

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Whiting Oil and Gas Corporation  
6-inch Natural Gas Line/Mountrail Cty  
Siting Application**

**Case No. PU-08-843**

**ORDER GRANTING CORRIDOR CERTIFICATE AND ROUTE PERMIT**

**February 25, 2009**

**Appearances**

Commissioners: Kevin Cramer, Tony Clark, and Brian P. Kalk.

John W. Morrison, Attorney-at-Law, Crowley Fleck PLLP, 400 East Broadway, Suite 600, Bismarck, North Dakota 58502, on behalf of Whiting Oil and Gas Corporation.

Annette Bendish, Legal Counsel, Public Service Commission, State Capitol, Bismarck, North Dakota 58505, on behalf of the Public Service Commission.

Patrick Fahn, Director - Compliance and Competitive Markets Division, Public Service Commission, 600 East Boulevard, Bismarck, North Dakota 58505 on behalf of the Public Service Commission.

Allen C. Hoberg, Office of Administrative Hearings, 1707 North Ninth Street, Bismarck, North Dakota 58501-1882, as Administrative Law Judge.

**Preliminary Statement**

On November 17, 2008, Whiting Oil and Gas Corporation (Whiting) filed an application to site a 16-mile, six-inch natural gas pipeline (Pipeline) from its Robinson Lake Gas Processing Plant to an interconnection with Williston Basin Interstate Pipeline Company's (WBI) interstate transmission line southeast of the town of Stanley, North Dakota, all in Mountrail County. The pipeline route is specifically shown by route maps included in Whiting's application.

Whiting requests that the Commission (1) waive the requirement of separate filing applications for a corridor certificate and a route permit; and (2) reduce the minimum width of the corridor to 1 mile under North Dakota Administrative Code Section 69-06-04-02; and (3) designate the corridor and route as requested.

On November 26, 2008, the Commission deemed the application of Whiting complete and issued a Notice of Filing and Notice of Hearing scheduling a hearing for January 13, 2009, at 12:00 noon in the Mountrail County Courthouse, Community Room, 101 North Main Street, Stanley, North Dakota. Due to inclement weather, the hearing was rescheduled for February 3, 2009 at 12:00 noon at the same location.

The Notice of Hearing identified the following issues to be considered:

1. Will the location, construction, and operation of the proposed facilities produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?
3. Will the proposed facility 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. Is it appropriate for the Commission to waive procedures and time schedules as requested, including the requests for single consolidated applications for corridor certificates and route permits?

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. Whiting is a Delaware corporation based in Denver, Colorado. Whiting owns and operates oil and gas properties in the Permian Basin, Rocky Mountain, Mid-Continent, Gulf Coast and Michigan regions of the United States and is currently developing new oil and gas production fields in North Dakota, including Mountrail County, North Dakota.
2. Whiting has constructed and is operating the Robinson Lake Gas Processing Plant approximately 17 miles south of the city of Stanley, North Dakota. The Plant processes casinghead gas, produced in association with oil, to produce end-use consumer-quality gas to be delivered into a transmission pipeline.
3. Whiting has constructed the Pipeline and has placed it in service. The Pipeline transports end-use consumer-quality gas from the Robinson Lake Gas Processing Plant to WBI's transmission line. There is no alternative method for transmitting the gas.

### **Pipeline Integrity**

4. The pipeline is a six-inch, nominal size diameter with a minimum 0.280 inch wall thickness and a grade of X-52/X42. The maximum operating pressure will be at 720 pounds per square inch. The maximum design flow rate is 20 million cubic feet per day. Whiting has also constructed two above-ground block valve facilities, each of which is located at the edge of an agricultural field in a fenced-in enclosure approximately 16 feet by 40 feet in size. The block valve facilities are located approximately six miles and 11 miles north of the Plant. There is also a meter station at the point of interconnection with WBI that is contained in a 50 foot by 135 foot fenced-in facility.

5. Whiting affirms that the design, construction and operation of the pipeline is in accordance with the United States Department of Transportation regulations governing the transportation of natural gas as prescribed under 49 CFR Part 192-Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.

### **Exclusion and Avoidance Areas**

6. 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.

7. Subsequent to construction of the pipeline, Whiting retained Merjent, Inc. of Minneapolis, Minnesota, to coordinate environmental studies and reports. As part of the environmental studies and reports, Merjent, Inc. reviewed a one-mile wide study corridor centered on the pipeline (Merjent Corridor). Merjent, Inc. retained Keitu Engineers & Consultants, Inc. of Mandan, North Dakota, to conduct a field survey for biological resources and a wetland assessment within a 170-foot-wide corridor, 75 feet wide on the west side of the Pipeline and 95 feet on the east side on the Pipeline (Keitu Corridor). Merjent, Inc. retained Metcalf Archaeological Consultants to conduct a Class III cultural survey within a 120-foot-wide corridor, 40 feet on the west side of the Pipeline and 80 feet on the east side of the Pipeline (Metcalf Corridor).

