drain Commissioner

904 E. Center St.
Ithaca, MI 48847
Phone (989) 875-5207
email-bbarnes@gratiotmi.com

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From: Spence, Kevin (LARA) (SpenceK@michigan.gov)
Date: 08/28/19 10:10 am
To: drain@gratiotmi.com
Subject: **ZFS Ithaca, LLC West Yankee Pipeline Project**

Good morning,

My name is Kevin Spence, an Engineer in the Gas Operations Section of the Michigan Public Service Commission. I was the case coordinator for the ZFS Ithaca, LLC Act 9 application of the West Yankee Pipeline in Case No. U-20198. As such, MPSC Staff and ZFS Ithaca have an informal meeting scheduled for next Wednesday, September 4th, to discuss the deviation of the constructed West Yankee Pipeline route from the proposed route that was agreed upon through settlement and approved by Commission order. So that we have a greater understanding of the Gratiot Drain Commission's position on this project going into the meeting, please respond to the following questions regarding the Drain Commission's involvement in the ZFS Ithaca, LLC West Yankee Pipeline project:

- Did ZFS Ithaca, LLC and/or its contractor, Major Pipeline, LLC, meet with the Gratiot County Drain Commission to discuss the proposed pipeline route for the West Yankee Pipeline prior to the MPSC order approving settlement issued on February 7th, 2019?
 - If yes, did the Gratiot County Drain Commission approve the proposed route as represented by ZFS Ithaca, LLC and/or Major Pipeline, LLC at that time?
- In response to the MPSC's Show Cause Order, issued August 8th, 2019, ZFS Ithaca, LLC stated "[d]eviations to the approved route were caused by several factors, including, but not limited to: (i) the Gratiot County Drain Commission required many changes because after further review they decided the revised route minimized any effect to drains in their jurisdiction...." (U-20198, Response to Order to Show Cause, page 8, paragraph 17)
 - Will the Gratiot County Drain Commission dictate, or require, a route revision above and beyond preventative measures that could be implemented (i.e. HDD) in order to preserve a proposed pipeline route and drainage features?
 - If yes, did the Gratiot County Drain Commission dictate, or require, ZFS Ithaca, LLC and/or Major Pipeline, LLC to make a revision to the proposed West Yankee Pipeline route following issuance of the MPSC order approving settlement on February 7th, 2019?
 - If yes, please provide correspondence between the Gratiot County Drain Commission and ZFS Ithaca, LLC and Major Pipeline, LLC which corroborates this required alteration in pipeline route for the West Yankee Pipeline.

Should you have any questions regarding the above request, or would like to discuss this matter further, please let me know.

Thank you

Kevin P. Spence

Public Utilities Engineer

Gas Operations Section

Energy Operations Division

Michigan Public Service Commission

(517) 284-8263

Appendix C

From: [Kurt Rushmore](#)
To: [Spence, Kevin \(LARA\)](#)
Subject: The West Yankee Route is the Route
Date: Friday, March 8, 2019 9:25:26 AM

Good morning Kevin.

Thanks for following up, I would have let the day slip by without any communication.

We're sticking with what you suggested – no need for a rehearing. The route is what it is. While not the best situation for all involved, it is the route the MPSC wanted; and for us, it's "6 one – half dozen another." Length is the same. Pipe is the same. Point A is the same. And Point B is the same. My inquiry was just to help out Gratiot County and a couple handfuls of residents. I'll chalk this one up as an occurrence where the adherence to the process is the enemy of the solution.

With any luck, I'll have a new filing to present within the next 90 days; not on West Yankee, but an entirely new pipeline.

Until then, let me know if there is anything I can do to help. I know you have the right to inspect the installation of the West Yankee pipeline from time-to-time, but I just want to go beyond and extend you a 'welcome' to see every aspect of how this pipeline comes together (and came together) – I believe the more you understand, the better you can form opinions on future pipelines. I wish you had known the sequence of events that had brought that landowner group to your doorstep, it may have had you looking at the route issue with a broader spectrum. You can ask me, at any time in the process, why we choose a certain route over other options.

Stay warm, and have a great Spring. If it stays like this, I fear we'll be cracking ice on opening day of trout season!?!

