

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Belle Fourche Pipeline Company
8-Inch Crude Oil Pipeline/McKenzie County
Siting Application**

Case No. PU-07-596

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

November 9, 2007

Appearances

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

John W. Morrison, Attorney-at-Law, Fleck, Mather & Strutz, Ltd., 400 East Broadway, Suite 600, Bismarck, North Dakota 58502, on behalf of Belle Fourche Pipeline Company.

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 August 2, 2007, Belle Fourche Pipeline Company (Belle Fourche) filed a Letter of Intent with the Public Service Commission ("Commission"). Belle Fourche proposes to construct approximately 32 miles of 8-inch liquid petroleum pipeline adjacent and parallel to its existing pipeline in McKenzie County, North Dakota (Alexander Loop).

On August 8, 2007, the Commission acknowledged Belle Fourche's Letter of Intent, shortened the waiting period for filing the siting application to one day, and assessed a filing fee of \$51,000.00 due upon filing of an application.

On September 18, 2007, Belle Fourche filed an application for a waiver of procedures and time schedules, and a consolidated application for a certificate of corridor compatibility and route permit authorizing the construction of the Alexander Loop.

On September 25, 2007, the Commission found that the application of Belle Fourche was complete and issued a Notice of Filing and Notice of Hearing for a public hearing for October 30, 2007, at 10:00 a.m. CDT at the McKenzie County Courthouse, 201 5th Street NW, Watford City, North Dakota. The public hearing was held as scheduled.

Belle Fourche requests the Commission (1) waive the procedures set forth in North Dakota Century Code §§ 49-22-08 and 49-22-08.1 to allow a single consolidated application for a corridor certificate and a route permit for this project and (2) reduce the minimum width of the corridor for this project, from 3.2 miles, as required by North Dakota Administrative Code § 69-06-04-02, to one mile.

The issues to be considered in this matter include:

1. Will the location, construction, and operation of the proposed pipeline produce minimal adverse effects on the environment 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 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. Belle Fourche is a Wyoming corporation with its principal place of business located at 455 North Poplar Street, Casper, Wyoming.
2. Belle Fourche is a part of the True companies, of Casper Wyoming and currently operates approximately 1500 miles of pipeline in 3 states, including a pipeline running from Baker, Montana to Alexander, North Dakota. The Baker to Alexander pipeline was previously designed to move crude from points of production in North Dakota to the Butte Pipeline near Baker, Montana for delivery to Guernsey, Wyoming.

3. At the present time, prices for crude oil delivered into the Guernsey, Wyoming interconnection are depressed, primarily because increased imports of Canadian crude oil have filled available refinery capacity in the Midwest and Mid-continent areas and have also filled pipeline capacity out of Guernsey into other refining markets. As a result, crude delivered into Guernsey in the spring of 2006 suffered a price discount as high as \$25.00 per barrel.

4. To accommodate producers and shippers, on January 1, 2006 Belle Fourche reversed the line to deliver crude produced in Bowman County, North Dakota and Fallon County, Montana to an interconnection with an Enbridge pipeline system near Alexander, North Dakota. The pipeline currently consists of 10-inch pipe from Baker to Belle Fourche's Bicentennial Station in McKenzie County, North Dakota; 8-inch pipe from Bicentennial Station to Bowline Field, also in McKenzie County; and 6-inch pipe from Bowline Junction to Alexander. The 6-inch line is a constraint on the system, only able to deliver approximately 10,000 barrels per day after employing Drag Reducing Agents and increased pressures.

5. The Alexander Loop will, for the most part, parallel the existing 6-inch pipeline from Bowline Junction to Alexander. The Alexander Loop will be able to deliver an average of 20,000 barrels of crude per day to Enbridge, which will increase the overall capacity of the system to 30,000 barrels of crude per day. The Alexander Loop will alleviate the restrictions on marketing of substantial volumes of crude oil produced in Bowman and Fallon Counties by allowing that oil to be delivered into the Enbridge Pipeline system for delivery to an interconnection hub at Clearbrook, Minnesota.

6. Neither tanker trucks nor railroad cars offer a practical alternative for delivery of these quantities of crude oil because of limitations on equipment and facilities and the impact the movement of such volumes of crude oil would have on roads and other infrastructure. The 20,000 barrels per day to be delivered through the Alexander Loop alone would require approximately 95 cargo tanker trucks traveling 270 miles round trip each on each day of the year.

7. The Alexander Loop will be installed in right-of-way that is adjacent to the right-of-way for the existing 6-inch pipeline. It will use the existing pipeline system of 10-inch, 8-inch and 6-inch pipes from Baker to Alexander rather than replacing the entire system.

