

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**Enbridge Energy, Limited Partnership
36-inch LP Pipeline/Pembina County
Siting Application**

Case No. PU-07-108

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

November __, 2007

Appearances

Commissioners Susan E. Wefald, Tony Clark, 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 Energy, Limited Partnership.

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 Ninth Street, Bismarck, North Dakota 58501-1882, as Procedural Hearing Officer.

Preliminary Statement

On March 16, 2007, Enbridge Energy, Limited Partnership (“Enbridge LP”) filed a Letter of Intent with the Public Service Commission (“Commission”). Enbridge LP proposes to construct 28 miles of 36-inch liquid petroleum pipeline adjacent and parallel to its existing pipelines in Pembina County, North Dakota (“Alberta Clipper Pipeline”).

On March 21, 2007, the Commission acknowledged Enbridge LP’s Letter of Intent, shortened the waiting period for filing the siting application to one day, and assessed a filing fee

of \$100,000.00 due upon filing of the application.

On July 16, 2007, Enbridge LP filed an application for a waiver of procedures and time schedules, and consolidated applications for a certificate of corridor compatibility and route permit authorizing the construction of approximately 28 miles of 36-inch liquid petroleum pipeline and associated facilities in Pembina County, North Dakota.

Enbridge LP requests the Commission waive the procedures set forth in North Dakota Century Code §§ 49-22-08 and 49-22-08.1 to allow for single consolidated applications for corridor certificate and route permit for this project. Enbridge LP further requests that the Commission reduce the minimum width of the corridor for this project, from 2.8 miles, required under North Dakota Administrative Code § 69-06-04-02, to one mile.

On August 22, 2007, the Commission found that the application of Enbridge LP was complete and issued a Notice of Filing and Notice of Hearing scheduling a public hearing for October 2, 2007, at 1:30 p.m. at the Cavalier Law Enforcement Center, Lower Level Meeting Room, Courthouse Drive, Cavalier, North Dakota. The public hearing was held as scheduled in conjunction with Enbridge Energy (Southern Lights) LLC Case No. PU-07-75.

The issues to be considered in this matter include:

1. Will the location, construction, and operation of the proposed pipeline produce minimal adverse affects on the environment, natural resources, and upon the welfare of the citizens of North Dakota?
2. Is the proposed pipeline compatible with the environmental preservation and the efficient use of resources?

3. Will the proposed pipeline corridor and route permit 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. Is it appropriate for the Commission to waive the procedures as requested in the application, including the request for a single consolidated application for Corridor Certificate and Route Permit?

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 LP is a limited partnership with its operations center located at 1401 Hammond Avenue, Superior, Wisconsin.
2. Enbridge LP operates what is commonly known as the “Lakehead System” beginning at the international border near Neche, North Dakota. There are currently five pipelines operating as a part of this system. When combined with the Canadian portion of the system, they form the longest liquid petroleum pipeline in the world. These two systems together are referred to as the “Enbridge Mainline System.” The first pipelines were constructed in the 1950s. Certain segments of the Lakehead System have come before the Commission in various cases.
3. The purpose of the Alberta Clipper Pipeline is to ship crude oil from Canada to markets in the United States. The Alberta Clipper Pipeline will transport crude oil and other

liquid hydrocarbons from Hardisty, Alberta, Canada, to Superior, Wisconsin, for delivery to U.S. markets.

4. Western Canadian supplies of crude oil are expected to increase, due primarily to production of oil sands in the Province of Alberta. Such production is expected to more than double for the forecast period between 2010 and 2015. Additionally, the American demand for petroleum products as an energy source and for other purposes is growing, and will continue to escalate throughout the Midwest area as population increases and economic activity expands, despite energy conservation, use of alternative energy and efficiency measures. With this rising demand for petroleum products as domestic supplies decline, refiners are looking to supplies from Canada as economical and secure alternatives to oil production countries outside North America. Thus, this pipeline provides the capacity necessary for transporting such increasing volumes of western Canadian crude oil supplies to the Midwest and helps reduce the United States' dependence on crude oil from the Middle East.
5. The Alberta Clipper Pipeline project consists of approximately 990 miles of 36-inch diameter pipeline. The pipeline will originate at Hardisty, Alberta, Canada and terminate at Superior, Wisconsin. This pipeline will parallel the LSr Line which is also the subject of the joint hearing, Commission Case No. PU-07-75. The proposed pipelines will parallel each other. The Alberta Clipper Pipeline will enter Pembina County near Neche and extend southeasterly for approximately 28 miles and cross the Red River approximately two miles northeast of Bowsmont, North Dakota.

