



Public Service Commission

State of North Dakota

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December 31, 2008

Lawrence Bender
Fredrikson & Byron, P.A.
200 North Third Street, Suite 150
Bismarck, ND 58501-3879

RE: Case No. PU-08-831
Pecan Pipeline (North Dakota) Inc.
Natural Gas Pipeline Extension – Mountrail County
Jurisdictional Determination

Dear Mr. Bender:

Thank you for your letter dated October 14, 2008. The Commission has asked me to respond to your request on behalf of Pecan Pipeline (North Dakota), Inc., (Pecan) for a jurisdictional determination regarding siting an extension of a gas gathering facility from Palermo, North Dakota to Alliance Pipeline Interconnect near Towner, North Dakota.

After considering your filings, the staff memorandum, and research, and discussing the matter at an informal hearing and at a work session, the Commission has concluded that the proposed extension is not subject to the Energy and Transmission Facility Siting Act (Siting Act). North Dakota Century Code section 49-22-07 prohibits a utility from beginning construction of a transmission facility without first obtaining a certificate of site compatibility from the Commission. North Dakota Century Code Section 49-22-03(12)(b) defines transmission facility as:

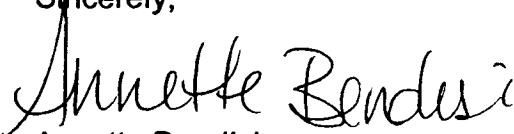
b. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or carbon dioxide. This subdivision does not apply to an oil or gas pipeline gathering system. For purposes of this chapter, a gathering system includes the pipelines and associated facilities used to collect oil from the lease site to the first pipeline storage site where pressure is

increased for further transport, or pipelines and associated facilities used to collect gas from the well to the gas processing facility.

The Commission has concluded that the facility described in your letter does not meet the definition of transmission facility in the Siting Act.

If you have any questions, please contact me.

Sincerely,



Annette Bendish
Staff Counsel

CONCURRING OPINION
Commissioner Kevin Cramer

December 31, 2008

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In October of this year, following a meeting between PSC staff and representatives of Pecan Pipeline ND Inc., PSC staff received a letter requesting a determination of non-jurisdiction relative to plans by the company to construct and install additional pipelines in Mountrail, Ward and McHenry Counties. Specifically Pecan, a wholly owned subsidiary of EOG Resources proposes a 75 mile extension of its current natural gas gathering operations performed in conjunction with oil and gas development in the Parshall-Bakken Pool.

ND law clearly requires the PSC to issue a route permit and corridor certificate for intrastate natural gas **transmission lines**. It exempts natural gas **gathering lines** from our siting authority. So the question as to our authority in the Prairie Rose Pipeline which is the name given to this particular project, is does this 75 miles of 12 inch pipe constitute a transmission line or a gathering line.

The most compelling standard for me in answering the question relates to the quality of the gas being delivered. Although the gas collected at the well is raw gas and then processed to the degree necessary to move it down stream to the Alliance Interstate Pipeline, it is still largely raw gas. The processing facility currently operated at Palermo where this extension begins is being mothballed and replaced by a condensate recovery unit which I believe constitutes an “**associated facility**”, and not a processing facility.

Although staff argument that the proposed condensate facility does process the gas beyond raw gas has merit, the removal of some impurities does not make the gas suitable for end use.

The question not answered in law is how much processing triggers the siting standard? Absent a clear definition of processing in law I believe we have to give consideration to the ordinary sense of the words used and the context in which they are used. The words “**processed gas**” used by industry refer to pipeline quality gas such as currently comes out of the Palermo facility.


There is no statute language I could find that draws a distinction between different degrees of processing. If any processing creates “**processed gas**” then there is several hundred miles of jurisdictional pipelines that have not been sited by the PSC in western ND.

Had the ND legislature wanted all pipelines from the well to the market to be sited they would have said so. Instead they drew a distinction between gathering and transmission.

The ND Industrial Commission also weighed in on our decision. Although the letter from the pipeline authority urging us to find in favor of Pecan is irrelevant to our legal responsibility, it is worth noting that the attorney general of the state sits on the governing board which authorized the letter. I can't imagine he would encourage us to break the law.

I am pleased that EOG and other companies are investing in facilities to capture and transport the rich natural gas reserves coming out of western ND rather than flaring it off. The demand for gas is increasing in our nation while the supply is finite. Currently EOG flares off 21 mcf of gas every day which could be shipped to Chicago for processing via the Prairie Rose Pipeline and the Alliance Pipeline. This will preserve a precious natural resource while providing more wealth for our citizens and revenue for our state.

The urgency of production is not the primary concern of the PSC, rather orderly and safe development is. I believe the law supports a decision of non-jurisdiction in this case.



Kevin Cramer, Commissioner