8. No new pumping stations will be constructed within the State of North Dakota. One gate valve will be installed above-ground and the only other above-ground facilities will be line markers and rectifiers which are a part of the cathodic protection system for the pipeline.

9. During construction, Belle Fourche will generally require a construction corridor of 66 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.

10. Installing the Alexander Loop adjacent to the existing 6-inch pipeline allows Belle Fourche to minimize land disturbances.

11. After construction is completed, the project will directly benefit the local economy by increasing McKenzie County property taxes by an estimated \$90,000.

12. 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 Selection 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.

13. Belle Fourche evaluated a one-mile wide corridor for the exclusion, avoidance, selection and policy criteria of the Commission.

14. Belle Fourche, through a consultant, conducted an archeological and cultural resource assessment of the corridor and route. A literature search revealed that fifteen previous cultural resource inventories have been conducted in the area of the proposed pipeline. A review of the State Historic Preservation Office's (SHPO) files identified three prehistoric sites and six historic sites within one mile of the proposed route. Of these, only one was located within a 150-foot wide corridor centered on the proposed pipeline route and that is a foundation, depression and shed with scattered cultural material which has been determined to be ineligible for listing in the National Register of Historic Places. A pedestrian survey was conducted along the 150-foot wide corridor in which the site referred to above was re-examined and again determined to be ineligible for listing and another site consisting of a foundation/basement feature with historic cultural material scatter which was also determined to be ineligible for listing was also located. All of the other sites are outside the 150-foot corridor in which the pipeline will be located.

15. The archeologist who conducted the study determined that the project will have no effect on historic properties. A cultural resource report was submitted to the SHPO and SHPO has concurred with the recommendations contained in the report.

16. There are no national historic sites or landmarks, natural landmarks, wilderness areas, national parks, national monuments, state parks, state historic sites, state historical markers, state archaeological sites or state monuments within the proposed corridor.

17. There are no state nature preserves, state game refuges, state game management areas, national wildlife areas, or national wildlife refuges within the proposed corridor.

18. The proposed corridor and route cross national grasslands managed by the United States Forest Service, and approximately 7 miles of the proposed line will be located on lands designated as national grasslands. Because of the location of the existing pipeline and the prevalence of national grasslands in the area, Belle Fourche found no reasonable alternative to crossing the national grasslands. Belle Fourche has applied for and received a modified special use permit from the United States Forest Service.

19. Neither the proposed pipeline nor the proposed corridor cross any national or state wild, scenic or recreational rivers. The pipeline will have ten creek crossings. There are some wetland-type areas in the vicinity of some of the creek crossings. Belle Fourche has applied for the necessary permits from the United States Army Corps of Engineers and the permits are pending. If the permits are not obtained by the time necessary for construction, Belle Fourche will cross the creeks by boring under the creeks and riparian wetlands, which will not require any permits. Exhibit 6 consists of 11 maps marked 6.1 through 6.11 detailing the location of trees and shrubs along the route and various water crossings. The maps indicate there is no impact on woody areas due to the proposed pipeline construction at the Exhibit 6.4 Lonesome Creek crossing, the Exhibit 6.6 Antelope Creek crossing, the Exhibit 6.8 Charbonneau Creek crossing, the two Exhibit 6.9 Spring Creek crossings, the Exhibit 6.10 Spring Creek crossing and the Exhibit 6.11 Spring Creek crossing. The maps indicate that construction of the proposed pipeline may avoid trees at the Exhibit 6.2 Camp Creek crossing. The maps indicate that the woody area at the Exhibit 6.7 Antelope Creek crossing would be impacted unless the creek crossing is made using horizontal directional drilling.

20. The proposed pipeline is not located within 500 feet of any residences, schools or places of business.

21. The proposed pipeline will be more than 1000 feet away from two water supply wells used by the City of Alexander. The supply wells produce from the Fox Hills aquifer with a depth of approximately 1700 feet below the surface. The existing 6-inch line is closer to the water supply wells than the proposed 8-inch line. The City of Alexander indicated to Belle Fourche that it had no concerns about the location of the line and that it had not experienced any problems with the existing 6-inch line.