8. The Merjent, Inc. staff has contacted the following state and federal agencies: the United States Army Corps of Engineers, U.S. Fish and Wildlife Service, Natural Resources Conservation Service, North Dakota State Historical Society, North Dakota Game and Fish Department, North Dakota State Land Department, North Dakota State Health Department, and the North Dakota Parks and Recreation Department.

### **Exclusion Areas**

9. No exclusion areas were identified in the Merjent Corridor.

### **Avoidance Areas**

10. Avoidance areas in the Merjent Corridor include national wildlife refuges, state management areas, historical resources which are not specifically designated as exclusion or avoidance areas, residences, schools, and business.

11. No national wildlife refuges are found within a 45-foot wide corridor encompassing the construction footprint which was used to excavate the trench and lay the pipeline.

12. Several large sections of private land holdings are subject to wetland and grassland conservation easements held by the United U.S. Fish and Wildlife Service (FWS). Whiting consulted with FWS personnel and either moved the pipeline route laterally as necessary to avoid wetlands or grasslands or used horizontal directional drilling to cross certain wetlands.

13. Wetlands are scattered through the Merjent Corridor and along the proposed route. Whiting intends to minimize any impacts on these wetlands by stripping topsoil in unsaturated area.

14. The FWS letter dated February 6, 2009 with attached September 30, 2008 letter outlines measures that the FWS believes should be included as conditions of the Commission's order. In its letter dated February 11, 2009, Whiting agrees to fully comply with the conditions outlined by the FWS, including the retention of a qualified biologist to conduct field surveys, if, as is likely, the oil pipeline is constructed during the breeding season between February 1 and July 15.

15. There is one parcel of School Trust Land within the corridor but it will not be crossed by the proposed route.

16. There are two parcels of Conservation Reserve Program (CRP) lands and two parcels of Private Land Open To Sportsmen (PLOTS) crossed by the 45-foot wide construction corridor. The North Dakota Game and Fish Department requested that two tracts of PLOTS land be restored to pre-construction conditions. Whiting will restore the CRP and PLOTS lands to preconstruction conditions and reseed the CRP land according to specifications from the Natural Resources Conservation Service.

17. A Class I Literature Search disclosed five archaeological site leads, one prehistoric isolated find, three archaeological sites, and three standing structures within a two-mile wide study corridor. Additionally, one missile site was also located within the two-mile wide study corridor. A Class III Intensive Inventory field survey was conducted along a 120-foot wide corridor except that on the north end of the proposed pipeline, all of the SE/4 and the E/2SW/4 of Section 27, which is where the final 1.4 miles of pipeline will be located, were surveyed. The Class III survey discovered a total of 17 new archaeological sites and six isolated finds. As a result, Merjent, Inc. consulted with the North Dakota State Historic Preservation Office (NDSHPO) and obtained approval for a mitigation plan which includes maintaining a 50-foot buffer around certain of the features for construction on an oil pipeline adjacent to the gas pipeline.

18. No residences, schools or businesses are within 500 feet of the 45-foot wide construction corridor.

19. Prior to pipeline trenching, up to 6 inches of topsoil was segregated before the pipeline trench was excavated. The pipeline was buried to a minimum depth from ground surface to the top of the pipe of 48 inches. Upon completion of construction, subsoil was first placed on the pipe, followed by respread of the topsoil.

20. All crossings of graded roads were bored.

21. The proposed pipeline crossed or potentially impacted three tree rows. One contains only small, immature chokecherry and buffalo berry shrubs or trees. Approximately 10 trees were removed at this location. The second crossing of a mature tree row was bored to avoid any impact. The third tree row had no live trees at the point of crossing and only one dead tree was removed.

22. Whiting agreed to comply with the Tree and Shrub Mitigation Specifications attached to this Order.

23. There will be no significant long-term irreversible effects to the environmental or to cultural resources by construction of this pipeline.

24. 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.

25. The Commission finds the location, construction, and operation of the Pipeline will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.

26. The Commission finds the proposed project compatible with environmental preservation and the efficient use of resources.

27. The Commission finds that the proposed project minimizes 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.

28. The Commission finds the proposed project is of such length, design, location and purpose that it will produce minimal adverse effects, so that procedures and time schedules may be waived.

