

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Plains Pipeline, LP
Application

Case No. PU-05-184

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

_____, 2005

Appearances

Commissioners Tony Clark and Kevin Kramer.

Lawrence Bender, Attorney at Law, Pearce & Durick 314 East Thayer Avenue, Bismarck, North Dakota 58501, on behalf of the Applicant, Plains Pipeline, LP.

William W. Binek, Chief Counsel, Public Service Commission, Capitol, Bismarck, North Dakota 58505, on behalf of the Public Service Commission.

Al Wald, Administrative Law Judge, Office of Administrative Hearings, 1701 N. 9 Street, Bismarck, ND 58501-1882, as Procedural Hearing Officer.

Preliminary Statement

On March 28, 2005, Plains Pipeline, LP (“Plains”) filed a Letter of Intent with the Commission indicating that it planned to file applications for both a certificate of corridor compatibility and a route permit for the proposed transmission facilities.

On June 20, 2005, Plains filed a consolidated application for a waiver of procedures and times schedules, a certificate of corridor compatibility and a route permit authorizing construction of approximately 2.38 miles of 10-inch pipeline and 1000 feet of 6-inch pipeline in Williams County, North Dakota.

On July 14, 2005, the Commission deemed the application complete and issued a Notice of Filing and Notice of Hearing, scheduling a public hearing for August 11, 2005 at 1 p.m. CDT at the Williston City Hall, City Commission Meeting Room, 22 East Broadway, Williston, North Dakota. The notice identified the following issues to be considered:

1. Will the location, construction and operation of the proposed pipeline facilities produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Are the proposed pipeline facilities compatible with the environmental preservation and the efficient use of resources?
3. Will the proposed pipeline facilities locations minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.
4. Are the proposed pipeline facilities of such length, design, location, or purpose that they will produce minimal adverse effects so that procedures and time schedules may be waived?
5. Is it appropriate for the Commission to waive any procedures and time schedules as requested in the application?

A public hearing on Plains' Application was held as scheduled on August 11, 2005 in Williston, North Dakota. Following the hearing, the Commission received from Plains certain late filed exhibits.

Having allowed all interested persons an opportunity to be heard and having heard, reviewed and considered all testimony and evidence presented, the Commission makes the following:

Findings of Fact

1. Plains is a limited liability partnership organized and existing under the laws of the state of Texas with principal offices located at 333 Clay Street, Suite 1600, Houston, Texas 77002.
2. Plains proposes to construct and install approximately 2.38 miles of 10-inch diameter pipe and 1,000 feet of 6-inch diameter pipe. The pipe will be buried underground within or adjacent to existing Plains= right-of-way easements in Williams County, North Dakota. The proposed two new segments of pipe will connect a segment of existing 6-inch diameter pipe to Plains= Trenton Station located approximately 5 miles southwest of the city of Williston, North Dakota.
3. The proposed expansion is referred to by Plains as the ATrenton Expansion Project@ and is part of another expansion project plan for the Trenton Pipeline System near Buford, North Dakota, referred to by Plains as the ABuford Expansion Project@. (ND PSC Case No. PU-05-185.) These two expansion projects compliment more extensive expansion projects which are ongoing in the state of Montana necessitated by increased oil and gas exploration activities in an area of Montana, near the city of Sidney commonly referred to as the ARichland County Bakken Field.@

4. The proposed Trenton Expansion Project will replace a segment of existing 6-inch diameter pipe and a segment of dual 4-inch diameter pipe currently being used to transport crude oil from oil and gas wells located in Richland County, Montana, and McKenzie and Williams Counties, North Dakota, to Trenton Station.

5. The estimated cost of the Trenton Expansion Project is approximately Seven Hundred Fifty Thousand and no/100 Dollars (\$750,000.00).

6. Plains plans to commence construction on September 1, 2005 or immediately upon the issuance by the North Dakota Public Service Commission of a Corridor Certificate and Route Permit for the Trenton Expansion Project. Plains estimates that construction of the Trenton Expansion Project will take approximately 60 days and has plans to have the new segment of pipeline in service on or before November 1, 2005. Once in service, the Trenton Expansion Project will facilitate the existing Trenton Pipeline System so as to allow an increase in capacity of the pipeline of approximately 23,000 BOPD. Current capacity of the Trenton Pipeline System is approximately 19,000 BOPD. Construction of the proposed Fort Buford Expansion Project (and other potential expansion projects) will result in additional increased capacity of the pipeline of approximately 23,000 BOPD, for a total flow rate of approximately 42,000 BOPD.

