

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Enbridge Pipelines (North Dakota) LLC
Trenton to Beaver Lodge Pipeline - Williams County
Siting Application

Case No. PU-06-330

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

September 20, 2006

Appearances

Commissioners Tony Clark, Susan E. Wefald, and Kevin Cramer.

Brian R. Bjella, Attorney-at-Law, Fleck, Mather & Strutz, Ltd., 400 East Broadway, Suite 600, Bismarck North Dakota 58502, on behalf of Enbridge Pipelines (North Dakota) LLC.

William W. Binek, Chief Counsel, Public Service Commission, 600 East Boulevard, Bismarck, North Dakota 58505, on behalf of the Public Service Commission.

Patrick Fahn, Utility Analyst, Public Service Commission, 600 East Boulevard, Bismarck, North Dakota 58505 on behalf of the Public Service Commission.

Allen Wahl, Administrative Law Judge, Office of Administrative Hearings, 1701 North 9th Street, Bismarck, ND 58501-1882, as Procedural Hearing Officer.

Preliminary Statement

On July 26, 2006, Enbridge Pipelines (North Dakota) LLC (Enbridge) filed a Consolidated Letter of Intent and Application for Waiver or Reduction of Procedures and Time Schedules and for a Corridor Certificate and Route Permit. Enbridge proposes to construct 52 miles of 10-inch pipeline adjacent and parallel to its existing pipeline from the existing Trenton Station to its existing Beaver Lodge Station, all in Williams County.

On July 28, 2006 the Commission acknowledged Enbridge's Letter of Intent, waived the waiting period for filing a siting application, assessed a filing fee of \$100,000, deemed the application complete, and issued a Notice of Filing and Notice of Hearing, scheduling a public hearing for August 28, 2006 at 10 a.m. CST at the Williston City Hall, City Commission Meeting Room, 22 East Broadway, Williston, North Dakota. The public hearing was held as scheduled.

On September 14, 2006 Enbridge filed a letter explaining a resolution of the proposed route on property owned by Mr. Cartier.

On September 14, 2006 Enbridge filed a copy of the response by North Dakota Game & Fish Department concerning the pipeline project.

On September 14, 2006 Enbridge filed a copy of the final Cultural Resource Report submitted to the State Historic Preservation Officer.

Enbridge requests that the Commission (1) waive the requirement of separate filings of applications, separate notices of such applications, separate hearings on such applications and certain time schedules; (2) approve a one mile corridor rather than a 5.2 mile corridor required under North Dakota Administrative Code § 69-06-04-02(1)(b); and (3) designate the corridor and route as requested.

Issues to be considered in this matter include:

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?

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. Enbridge is a limited liability company with its operations center located at 2625 Railway Avenue, Minot, North Dakota 58703.
2. Enbridge owns and operates an existing underground crude petroleum pipeline system that extends from the Williston Basin in North Dakota and Montana primarily to Enbridge's terminal in Clearbrook, Minnesota, but also to the Tesoro Refinery in Mandan, North Dakota. Part of that system, known as the Beaver Lodge/Alexander Segment, consists of an 8-inch outside-diameter pipe that was constructed in 1983 by Portal Pipeline Company in accordance with the Commission's October 11, 1983 order in Case No. 10,472; Certificate of Site Compatibility No. 40; and Route Permit No. 49. In 1998 Portal Pipeline Company changed its name to Enbridge.
3. The existing pipeline infrastructure in North Dakota and neighboring states is at capacity. In April 2006, the pipeline infrastructure was short about 15,000 barrels per day. Enbridge has

received requests from oil producers in the Williston Basin of North Dakota and Montana for immediate additional pipeline capacity to transport increased production of crude petroleum to market.