6. The Alberta Clipper Pipeline will have an annual capacity of approximately 450,000 barrels per day. No new pumping stations will be constructed within the State of North Dakota.
7. During construction, Enbridge LP will require construction corridor of 140 feet. However, an extra temporary area of up to 75 feet may be required in locations such as where the pipeline approaches roads, railroads and water bodies. Anticipated construction start date for the Alberta Clipper Pipeline is May 2009. The estimated construction completion date is on or before December 31, 2009, with the pipeline placed in service on that date.
8. Installing the Alberta Clipper Pipeline in the existing pipeline corridor allows Enbridge LP to take advantage of existing facilities to the maximum extent practicable. It also allows Enbridge LP to take advantage of existing rights-of-way and easements, and minimizes land disturbances by following an established energy corridor.
9. The design, construction, and operation of the pipeline will conform to the Department of Transportation regulations prescribed in 49 CFR Part 195-Transportation of Hazardous Liquids by Pipeline.
10. Minimal environmental impacts are anticipated as a result of construction of the pipeline. Direct impacts on the local economy will be minimal due to the size and duration of the project. Construction of the pipeline may affect, but is not likely to jeopardize the continued existence of any listed endangered species and is not likely to destroy or adversely modify critical habitat. 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.

11. Enbridge LP evaluated a corridor width of one-mile for the exclusion, avoidance, selection and policy criteria of the Commission.
12. There will be minimal adverse affects to cultural resources by construction of the pipeline. A total of six previous archeological surveys have been completed that directly relate to the proposed pipeline route. A review of SHPO's files identified one archeological site, being a historical ox-cart trail referred to as an Angle Road, which has been determined eligible for nomination to the National Register of Historic Places. Previous Enbridge LP pipelines have avoided impacts to the site by using conventional boring construction methods. Enbridge LP also proposes to bore beneath Angle Road for construction of this pipeline project. Thus, the historic site will be avoided. Enbridge LP completed a Class III cultural resource inventory for the proposed route through consultation with the North Dakota State Historic Preservation Office (SHPO).
13. The U.S. Fish and Wildlife Service owns land included within the Juhl National Wildlife Management Area, which is crossed by existing Enbridge LP pipelines. Enbridge LP has reviewed its proposed route and determined it is possible to avoid the Juhl National Wildlife Management Area by making a slight route deviation within the corridor. Therefore, the proposed pipeline will avoid this area.
14. The Pembina River also will be crossed by the pipeline. The Pembina River has been designated on the National Rivers Inventory ("NRI"). Thus, state and federal agencies need to avoid or mitigate actions that would adversely affect designated NRI river

segments. In order to protect the NRI designation, Enbridge LP will utilize a horizontal directional drilling method to cross underneath the Pembina River.

15. The pipeline will also cross the Tongue River. At the Tongue River, the proposed route deviates approximately 200 feet south and west of the existing maintained right-of-way, so as to minimize the environmental impacts to the river crossing. Enbridge LP will cross the Tongue River by traditional open cut method.
16. The proposed pipeline route is located within 500 feet of three inhabited rural residences. Enbridge LP has obtained waivers from the owners of each of the residences to allow construction within 500 feet.
17. 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.

18. A cathodic protection system will be installed to prevent against corrosion. In addition, Enbridge LP will monitor flow of crude oil by a SCADA (Supervisory Control and Data Acquisition) system.
19. The vast majority of the land in the proposed corridor is agricultural land. Enbridge LP's application provides mitigation measures to minimize the impacts of construction on agricultural land.
20. Enbridge LP will work with landowners to make sure the appropriate amount of topsoil is being removed according to landowners' requirements and according to the requirements of the Commission.
21. An estimated 27 wetlands will be crossed by the route. No surface facilities will be installed within the wetlands as requested by the North Dakota Game and Fish Department. Enbridge LP anticipates issuance of a wetlands crossing permit by the U.S. Army Corps of Engineers. No wetlands will be permanently drained or filled as a result of construction, and effects on wetlands are expected to be short term and minor. Enbridge LP's application describes mitigation measures to be implemented to minimize the impact of construction on wetlands.
22. The proposed pipeline will cross approximately 0.1 mile of wooded areas, primarily associated with the crossings of the Pembina and Tongue Rivers. Enbridge LP 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.

23. Enbridge LP consulted with the following state and federal agencies: the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, North Dakota Game and Fish Department, North Dakota State Health Department, North Dakota Department of Transportation, and the North Dakota State Water Commission. The North Dakota Game and 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 LP. The Department 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. The North Dakota Game and Fish Department and the U.S. Fish and Wildlife Service have recommended that construction of major water body crossings be scheduled to avoid fish spawning periods. In addition, the U.S. Fish and Wildlife Service also recommended that construction of wetlands be scheduled to avoid disruption of waterfowl and other wildlife during the nesting season. Enbridge LP has incorporated all these requests into its construction plans.
24. Enbridge LP will utilize an environmental inspector on the project during active construction that will be responsible for overseeing contractor's compliance with the environmental requirements and permits during construction. The environmental inspector will have stop work authority.