7. All construction, testing, and operation of the pipeline will conform to the U.S. Department of Transportation's minimum pipeline safety requirements as outlined in Title 49 Code of Federal Regulations.

8. Any adverse affects produced by the construction and operation of the proposed pipeline will be minimized by utilizing portions of the existing pipeline right way. The pipeline crosses predominantly farmland and grassland.

9. The pipeline will cross N.D. Highway 1804. Plains has received crossing permits from the North Dakota Department of Transportation.

10. As part of this project and the Buford Expansion Project (Case No. PU-05-185), Plains completed an extensive cultural resources review in coordination with the North Dakota State Historical Society.

11. Plains has also consulted with the North Dakota Game and Fish Department, the U.S. Fish and Wildlife Service, and other regulatory agencies. Plains will continue to work with these agencies to address potential impacts and obtain applicable permits.

12. Section 49-22-07.2, N.D.C.C., authorizes the Commission to waive procedures, time schedules, and public hearings otherwise required by the Siting Act, when the Commission finds that a proposed facility is of such length, design, location or purpose that it will produce minimal adverse affects.

13. The state and federal departments and agencies which have permit or regulatory approval authority relating to the construction and operation of the proposed facility are as follows:

- a. state and local agencies
 - (1) North Dakota Public Service Commission
 - (2) North Dakota Department of Health
 - (3) North Dakota State Historical Society, State Historic Preservation Office
 - (4) North Dakota Department of Transportation
- b. federal
 - None

At hearing, Plains witnesses testified that all the permits and approvals that must be obtained for Plains' Trenton Expansion Project have been obtained.

14. Chapter 69-06-08, N.D. Admin. Code, sets forth certain criteria to guide the Commission in evaluating the suitability of granting an application for a certificate of corridor compatibility and route permit. The criteria as set forth in Section 69-06-08-02, N.D. Admin. Code, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria and Policy Criteria. A transmission facility route shall not be sited within an Exclusion Area. A transmission facility route shall not be sited within an Avoidance Area unless the applicant shows under the circumstances there are no reasonable alternatives. In determining whether an Avoidance Area should be designated for a facility, the Commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative routes. In accordance with the Commission's Section Criteria, a transmission route shall be approved if it is demonstrated that no significant adverse impacts will result from the location, construction and maintenance of the transmission facility. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the transmission facility.

15. The location and route designated by Plains for its proposed Trenton Expansion Project does not include any geographical areas listed as an Exclusion Area.

16. The location and route designated by Plains for its proposed Trenton Expansion Project does not include any geographical areas listed as an Avoidance Area; except as the route is less than 500 feet from one occupied residence.

17. The proposed corridor between the point of origin and the point of termination (Trenton substation) was evaluated for the exclusion, avoidance, and selection criteria. Based on the analysis of the corridor, it was determined that the best location for the proposed Trenton Expansion Project.

18. Plains submitted substantial evidence to demonstrate that the proposed Trenton Expansion Project would not have any significant impact on the Selection Criteria set forth in Section 69-06-08-01(3), N.D. Admin. Code.

19. Plains submitted substantial evidence to demonstrate its commitment to maximize the benefits of the proposed Trenton Expansion Project as far as is possible to meet the Policy Criteria set forth in Section 69-06-08-01(4), N.D. Admin. Code.

20. The route for the Trenton Expansion Project is located within a highly rural area. There is no information to indicate that any new residential construction is contemplated within the corridor or route.

21. The route for the Trenton Expansion Project crosses areas that are primarily agricultural land.

22. The Trenton Expansion Project is not anticipated to result in any negative impacts to public services such as local services, electric service, roads, traffic, water supply or telephone and other communication services.

23. No impact to the recreational resources in the area of the proposed corridor and route are anticipated by the proposed Trenton Expansion Project.

24. Land use is not expected to change as a result of construction of the proposed Trenton Expansion Project. Another pipeline is already present within portions of the corridor. The area above or adjacent to the Trenton Expansion Project will still be used for agricultural practices following construction of the pipeline.

25. No impact to geologic and groundwater resources are anticipated as a result of the proposed Trenton Expansion Project.

26. Temporary impacts to vegetation will occur in the right of way area during construction of the pipeline.

27. Raptors, waterfowl and other bird species will not be affected by the construction and placement of the proposed pipeline.

28. No rare or unique resources have been identified in the route. It is not anticipated that the proposed pipeline will impact rare and unique resources.