4. Enbridge upgraded the Alexander and Trenton pump stations, and constructed a new East Fork pump station on the Beaver Lodge/Alexander Segment in accordance with the Commission's July 28, 2005 order in Case No. PU-05-274; First Amended Certificate of Site Compatibility No. 40; and First Amended Route Permit No. 49. Enbridge is making further upgrades to the Alexander, Trenton, Beaver Lodge and Stanley stations in accordance with the Commission's August 23, 2006 order in Case No. PU-06-317; Certificate of Site Compatibility No. 93; and Route Permit No. 103.

5. In this proceeding, Enbridge proposes to construct 52 miles of pipeline that will be buried within approximately 25 feet and parallel to its existing pipeline from the existing Trenton Station to its existing Beaver Lodge Station. The proposed pipeline is called the Trenton to Beaver Lodge Line Loop (pipeline loop). The estimated cost of the pipeline loop and associated facilities is \$25,122,000. Enbridge plans to begin construction in October 2006 and complete construction in June 2007.

6. The proposed pipeline is within the pipeline corridor granted by the Commission's October 11, 1983 order in Case No. 10,472 and the crude oil pipeline is needed as soon as possible to eliminate the current crude petroleum production and transportation constraints existing in Williston Basin.

7. The pipeline will be a ten-inch, nominal size diameter with a minimum 0.219 inch wall thickness and a grade of X-52. Heavier wall pipe will be used at railroad and major road crossings. The maximum operating pressure will be at 1480 pounds per square inch. The maximum design flow rate is 51,000 barrels per day.

8. All proposed construction, materials, testing and operation of the pipeline will conform to the Department of Transportation regulations prescribed under 49 CFR Part 195-Transportation of Hazardous Liquids by Pipeline.

9. A cathodic protection system will be installed to prevent against corrosion. In addition, Enbridge will monitor flow of crude by a SCADA (Supervisory Control and Data Acquisition) system.

10. Additional pipeline capacity will be provided by the pipeline loop. The maximum design flowrate of the pipeline loop is 51,000 barrels per day. Enbridge hopes to achieve 30,000 additional barrels per day incremental capacity as a result of pump station upgrades and this pipeline loop, with a potential of 45,000 additional barrels per day capacity.

11. North Dakota Administrative Code Chapter 69-06-08, 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 North Dakota Administrative Code Section 69-06-08-02, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria and Policy Criteria. A transmission facility route must not be sited within an Exclusion Area. A transmission facility route must 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 shall 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.

12. Enbridge evaluated a corridor width of one mile for the exclusion, avoidance, selection and policy criteria.

The environmental assessments that were previously performed for the existing pipeline under Case No. 10,472 were updated for purposes of this pipeline project.

13. Enbridge determined that a park in the City of Epping is in the corridor, but the park is about ½ mile from the proposed pipeline loop route.

14. Three parcels of school trust land managed by the State Land Department are crossed by the proposed route. Enbridge's application provided measures to minimize the temporary impacts of construction on school trust land.

15. Enbridge identified 16 historic landslides within the proposed corridor and an abandoned mine approximately one mile east of Little Muddy Creek and just south of County Road 8. In its "*Investigation of Suspected Mine in Section 4 of Pherrin Township*" filed with the Commission on September 15, 2006, Enbridge is proposing to drill holes from the surface of the ground to the coal seam every 30 feet along that portion of the proposed pipeline that falls within 2,750 feet of the mine entrance. This further research should verify the depth of coal seam and related mining activities and determine if there are voids beneath the proposed route that could pose a risk to construction or operation of the pipeline.

16. One business (a feed lot), and six residences are located within 500 feet of the pipeline. Three residences are on the opposite side of County Road 8 from the proposed pipeline and would be buffered from construction by the road. The proposed pipeline route will be at a further distance from the residences than the existing 8-inch pipeline. Enbridge has not obtained written waivers from the affected landowners to locate the pipeline within 500 feet.

17. One school (Garden Valley Elementary School) is located within 500 feet of the proposed pipeline. The pipeline has been routed 400 feet to the north of the Garden Valley Elementary School. Enbridge testified that routing the pipeline more that 400 feet north of the school is not practical because of unsuitable terrain. The feedlot is located approximately 175 feet south of the pipeline, on the opposite side of County Road 8 relative to the pipeline.