25. After construction, Enbridge LP will conduct post construction monitoring of the project area until the right-of-way has been successfully restored and crossings stabilized. Post-construction monitoring will be conducted on all areas disturbed during construction to determine successful revegetation of all project areas.
26. Enbridge LP's Cultural Resource Report will be submitted to the SHPO. Enbridge LP anticipates SHPO concurrence with the report's recommendations.
27. Enbridge LP submitted Exhibit Nos. 3-6 at the hearing which identifies several minor re-routes. These re-routes are clear from any cultural resources.
28. Enbridge LP will comply with the Tree and Shrub Mitigation Specifications submitted as Exhibit A at the hearing.
29. Enbridge LP intended to bury the proposed pipeline to a depth of 36 inches to top of pipe. However, at the hearing Enbridge LP was requested to commit to bury the pipeline to a minimum depth from the ground surface to top of pipe of 48 inches. Federal law codified at 49 CFR Part 195, Subsection D, 248, states in part that pipelines are only required to be buried 30 inches to top of pipe. Enbridge LP, in the spirit of cooperating with the Commission, agrees for purposes of this case to comply with the Commission's wishes; and for purposes of this case will bury the pipeline to a depth greater than required by federal law.
30. At the hearing, a representative on behalf of North Valley Water District testified with respect to its rural water lines which will cross under the proposed pipeline at approximately nine locations. Enbridge LP committed that it will work with the water district to minimize disruption to its rural water lines. The Commission understands that

Enbridge LP has reached an agreement with North Valley Water District regarding mitigation measures needed at any of the nine crossings.

31. The proposed pipeline was evaluated for the exclusion, avoidance, and selection of policy criteria. Based on this analysis, the Commission believes the proposed route is the best location for the pipeline.
32. North Dakota Century Code § 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 effects.
33. The anticipated cost for the North Dakota portion of the Alberta Clipper Pipeline is \$90,700,000.00.

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

Conclusions of Law

1. The Commission has jurisdiction over the applicant, Enbridge LP, and over the subject matter of this application under North Dakota Century Code Chapter 49-22.
2. Enbridge LP is a utility as defined in North Dakota Century Code Section 49-22-03(13).
3. The pipeline proposed by Enbridge LP is a transmission facility as defined in North Dakota Century Code Section 49-22-03(12).
4. Enbridge LP 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 LP's application for waiver of procedures and time schedules is granted.
2. Enbridge LP is issued Certificate of Corridor Compatibility for a Transmission Facility Corridor No. ____ and Route Permit for Construction of a Transmission Facility No. ____ to construct the 28-mile 36-inch pipeline. The route that is approved for this purpose is the route identified on Exhibit D to the Application, as supplemented by Exhibit Nos. 3-6 as submitted at the hearing.
3. Enbridge LP shall obtain approval from the Commission or Commission staff prior to any changes or deviations to the pipeline route.
4. The Certificate of Compatibility for a Transmission Facility Corridor No. ____ and Route Permit for Construction of a Transmission Facility No. ____ 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.

5. Enbridge LP shall comply with all the rules and regulations of all other agencies having jurisdiction over any phase of the proposed project. Prior to commencing construction of any phase of the proposed project, Enbridge LP shall obtain all other necessary licenses and permits for construction of such phase, and provide copies to the Commission prior to construction of each phase.
6. Enbridge LP 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.
7. Enbridge LP shall conduct a preconstruction conference to be held prior to the commencement of any construction. The conference must include an Enbridge LP representative, Enbridge LP's construction supervisor, and Commission staff, to ensure that Enbridge LP fully understands the conditions set forth in this order.
8. Enbridge LP 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.
9. Enbridge LP 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.

10. 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.
11. All crossings of graded roads must be bored unless the responsible governing agency specifically permits Enbridge LP to open cut the road.
12. 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.
13. Enbridge LP 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 LP becomes aware of and that were not previously reported to the Commission.
14. 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.
15. 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.

16. 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. A landowner may waive the requirement to strip and segregate topsoil greater than 12 inches in depth. 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.
17. Reclamation and clean-up along the right-of-way must be continuous and coordinated with ongoing construction.
18. 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.
19. Reclamation, fertilization and reseeding must be done by Enbridge LP according to the Natural Resource Conservation Service unless otherwise specified by the landowner and approved by the Commission.
20. Enbridge LP shall comply with the Commission's Tree and Shrub Mitigation Specifications submitted as Exhibit A at the hearing.
21. Enbridge LP shall repair or replace all fences and gates removed or damaged during all phases of construction and operation of the proposed transmission facility.

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

Dated this ___ day of October, 2007.

PUBLIC SERVICE COMMISSION

Susan E. Wefald
Commissioner

Tony Clark
President

Kevin Cramer
Commissioner