22. There are no irrigated lands or lands suitable for irrigation within the proposed corridor.

23. The majority of the land in the proposed corridor is agricultural and pasture land where crop or livestock production is extensive. Construction is anticipated to start after the completion of the 2007 growing season and prior to the 2008 season. Belle Fourche will compensate landowners for any crop loss resulting from construction or pipeline maintenance or repair.
24. The pipeline will not cross any wetland areas as identified in the National wetlands inventory posted by the U.S. Fish and Wildlife Service.
25. Belle Fourche consulted with the following federal, state and local agencies: the United States Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Forest Service, North Dakota Game and Fish Department, North Dakota Parks and Recreation Department, North Dakota Department of Transportation, McKenzie County, and the City of Alexander.
26. Belle Fourche reviewed the National Heritage Inventory data maintained by the North Dakota Parks and Recreation Department to identify species of concern and significant ecological communities that exist in the project area. Belle Fourche also conducted botany surveys along the proposed route. No endangered, threatened or sensitive plant species were identified along the proposed route.
27. The Fish and Wildlife Service recommended avoidance of prairie dog colonies, which are inhabited by black-footed ferrets, and consideration for the Dakota skipper butterfly. There are no known prairie dog colonies that will be affected by the proposed route and construction will occur during the fall and winter, when there will be no impact on the Dakota skipper butterfly.
28. The Forest Service provided a list of sharp-tail and sage grouse leks in the area. Since Alexander Loop construction activity will occur when the leks inactive, there will be no impact on the reproductive success of sharp-tailed grouse and sage grouse. The Forest Service also identified golden eagle nests in the vicinity of the pipeline route, but the pipeline will be at least one-half mile from the nearest golden eagle nest and, due to the topography involved, construction activity will impact no golden eagle nest.
29. Belle Fourche will utilize an environmental inspector during active construction with responsibility for compliance with the environmental requirements and permits during construction. The environmental inspector will have stop work authority.
30. The design, construction, 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.
31. A cathodic protection system will be installed to prevent against corrosion. In addition, Belle Fourche will monitor flow of crude oil by a SCADA (Supervisory Control and Data Acquisition) system.

32. Belle Fourche will conduct post-construction monitoring on all areas disturbed by the project to determine the success of restoration.

33. At the hearing, Belle Fourche amended the proposed route for the Alexander Loop at two locations due to an inability to secure landowner consents or easements for the original proposed route. Maps of the route changes were submitted as Exhibit Nos. 3, 4, and 5. The route at these two locations does not impact cultural resources or any other exclusion, avoidance, or selection criteria.

34. Belle Fourche testified that it will comply with the Tree and Shrub Mitigation Specifications presented by the Commission at the hearing.

35. The proposed pipeline will cross tree rows and wooded areas. Trees will be protected to the extent possible and Belle Fourche indicated it would comply with the Commission's requirements to replace trees. Belle Fourche filed late-filed Exhibit No. 6 detailing the location of tree rows and wooded areas in relation to water crossings.

36. 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.

37. 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, Belle Fourche Pipeline Company, and over the subject matter of this application under North Dakota Century Code Chapter 49-22.

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

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

4. 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.

5. The proposed pipeline corridor and route are compatible with the environmental preservation and the efficient use of resources.
6. 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.
7. 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. Belle Fourche Pipeline Company's application for waiver of procedures and time schedules is granted.
2. Belle Fourche is issued Certificate of Corridor Compatibility for a Transmission Facility Corridor No. 98 and Route Permit for Construction of a Transmission Facility No. 108 to construct the 32-mile 8-inch pipeline. The route that is approved for this purpose is the route identified on Appendix 4.B to the Application, amended as shown by Exhibit Nos. 3, 4, and 5 submitted at the hearing.
3. Belle Fourche 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. 98 and Route Permit for Construction of a Transmission Facility No. 108 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. Belle Fourche 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.
6. Belle Fourche shall conduct a preconstruction conference to be held prior to the commencement of any construction. The conference must include a Belle Fourche representative, Belle Fourche's construction supervisor, and Commission staff, to ensure that Belle Fourche fully understands the conditions set forth in this order.

7. Belle Fourche 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.
8. Belle Fourche 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.
9. 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.
10. All crossings of graded roads must be bored unless the responsible governing agency specifically permits Belle Fourche to open cut the road.
11. The Pipeline construction shall avoid trees at the Exhibit 6.2 Camp Creek crossing, and, if practicable, avoid trees at the Exhibit 6.7 Antelope Creek crossing.
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. Belle Fourche 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 Belle Fourche 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 Belle Fourche according to the Natural Resource Conservation Service unless otherwise specified by the landowner and approved by the Commission.

20. Belle Fourche shall comply with the Commission's Tree and Shrub Mitigation Specifications as identified in Exhibit A. The Commission may order additional plantings if, after three years from the anniversary of the plantings, survival rates of plantings are less than 75% after three years.

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

22. Belle Fourche shall provide the Commission with a hard copy and electronic copy of the pipeline alignment drawings with alignment data showing the pipeline as built, and an electronic version of the as-built pipeline alignment that can be imported into ESRI GIS mapping software, and shall provide this information within 3 months of the completion of the construction.

23. Belle Fourche's obligation for reclamation and maintenance of the right-of-way shall continue throughout the life of the pipeline.

PUBLIC SERVICE COMMISSION

Tony Clark
Commissioner

Susan E. Wefald
President

Kevin Cramer
Commissioner