18. Enbridge testified that it has agreed to relocate a segment of the existing 8-inch pipeline which currently passes through the Garden Valley Elementary School ground. This segment would be relocated approximately 350 feet north of the school, outside of the school yard. An application for this pipe relocation will be filed with the Commission.

19. Enbridge testified that the project will have no significant impact on fish and wildlife resources and no endangered or threatened plant or animal species are known to occupy the proposed route.

20. Sixty-three percent of the land in the corridor is agricultural land. Enbridge's application provided mitigation measures to minimize the impacts of construction on agricultural land.

21. Thirty-four percent of the land in the corridor is grassland. Enbridge's application provided mitigation measures to minimize the impacts of construction on grasslands.

22. Enbridge testified that it will work with landowners to make sure the appropriate amount of topsoil is being removed according to the landowners' requirements and according to the requirements of the Commission.

23. An estimated 19 wetlands will be crossed by the route, but the construction could affect up to 47 wetlands because some of the lands not crossed by the pipeline may encroach into the work area. Of the 47 wetlands, 17 are isolated and not subject to regulation by the Army Corps of Engineers. Enbridge estimates that construction would temporarily affect about five acres of wetlands. No surface facilities will be installed within the wetlands as requested by the North Dakota Game and Fish Department. Enbridge anticipates issuance of a wetlands crossing permit by the U.S. Army Corps of Engineers. Enbridge's application provided mitigation measures to minimize the impacts of construction on wetlands. There will be no loss of wetlands due to the project.

24. The proposed pipeline will cross one wooded draw and an estimated 19 shelterbelts, totaling approximately two acres. Enbridge has agreed to reduce the width of the construction in these areas to 50 feet, to selectively cut and remove shrubs and trees within the work area leaving mature shrubs and trees in place where practical.

25. The pipeline will cross two perennial water bodies and 39 other intermittent water bodies. Due to the meandering nature of the water bodies, there will be 54 actual water body crossings. Only Little Muddy Creek and Beaver Creek are expected to have water at the time of construction. At Little Muddy Creek, pipe will be placed by horizontal directional drilling. If horizontal directional drilling fails, Enbridge will open cut the creek. Beaver Creek will be crossed by open cut. Enbridge's application provided mitigation measures to minimize the impacts of construction on open cuts of water bodies.

26. Enbridge consulted with the following state and federal agencies: the United States Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Bureau of Reclamation, Natural Resources Conservation Service, North Dakota Game and Fish Department, North Dakota State Land Department, North Dakota State Health Department, and the North Dakota State Water Commission. The U. S. Army Corps of Engineers was the only agency to require studies of the project area. The U. S. Army Corps of Engineers has not issued its Nationwide Permit 12 to date for the project. The North Dakota Game & Fish Department has reviewed the project and foresees no identifiable conflict with wildlife or wildlife habitat based on the information provided to it by Enbridge. The Department provided recommended measures to mitigate impacts to wetlands. The Department requested that every effort be made to prevent destruction of trees and shrubs, and that any of those removed be replaced at a two-to-one ratio. Further, the Department requested that Little Muddy Creek be crossed by horizontal drilling. Enbridge has incorporated all these requests into its construction plans. Enbridge has yet to obtain a permit from the North Dakota Health Department for hydrostatic test water discharges.

27. Enbridge testified that the project will require a working area of 75 feet to 100 feet along the route, but may require up to 200 feet in some areas.

28. Enbridge commissioned cultural resource studies of the proposed corridor and route.

29. Thirty-one potential cultural resource sites were identified in the corridor. Enbridge's recommendation to the SHPO is that 11 are not eligible for listing in the National Register of Historic Places. The remaining 20 sites will be avoided by the proposed pipeline route. Enbridge is seeking concurrence from the SHPO concerning the recommendation for the 11 sites. Enbridge's completed Cultural Resource Report was submitted to the Commission on September 14, 2006. Enbridge filed the Report with the SHPO on September 18, 2006 and is waiting for SHPO concurrence with the recommendations of the Report.