From the foregoing Findings of Fact, the Commission now makes its:

Conclusions of Law

1. The Commission has jurisdiction over this proceeding under Chapter 49-22, N.D.C.C.
2. The pipeline proposed by Plains is a transmission facility as defined in Section 49-22-03(11), N.D.C.C.

3. The proposed project is of such design, location and purpose that it will produce minimal adverse effects, as defined under Section 49-22-07.2, N.D.C.C.

4. The Application submitted by Plains meets the corridor and route evaluation criteria required by Chapter 49-22, N.D.C.C.

5. The location, construction, and operation of the proposed pipeline will produce only minimal adverse effects of the environment and upon the welfare of the citizens of North Dakota.

6. The proposed pipeline is compatible with the environmental preservation and the efficient use of resources.

7. The proposed pipeline corridor and route will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

8. The proposed pipeline is of such length, design, location and purpose that it will produce minimal adverse effects so that adherence to procedures and time schedules is unnecessary.

From the foregoing Findings of Fact and Conclusions of Law, the Commission now makes its:

Order

The Commission orders:

1. Plains' application for a waiver of procedures and time schedules is granted.
2. Certificate of Compatibility for a Transmission Facility Corridor No. ___ is issued to Plains, designating a Corridor for its proposed transmission facility route as shown on the attached map.
3. Route Permit for Construction of a Transmission Facility No. ___ is issued to Plains granting authority to construct the pipeline at the location shown on the attached map.
4. Plains shall conduct a preconstruction conference prior to commencement of any construction, and must include a Plains representative, its construction supervisor, and a representative of Commission staff to ensure that Plains fully understands the conditions set forth in this order.
5. Plains shall comply with the rules and regulations of all other agencies having jurisdiction over any phase of the proposed transmission facility, and shall obtain all other necessary

approvals and permits, and shall provide copies of all approvals and permits to the Commission prior to the construction of the pipeline.

6. Plains shall inform the Commission of its intent to start construction on the pipeline prior to the commencement of construction, and, once construction has started, Plains shall keep the Commission updated of construction activities on a monthly basis.

7. Plains shall construct and operate the pipeline in the manner described in its Application and at the hearing, and in accordance with all applicable safety requirements.

8. Plains shall promptly report to the Commission the presence in the permit area of any critical habitat of threatened or endangered species, or of bald or golden eagles that Plains becomes aware of and that were not previously reported to the Commission.

9. If any cultural resources or gravesites are discovered during construction of the facility, earth disturbing activities in the immediate vicinity of the discovery would be halted. The resources will be marked, preserved and protected from any further disturbance until a professional examination can be made in consultation with the North Dakota State Historical and Preservation Office (“SHPO”) and clearance to proceed is given by SHPO. A report of such examination will be filed with the SHPO and the Commission.

10. Construction must be suspended when weather conditions are such that construction activities will cause irreparable damage, unless adequate protection measures approved by the Commission are taken.

11. Reclamation along the right-of-way shall be continuous and coordinated with construction.

12. Reclamation, fertilization and reseeding is to be done by Plains according to the Natural Resource Conservation Service and U.S. Fish and Wildlife Service recommendations for CRP, native prairie and other non-cropped lands unless otherwise specified by the landowner and approved by the Commission.

13. Plains’ obligation for reclamation and maintenance of the right-of-way shall continue throughout the life of the transmission line.

14. Trees or other woody vegetation must be replaced with saplings that are two or more years old at a rate of two for every one removed. Landowners shall be given the option of having replacement trees/shrubs planted off the right-of-way on the landowner’s property or waiving that requirement in writing and allowing Plains to plant the replacement trees/shrubs elsewhere. Plains shall inspect tree replacements once a year for three years and send a report on or shortly before December 31st of each year to the Commission documenting work completion and condition of woodlands planting. The Commission may order additional plantings if survival rates are less than 75%.

15. Plains shall repair or replace all fences and gates removed or damaged during all phases construction and operation of the proposed transmission facility.

16. Plains shall provide the Commission with a copy of the design specifications for construction of the pipeline showing the location of the pipeline as built.

17. The Certificate of Compatibility for a Transmission Corridor No. _____ and Route Permit for Construction of a Transmission Facility No. _____ shall be effective for the life of the project but is subject to modification by order of the Commission if deemed necessary to further protect the public or the environment.

PUBLIC SERVICE COMMISSION

Susan E. Wefald
Commissioner

Tony Clark
President

Kevin Kramer
Commissioner