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

### **Conclusions of Law**

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

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

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

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

5. The location, construction and operation of the pipeline are compatible with environmental preservation and the efficient use of resources.

6. The pipeline 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 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.

8. It is appropriate for the Commission to waive those certain procedures and time schedules as requested in the Application and provided under North Dakota Century Code Section 49-22-07.2.

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

### **Order**

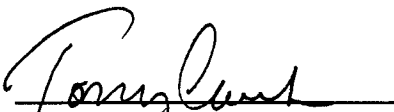
The Commission orders:

1. Whiting Oil and Gas Corporation's application for a waiver of procedures and time schedules is granted.
2. Certificate of Corridor Compatibility Number 108 is issued to Whiting, designating a corridor for its proposed pipeline project.
3. Route Permit Number 118 is issued to Whiting, granting authority to construct and operate a 6-inch natural gas pipeline in Mountrail County.
4. The Certificate of Corridor Compatibility Number 108 and Route Permit Number 118 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. Whiting must obtain approval from the Commission prior to any changes in the facility route or structure locations.
6. Whiting shall comply with the rules and regulations of all other agencies having jurisdiction over any phase of the proposed pipeline, shall obtain all other necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission.
7. Whiting shall conduct a preconstruction conference prior to the commencement of any further construction, which must include a Whiting representative, its construction supervisor, and a representative of Commission staff to ensure that Whiting fully understands the conditions set forth in the Commission's order.
8. Whiting shall inform the Commission of its intent to start any further construction on the pipeline prior to the commencement of construction, report to the Commission on the date construction has started, and once construction has started, it shall keep the Commission updated on construction activities on a weekly basis.
9. Whiting shall construct and operate the pipeline in the manner described in its application, in any late filed exhibits and supplemental materials, and in accordance with all applicable safety requirements.
10. The pipeline shall 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, and 48 inches at the bottom of the ditch for road crossings. For any further construction, the pipeline shall 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 shall be bored unless the responsible governing agency specifically permits Whiting to open cut the road.

12. The width of clear cuts through any wooded areas and shelterbelts shall be kept at a maximum of 50 feet where possible.
13. Whiting shall promptly report to the Commission the presence in the permit area of any critical habitat of threatened species, endangered species, bald eagles, or golden eagles that Whiting becomes aware of and which were not previously reported to the Commission.
14. Whiting shall comply with the measures set forth in the U.S. Fish and Wildlife Service's February 11, 2009 and September 30, 2008 letters, including the conduct of a field survey by a qualified biologist if construction occurs during the February 1 and July 15 breeding season, and shall provide copies of any notifications to the Fish and Wildlife Service to the Commission.
15. Further 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.
16. All cultural resource mitigation plans must be submitted to the North Dakota State Historic Preservation Office and approved prior to the start of any fieldwork and any further construction activity.
17. If any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made by the State Historical Society, a report of such examination is filed with the Commission, and clearance to proceed is given by the SHPO and the Commission.
18. In any further 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 the topsoil. Any area on which excavated subsoil will be placed must also be stripped of topsoil. After backfilling is completed, and excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must 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 construction.
20. All pre-existing roads and lanes used during any further construction must be restored to a condition that will accommodate their previous use, and areas used as temporary roads or working areas during construction must be restored to their original condition.

21. Reclamation, fertilization, and reseeding are to be done by Whiting according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
22. Whiting shall comply with the Tree and Mitigation Specifications attached to this order.
23. Whiting shall work with landowners and residents to mitigate any increase in television and residential radio interference that results from the route of the pipeline.
24. Whiting shall provide the Commission with a hard copy of the facility alignment drawings with alignment data showing the facility as built (hardcopy and electronic versions), and an electronic version of the as-built facility that can be imported into ESRI GIS mapping software within 3 months of the date of this order.
25. Whiting's obligation for reclamation and maintenance of the right-of-way will continue throughout the life of the pipeline.
26. The authorizations granted by the corridor certificate and route permit are subject to modification by order of the Commission if deemed necessary to further protect the public or the environment.