Thanks Again,
Kurt

From: Spence, Kevin (LARA) [mailto:SpenceK@michigan.gov]
Sent: Friday, March 08, 2019 8:22 AM
To: Kurt Rushmore
Subject: RE: Your route on West Yankee Pipeline

Good morning Kurt,

Just curious, has it been decided how the West Yankee Pipeline route will proceed? As a reminder, today is the last day to petition for a rehearing. After today, if it is determined that the route should change, a new Act 9 application will need to be submitted.

Thank you

Kevin Spence

From: Kurt Rushmore <kar@majorpipe.com>
Sent: Wednesday, February 27, 2019 12:30 PM
To: Spence, Kevin (LARA) <SpenceK@michigan.gov>
Subject: RE: Your route on West Yankee Pipeline

Thanks!

From: Spence, Kevin (LARA) [<mailto:SpenceK@michigan.gov>]
Sent: Wednesday, February 27, 2019 11:37 AM
To: Kurt Rushmore
Subject: RE: Your route on West Yankee Pipeline

Kurt,

The settlement agreement was for the following:

- South side of East Harrison Road
- East side of North Wisner Road
- South side of East Tyler Road (to accommodate a buried drain)
- East side of North Blair Road

Kevin Spence

From: Kurt Rushmore <kar@majorpipe.com>
Sent: Wednesday, February 27, 2019 11:28 AM
To: Spence, Kevin (LARA) <SpenceK@michigan.gov>
Subject: Your route on West Yankee Pipeline

Kevin,

Can you please refresh my memory on which side of the road your re-route is on? I'm specifically looking at the route along East Harrison Rd, North Wisner Road, East Tyler Road, and North Blair Road.

Thanks for your help.

-Kurt Rushmore
Major Pipeline

From: [Kurt Rushmore](#)
To: [Spence, Kevin \(LARA\)](#)
Cc: [Orris, Michael \(AG\)](#)
Subject: RE: West Yankee Pipeline Route
Date: Friday, February 22, 2019 10:14:51 AM

Thanks for the consideration Kevin. We'll look at the idea and weigh out the "cost of the time" vs. the "atta boys" we would receive from the Drain Commissioner, and a few local farmers and let you know what direction we'll head with process.

Any idea of amount of time we'll be incurring in the process? Beyond a detailed description of the proposed new route, is there any other pieces of data the Staff would like to see?

I'll be in touch by the end of the day today.

Thanks,
Kurt

From: Spence, Kevin (LARA) [mailto:SpenceK@michigan.gov]
Sent: Friday, February 22, 2019 9:34 AM
To: Kurt Rushmore
Cc: Orris, Michael (AG)
Subject: West Yankee Pipeline Route

Good morning Kurt,

Staff has reviewed the recent proposed adjustment to the West Yankee Pipeline route. It is our opinion that this alteration is not considered a minor change in location, as provided for in the final Order. The Commission's Rules of Practice and Procedure, Rule 437, provides that a party may petition for a rehearing within thirty days after a Commission Order has been filed (R 792.10437(1)). If ZFS Ithaca wishes to use this alternate route, it is Staff's opinion that it should file a petition for rehearing to have that alternate route approved. That filing must be done by Friday March 8, 2019, in order to meet the thirty day deadline in Rule 437(1).

Should ZFS Ithaca wish to use this alternate route, but is unable to file a petition for rehearing by March 8, a new application would have to be submitted for approval. Should this be the scenario that plays out, Staff would refer ZFS Ithaca to Case Nos. U-18422 and U-20089. In these cases, the Commission approved settlement for Act 9 pipeline construction (U-18422). Prior to construction, the Company determined that a different construction method would be preferred and, subsequently, had to file a second application for the pipeline (U-20089) which was approved.

In either scenario, Staff would be supportive of the recently proposed route alteration as it would be less impactful to both landowners and the environment as compared to the route approved in Case No. U-20198.

Please let me know if you have any questions.

Kevin Spence
Public Utilities Engineer
Gas Operations Section
Michigan Public Service Commission
(517) 284-8263

Appendix D

From: kar@majorpipe.com
To: [Spence, Kevin \(LARA\)](mailto:Spence, Kevin (LARA))
Subject: RE: West Yankee Pipeline Construction Site Visit
Date: Friday, July 12, 2019 11:21:23 AM

Good morning Kevin,

The map that was used is the same one that was filed with the MPSC – in fact it was the map and route you created.