301. Mr. Cartier, a landowner in the SE1/4 of Section 34, as identified on Exhibit No. 6, Sheet 6, expressed concerns about the pipeline route on his property. By letter dated September 14, 2006, Enbridge and Mr. Cartier had agreed that the pipeline on his property be placed in the route proposed in the original application rather than the route proposed by Exhibit No. 6 at the hearing on August 28, 2006.

31. Enbridge has indicated that Exhibit No. 6 as submitted subsequent to the hearing identifies the route which it is requesting be approved by the Commission. This exhibit identifies several minor reroutes discussed at the hearing which have been proposed primarily due to landowners' requests or to avoid cultural resource sites, in addition a few reroutes were for engineering reasons. Enbridge testified that all of these reroutes are clear from any cultural resources.

32. The proposed pipeline loop route was evaluated for the exclusion, avoidance, selection and policy criteria. Based on this analysis, the Commission believes the proposed route is the best location for the pipeline loop.

33. North Dakota Century Code Section 49-22-07.2 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.

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

Conclusions of Law

1. The Commission has jurisdiction over the applicant, Enbridge, and over the subject matter of this application under North Dakota Century Code Chapter 49-22.

2. Enbridge is a utility as defined in North Dakota Century Code Section 49-22-03(13).

3. The pipeline proposed by Enbridge is a transmission facility as defined in North Dakota Century Code Section 49-22-03(12).

4. Enbridge is required to obtain written waiver under North Dakota Century Code Section 49-22-05.1 to locate the pipeline within 500 feet of an inhabited rural residence.

5. The location, construction, and operation of the proposed pipeline will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
6. The proposed pipeline corridor and route are 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 project is of such design and location that it will produce minimal adverse effects, as defined under North Dakota Century Code Section 49-22-07.2.

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

Order

The Commission orders:

1. Enbridge Pipelines (North Dakota) LLC's application for a waiver of procedures and time schedules is granted.
2. Enbridge Pipelines (North Dakota) LLC is issued Certificate of Compatibility for a Transmission Facility Corridor No. 94 and Route Permit for Construction of a Transmission Facility No. 104 to construct the Trenton to Beaver Lodge Line loop. The route that is approved for this purpose is the route proposed by Late Filed Exhibit 6 with the exception that the route in the SE1/4 of Section 34, as identified on Exhibit No. 6, Sheet 6, is placed in the originally proposed route, so as to parallel the existing pipeline.
3. Enbridge shall conduct further testing to determine if the construction or operation of the pipeline, following the proposed route, will be affected by the abandoned mine. Enbridge shall submit to the Commission a report of its findings. While construction will be allowed elsewhere, Enbridge shall not construct the pipeline within a 2,750 foot radius of abandoned mine entrances until a route in that 2,750 foot radius has been approved by the Commission.
4. Enbridge shall obtain approval from the Commission or Commission Staff prior to any changes or deviations to the pipeline route.
5. The Certificate of Compatibility for a Transmission Facility Corridor No. 94 and Route Permit for Construction of a Transmission Facility No. 104 are effective for the life of the pipeline but are subject to modification by order of the Commission if deemed necessary to further protect the public or the environment.
6. Enbridge shall comply with all the rules and regulations of all other agencies having jurisdiction over any phase of the proposed project, and shall obtain all other necessary licenses and permits, and shall provide copies to the Commission prior to any construction.