**PUBLIC SERVICE COMMISSION**

  
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**Tony Clark**  
**Commissioner**

  
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**Kevin Cramer**  
**President**

  
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**Brian P. Kalk**  
**Commissioner**

**Case No. PU-08-843**

**Tree and Shrub Mitigation Specifications**

**Inventory**

1. Trees and shrubs anticipated to be cleared, including those that are considered invasive species or noxious weeds (*e.g.*, *Caragana arborescens*, *Elaeagnus angustifolia*, *Rhamnus cathartica*, *Tamarix chinensis*, *T. parviflora*, *T. ramosissima*, *Ulmus pumila*), shall be inventoried before cutting. The inventory shall record the location, number, and species of trees and shrubs.
2. In windbreaks, shelterbelts and other planted areas, trees or shrubs anticipated to be cleared, regardless of size, shall be inventoried for replacement.
3. In native growth areas, trees anticipated to be cleared that are 1 inch diameter at breast height ("dbh") or greater shall be inventoried for replacement.
4. In native growth areas, shrubs anticipated to be cleared in the permanent right-of-way shall be inventoried for replacement.
5. In native growth areas outside the permanent right-of-way, shrubs shall be cut flush with the surface of the ground, taking care to leave the naturally occurring seed bank and root stock intact. If soil disturbance is necessary, the native topsoil shall be preserved and replaced after construction. Shrubs shall be allowed to regenerate naturally where native topsoil is preserved and replaced. Where native topsoil is not preserved and replaced, shrubs anticipated to be cleared shall be inventoried for replacement.
6. In native growth areas, trees and shrubs may be inventoried by actual count or by sampling method that will properly represent the woody

vegetation population. A sampling plan developed by the company, filed with the North Dakota Public Service Commission (NDPSC) and approved prior to the start of construction shall define the sampling method to be used for trees, for tall shrubs and for low shrubs. The data from the sample plots shall be extrapolated to the total acreage of the wooded area to be cleared to determine the species and quantity of trees and shrubs to be replaced.

#### **Clearing for Construction**

7. Trees and shrubs shall be selectively cleared, leaving mature trees and shrubs intact where practical.
8. The width of clear cuts through windbreaks, shelterbelts and all other wooded areas shall be limited to 50 feet or less unless otherwise approved by the NDPSC.
9. If the area of trees or shrubs actually cleared differs from the area inventoried, the difference in number of trees and shrubs to be replaced shall be noted on the inventory.

#### **Replacement**

10. Prior to tree/shrub replacement, documentation identifying the number and variety of trees removed as well as the mitigation plan for the proposed number, variety, type, location and date of replacement plantings shall be filed with the NSPSC for approval.
11. Tree replacement shall be on a 2 to 1 basis with 2-year-old saplings. Shrub replacement shall be on a 2 to 1 basis with stem cuttings.
12. Trees and shrubs shall be replaced by the same species or similar species suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.

13. Tree and shrub replacement shall not be conducted within a 20 to 30 foot wide path over the pipeline to facilitate visual inspections of the right-of-way in accordance with U.S. Department of Transportation safety regulations.
14. 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 those replacement trees/shrubs to be planted at alternative locations.
15. At the conclusion of the project, documentation identifying the actual number, variety, type, location and date of the replacement plantings shall be filed with the NDPSC.
16. Tree/shrub replacements shall be inspected once a year for three years, on about the anniversary of the plantings, and, on or shortly before October 1 of each year, a report shall be submitted to the NDPSC documenting the condition of replacement planting and any woodlands work completed. If after three years from the anniversary of the plantings the survival rate is less than 75%, the NDPSC may order additional planting(s).

# STATE OF NORTH DAKOTA

## Certificate of Corridor Compatibility

Number 108

*This is to certify that the Commission has designated a transmission facility corridor for Whiting Oil and Gas Corporation to construct and operate approximately 16 miles of six-inch natural gas pipeline with associated facilities and pipeline interconnections in Mountrail County, North Dakota.*

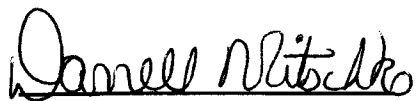
*The transmission facility route is designated by the Commission's February 25, 2009 Order in Case No. PU-08-843.*

*This certificate is subject to the conditions and limitations noted in that order.*

*Bismarck, North Dakota, February 25, 2009.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**



**Executive Secretary**



**Commissioner**

# STATE OF NORTH DAKOTA

## Route Permit

### Number 118

*This is to certify that the Commission has designated a transmission facility route for Whiting Oil and Gas Corporation to construct and operate approximately 16 miles of 6-inch natural gas pipeline with associated facilities and pipeline interconnections in Mountrail County, North Dakota.*

*The transmission facility route is designated by the Commission's February 25, 2009 Order in Case No. PU-08-843.*

*This permit is subject to the conditions and limitations noted in that order.*

*Bismarck, North Dakota, February 25, 2009.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
**Executive Secretary**

  
**Commissioner**