-Kurt

From: Spence, Kevin (LARA) <SpenceK@michigan.gov>
Sent: Wednesday, July 10, 2019 3:36 PM
To: kar@majorpipe.com
Subject: RE: West Yankee Pipeline Construction Site Visit

Kurt,

I'll look forward to the as-built map once the pipeline construction has been completed. In the meantime, would you please send a copy of the pipeline construction map that was used to bid and build the project?

Thank you for the update on the four potential pipelines. Do you anticipate meeting with us prior to application filing as you did with ZFS' West Yankee Pipeline?

Thank you

Kevin Spence

From: kar@majorpipe.com <kar@majorpipe.com>
Sent: Tuesday, July 09, 2019 1:09 PM
To: Spence, Kevin (LARA) <SpenceK@michigan.gov>
Subject: RE: West Yankee Pipeline Construction Site Visit

Hello Kevin.

I did receive your previous email. Sorry I didn't respond. We will certainly submit an as-built with the completion report, but the pipeline has not yet been completed.

On the issue of the plant – I'm not 'in the loop' on that issue, but I think they plan on taking beans during this falls harvest?

There are 4 pipeline projects we are currently vetting here in Michigan, and I'm not sure which one (if any) will pop up to Permit Acquisition stage first. There are two in the center of the State, one over near the Thumb, and a fourth in the far SE portion of the State. If I was to venture a guess, I would say September for the first one... but that's just speculation.

Talk with you soon!

-Kurt

From: Spence, Kevin (LARA) <SpenceK@michigan.gov>

Sent: Tuesday, July 9, 2019 12:54 PM

To: kar@majorpipe.com

Cc: Jerry Rushmore <jlr@majorpipe.com>; Ron Kobel <rak@majorpipe.com>; Nichole Hunter <nmh@majorpipe.com>

Subject: RE: West Yankee Pipeline Construction Site Visit

Good afternoon Kurt,

Not sure if you received my prior email having been sent so close to the 4th of July holiday week.

Please send me a copy of the as-built map for the West Yankee Pipeline so that I can file it with the rest of the information that I have for this Act 9 case. I drove up past the new plant last week on my way up and back from a well needed U.P. vacation; looks like things are progressing along nicely. Would you happen to know when the targeted in-service date for the plant is?

Also, as I asked in the previous email, any new information that you can provide on the prospective Act 9 that you alluded to from one of your earlier emails?

Have a good day

Kevin Spence

From: Spence, Kevin (LARA)

Sent: Friday, June 21, 2019 2:49 PM

To: kar@majorpipe.com

Cc: Jerry Rushmore <jlr@majorpipe.com>; Ron Kobel <rak@majorpipe.com>; Nichole Hunter <nmh@majorpipe.com>

Subject: RE: West Yankee Pipeline Construction Site Visit

Good afternoon Kurt,

Please send me a copy of the as-built map for the West Yankee Pipeline so that I can file it with the rest of the information that I have for this Act 9 case.

Additionally, you had mentioned previously that you may be coming to discuss another Act 9 case that you had in the works. Any new information that you are ready to share with us regarding it?

Thank you, and have a pleasant weekend.

Kevin Spence

From: kar@majorpipe.com <kar@majorpipe.com>
Sent: Wednesday, May 15, 2019 9:30 AM
To: Gregg, Rob (LARA) <GreggR1@michigan.gov>; Spence, Kevin (LARA) <SpenceK@michigan.gov>; Nathan Miller <millern8@michigan.gov>; Chislea, David (LARA) <chislead@michigan.gov>
Cc: Jerry Rushmore <jlr@majorpipe.com>; Ron Kobel <rak@majorpipe.com>; Nichole Hunter <nmh@majorpipe.com>
Subject: RE: West Yankee Pipeline Construction Site Visit

Good morning Robert,

As we are currently in construction, you're more than welcome to stop out at your convenience. By the rules of the Gratiot County Road Commission, we're asked to have all vehicles identified with signage. The worksite also requires hard hats, steel toed shoes/boots, hi-vis safety vests and eye protection. Please let us know when you're on-location (no need for advanced notice.) If you would be so kind as to identify yourself to one of the Major Pipeline personnel on-location, that would help us to keep a handle on ROW traffic.

A majority of this pipeline is being constructed and located on public road ROW, so I would ask that you are extremely careful as to where you park your vehicle – there are hostile residents in the area that will take every opportunity to impugn this project.