7. Enbridge shall obtain written waivers from affected landowners for location of the pipeline within 500 feet of a residence, school, or place of business prior to any construction in those areas.
8. Enbridge shall conduct a preconstruction conference to be held prior to the commencement of any construction. The conference must include an Enbridge representative, Enbridge's construction supervisor, and Commission staff, to ensure that Enbridge fully understands the conditions set forth in this order.
9. Enbridge shall inform the Commission of the date construction will start just prior to the commencement of construction; report to the Commission on the date construction is started; and, once construction has started, shall keep the Commission updated on construction activities on a weekly basis.
10. Enbridge shall construct and operate the pipeline in the manner described in the application and at the hearing and in late filed exhibits and supplemental materials, and in accordance with all applicable safety requirements.
11. The pipeline must be buried to a minimum depth from the ground surface to the top of the pipe of 48 inches in rangeland, 48 inches for cultivated land, 48 inches at the bottom of the ditch for road crossings, and 72 inches across undeveloped section lines.
12. All crossings of graded roads must be bored unless the responsible governing agency specifically permits Enbridge to open cut the road.
13. The crossing at Little Muddy Creek will be bored using horizontal directional drilling, unless otherwise approved by the Commission.
14. The width of the clear cuts through any wooded areas and shelterbelts must be kept at a maximum of 50 feet unless otherwise approved by the Commission.
15. Enbridge 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 Enbridge becomes aware of and that were not previously reported to the Commission.
16. 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.
17. All cultural resource mitigation plans must be submitted to the North Dakota State Historic Preservation Office (SHPO) and approved by the SHPO prior to the start of any fieldwork or construction activity. If any cultural resource, paleontological resource, archeological resource, historical resource, or gravesite is discovered during construction of the facility, earth disturbing activities in the immediate vicinity of the discovery must be halted. The resource must be marked, preserved and protected from any further disturbance until a professional examination can be made in consultation with the SHPO. A report of such examination must be filed with the SHPO and the Commission. Clearance to proceed must be given by the SHPO and the Commission.

18. During construction, at least 12 inches of topsoil, where available (or topsoil to the depth of cultivation, whichever is greater), over and along trench areas where cuts will be made, must be stripped and segregated from subsoil. Any area on which excavated subsoil will be placed must also be stripped of topsoil. After backfilling is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must then be replaced over areas from which it was stripped only after the subsoil is replaced.

19. Reclamation and clean-up along the right-of-way must be continuous and coordinated with ongoing construction.

20. All pre-existing roads and lanes used during construction must be restored to a condition that will accommodate their previous use, and areas used as temporary roads during construction must be restored to their original condition.

21. Reclamation, fertilization and reseeding must be done by Enbridge according to the Natural Resource Conservation Service unless otherwise specified by the landowner and approved by the Commission.

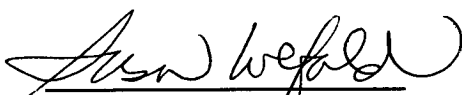
22. Trees or other woody vegetation must be replaced with saplings that are two or more years old at a rate of two for every one removed. Landowners shall be given the option of having replacement trees/shrubs planted off the right-of-way on the landowner's property or waiving that requirement in writing and allowing Enbridge to plant the replacement trees/shrubs elsewhere. All effected trees and shrubs must be quantified before construction activity. Enbridge shall record, and file with the Commission, the number and variety of replacement tree and shrub plantings, the specific planting area(s) and the dates of the plantings. Enbridge shall inspect tree replacements once a year for three years, on the anniversary of the plantings, and send a report on or shortly before October 1 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%.

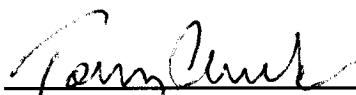
23. Enbridge shall repair or replace all fences and gates removed or damaged during all phases of construction and operation of the proposed transmission facility.

24. Enbridge shall provide the Commission with a copy of the design specifications for construction of the pipeline showing the location of the pipeline as built, and shall provide this information within 3 months of the completion of the construction.

25. Enbridge's obligation for reclamation and maintenance of the right-of-way shall continue throughout the life of the pipeline.

PUBLIC SERVICE COMMISSION


Susan E. Weald
Commissioner


Tony Clark
President


Kevin Cramer
Commissioner