Have a great Wednesday.

-Kurt Rushmore

From: Gregg, Rob (LARA) <GreggR1@michigan.gov>
Sent: Wednesday, May 15, 2019 8:58 AM
To: kar@majorpipe.com
Cc: Schimming, Derrick (LARA) <SchimmingD@michigan.gov>
Subject: West Yankee Pipeline Construction Site Visit

Kurt,

I'd like to schedule some construction inspection days for the West Yankee Pipeline, ideally I'd like to get out there once a week as schedules allow.

Let me know what works for Major.

Regards,

Robert Gregg, P.E.
Public Utilities Engineer, Gas Operations
Michigan Public Service Commission
Mobile: (517) 930-5269

Appendix E

From: [Pierce, Jeff \(EGLE\)](#)
To: [Spence, Kevin \(LARA\)](#)
Cc: [Miller, Nathan \(LARA\)](#); [Chislea, David \(LARA\)](#); [Haas, Joseph \(EGLE\)](#); [Schineman, Louis \(EGLE\)](#)
Subject: RE: MPSC Case U-20198 West Yankee Pipeline
Date: Tuesday, August 27, 2019 8:37:01 AM

Hi Kevin,

We have not received any applications from ZFS/Major since our last email. However, recently our wetland specialist was on a site in Gratiot County performing a wetland delineation and identified recent utility line activity within wetland on an adjacent parcel. The activities were traced to ZFS/Major Pipeline. We have been in contact with Jerry Rushmore from Major Pipeline and they had their wetland consultant reach out to discuss submitting an after-the-fact permit application. This occurred at N Mason Road in Gratiot County. Unclear if this is part of the same pipeline project or a different one. The consultant should be submitting a permit application soon but it may only be for activities at this one site. I speak with them to get further clarification on the project.

Jeff Pierce
Environmental Quality Analyst
Water Resources Division, Lansing District Office
Michigan Department of Environment, Great Lakes, and Energy

517-416-4297 | piercej2@Michigan.gov

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From: Spence, Kevin (LARA) <SpenceK@michigan.gov>
Sent: Tuesday, August 27, 2019 7:32 AM
To: Pierce, Jeff (EGLE) <PierceJ2@michigan.gov>
Cc: Miller, Nathan (LARA) <MillerN13@michigan.gov>; Chislea, David (LARA) <chislead@michigan.gov>; Haas, Joseph (EGLE) <HaasJ1@michigan.gov>; Schineman, Louis (EGLE) <SCHINEMANL@michigan.gov>
Subject: RE: MPSC Case U-20198 West Yankee Pipeline

Good morning Jeff,

We have a meeting scheduled with ZFS/Major on the 4th of September, could you please update us as to if you've received any applications for the West Yankee Pipeline project since your response to Nathan on the 26th of July?

Thanks

Kevin P. Spence

From: Miller, Nathan (LARA) <MillerN13@michigan.gov>
Sent: Monday, July 29, 2019 8:00 AM

To: Chislea, David (LARA) <chislead@michigan.gov>; Spence, Kevin (LARA) <SpenceK@michigan.gov>
Subject: FW: MPSC Case U-20198 West Yankee Pipeline

Nathan J. Miller, P.E.
Gas Safety Supervisor

From: Pierce, Jeff (EGLE) <PierceJ2@michigan.gov>
Sent: Friday, July 26, 2019 3:28 PM
To: Miller, Nathan (LARA) <MillerN13@michigan.gov>
Cc: Haas, Joseph (EGLE) <HaasJ1@michigan.gov>; Schineman, Louis (EGLE) <SCHINEMANL@michigan.gov>
Subject: RE: MPSC Case U-20198 West Yankee Pipeline

I'm not sure if Oil, Gas & Minerals Division also requires permits. I've copied Louis Schineman on this.

It should be noted that there are some exemptions for utility installation through streams and wetlands under Part 301 and Part 303 respectively. They may be meeting those exemptions and therefore wouldn't need a permit under Part 301 and Part 303. The exemptions are:
If the utility is directional drilled/bored a minimum of 10 feet below the bottom of the stream then it is exempt under Part 301.

Directional drilling, boring, or knifing -in of utility lines with a diameter of less than 6 inches and the top of the line is installed at least 4 feet below the soil surface of the wetland is exempt under Part 303.

Jeff Pierce
Environmental Quality Analyst
Water Resources Division, Lansing District Office
Michigan Department of Environment, Great Lakes, and Energy

517-416-4297 | piercej2@Michigan.gov

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From: Miller, Nathan (LARA) <MillerN13@michigan.gov>
Sent: Friday, July 26, 2019 2:37 PM
To: Pierce, Jeff (EGLE) <PierceJ2@michigan.gov>
Cc: Haas, Joseph (EGLE) <HaasJ1@michigan.gov>
Subject: RE: MPSC Case U-20198 West Yankee Pipeline

Thanks Jeff. Is there anybody else with EGLE who they would need permits from? The pipeline is under construction right now, and we had explicitly put in our order that: "ZFS Ithaca, LLC, shall not begin construction until all necessary permits have been acquired."

Thanks,

Nathan J. Miller, P.E.

Gas Safety Supervisor

From: Pierce, Jeff (EGLE) <PierceJ2@michigan.gov>
Sent: Friday, July 26, 2019 2:16 PM
To: Miller, Nathan (LARA) <MillerN13@michigan.gov>
Cc: Haas, Joseph (EGLE) <HaasJ1@michigan.gov>
Subject: RE: MPSC Case U-20198 West Yankee Pipeline

Hi Nathan,

Joe Haas passed this one along to me as I cover Gratiot County. We have not yet received any applications for a permit from ZFS regarding the West Yankee Pipeline project. I sat in on a conference call with Kevin Spence, LARA, back in October of 2018 where we discussed the proposed project. However, I haven't heard anything more regarding this project since.

Jeff Pierce
Environmental Quality Analyst
Water Resources Division, Lansing District Office
Michigan Department of Environment, Great Lakes, and Energy

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From: Haas, Joseph (EGLE) <HaasJ1@michigan.gov>
Sent: Thursday, July 18, 2019 8:44 AM
To: Pierce, Jeff (EGLE) <PierceJ2@michigan.gov>
Subject: FW: MPSC Case U-20198 West Yankee Pipeline

Status inquiry see below.

Thanks,
-Joe-
989-330-9252

From: Miller, Nathan (LARA) <MillerN13@michigan.gov>
Sent: Tuesday, July 16, 2019 8:08 AM
To: Haas, Joseph (EGLE) <HaasJ1@michigan.gov>
Subject: MPSC Case U-20198 West Yankee Pipeline

Hi Joe,

Can you or somebody else at EGLE let me know what the status is of the permits that Zeeland Farm Services requested for their West Yankee Pipeline? Our docket granting them an Act 9 to construct the pipeline is here:

<https://mi-psc.force.com/s/case/500t000000AUWkpAAH/in-the-matter-of-the-application-of-zfs-ithaca-llc-for-authority-to-construct-and-operate-a-pipeline-in-wheeler-north-star-lafayette-and-emerson-townships-of-gratiot-county-michigan>

This is in Wheeler, North Star, Lafayette, and Emerson Townships of Gratiot County. Additionally, the permits may have been requested by Major Pipeline, who was doing the construction coordination.

If you or somebody else could let me know what the status is, I'd appreciate it.

Thanks,

Nathan J. Miller, P.E.

Gas Safety Supervisor

Michigan Public Service Commission

millern13@michigan.gov

Office: 517-284-8235

Cell: 517-388-7928

Appendix F

Chislea, David (LARA)

From: [REDACTED]
Sent: Friday, September 20, 2019 4:16 PM
To: Chislea, David (LARA)
Cc: [REDACTED]
Subject: Verifying Jurisdiction Regarding a Whistleblower Complaint

Hi David,

I received a whistleblower complaint from [REDACTED] who would like to remain anonymous, and [REDACTED] the Major Pipeline natural gas project (West Yankee 6" pipeline) in Ithaca, MI. It appears that the pipeline is going to feed the Zeeland Farm Services (ZFS) soybean facility in Gratiot County. The allegations are: pipe being dragged on the ground, causing coating damage that was not repaired before putting the pipe in the ground; large portions of pipe not being jeepeed; and pipe not being buried at depth. Complainant stated he has photos, and will send them to me on 9/21/19. I just wanted to verify with your office regarding jurisdiction over this project, and therefore the whistleblower complaint. Please get back to me asap, and I will forward the complainant's name and contact information. Thank you for your help! All the best.



