

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA

Enbridge Pipelines (North Dakota) LLC
Beaver Lodge Loop Project –
Ward, Mountrail and Williams Counties
Siting Application

CASE NO. PU-10-613

RECEIVED

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER
April __, 2011**

APR 04 2011

PUBLIC SERVICE COMMISSION

Appearances

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

Brian Bjella and Wade Mann, Attorneys at Law, Crowley Fleck PLLP, 400 East Broadway, Suite 600, Bismarck, North Dakota 58501, on behalf of Enbridge Pipelines (North Dakota) LLC (“Enbridge”).

Mitchell Armstrong, Special Assistant Attorney General, Legal Counsel for Public Service Commission, 116 North Second Street, Bismarck, North Dakota 58502, on behalf of the Public Service Commission.

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

Al Wahl, Administrative Law Judge, Office of Administrative Hearings, 1701 North Ninth Street, Bismarck, North Dakota 58501-1882, as Procedural Hearing Officer.

Preliminary Statement

Under North Dakota Century Code § 49-22-07, a utility may not begin construction of a transmission facility in the state without first having obtained a certificate of site compatibility. The facility must be constructed, operated and maintained in conformity with the certificate or permit and any terms, conditions or modifications of the certificate or permit.

On November 17, 2010, Enbridge filed with the Public Service Commission (“Commission”) an application for a certificate of corridor compatibility (“Certificate of Corridor Compatibility”) and an application for route permit (“Route Permit”) to authorize

construction of a crude oil pipeline and associated facilities (“Project”) located in Ward, Mountrail and Williams Counties, North Dakota.

Enbridge also requested that the Commission waive the following requirements: (1) that the Commission hold a separate hearing on Enbridge’s waiver request, Certificate of Corridor Compatibility application and Route Permit application, (2) separately file applications for a Certificate of Corridor Compatibility and a Route Permit, and separate publication of notices of filing the applications, and (3) hold one consolidated public hearing on both applications for the three affected counties.

On December 8, 2010, the Commission deemed the application of Enbridge complete and issued a Notice of Filings and Notice of Hearing scheduling a hearing for January 20, 2011, at 10:00 a.m. at the City Hall Auditorium, 5 Third Avenue NE, Kenmare, North Dakota 58746.

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 affects 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 impacts while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

On January 18, 2011, Enbridge filed with the Commission updated facility descriptions for the Beaver Lodge and Stanley Stations and addendums to the wetland delineation report. On January 20, 2011, Enbridge filed with the Commission its Certification Relating to Order Provisions: Transmission Facility Siting dated January 17, 2011, binding Enbridge to requirements to be set forth by the Commission in its Order.

On January 20, 2011, the public hearing was held as scheduled.

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 Pipeline (North Dakota), LLC (“Enbridge”) is a Delaware limited liability company with an office located in Minot, North Dakota.

2. Enbridge has been authorized to do business in the State of North Dakota since May 4, 2001, as evidenced by a Certificate of Good Standing issued by the North Dakota Secretary of State on that same date.

Size, Type and Preferred Location of Facility

3. The Project will consist of a new transmission line consisting of approximately 56 miles of 16-inch diameter steel pipe running through Williams, Mountrail and Ward Counties. The project will also include the installation of new pumping station facilities and tankage at Enbridge's Beaver Lodge and Stanley Station sites, as well as additional tankage at Enbridge's Berthold Station site.
4. The Project includes a new 150,000 BBL breakout and storage tank at the Beaver Lodge Station and a new 80,000 BBL breakout and storage tank at Stanley Station. The Beaver Lodge and Stanley Stations upgrades will each include 2 new 3750 HP pump assemblies and variable frequency drive assemblies. Beaver Lodge Station will have 4 new control buildings, while Stanley Station will include 2 new control buildings. In addition, each pumping station will receive electrical infrastructure upgrades, new 400 HP booster pumps, interconnecting pipe and station valves, as well as additional associated equipment.

Need for Facility

5. Enbridge's North Dakota pipeline system operates at full capacity and is subject to apportionment. Enbridge has recognized that production of oil from the Bakken Formation and other oil producing formations within the Williston Basin of North Dakota has greatly increased and is a significant factor in this capacity constraint. This increased production has created an urgent need for additional pipeline capacity to transport the oil to key refining markets outside of North Dakota, as crude oil production in the Williston Basin may be curtailed if there is a lack of adequate transportation facilities. The purpose of the Project is to create additional transportation capacity for crude oil produced primarily from the Bakken and Three Forks Formations in the Williston Basin of North Dakota. Upon completion of the Project, this increased capacity will create additional access to refinery markets that include the Minneapolis/St. Paul refineries, Great Lakes region refineries, the Midcontinent markets connected to Cushing, Oklahoma via Enbridge's Mainline System and other markets via other interconnecting pipelines.

Study of Preferred Location(s)

6. The Project Right-of-Way ("ROW") will generally be 250 feet wide.
7. Approximately 43.7 miles of the proposed 56 mile corridor for the Project will be co-located parallel to Enbridge's existing Line 82 Pipeline that has been in place and

operating for years. Enbridge is utilizing an existing right-of-way corridor for the great majority of the Project and did not consider an alternate location so as to minimize additional environmental and human impacts while maximizing increased capacity potential of existing facilities that will be upgraded as part of the Project. However, Enbridge did consider the alternative of transporting the oil via long-haul trucking and estimated that the 145,800 barrels per day of incremental capacity created by the Project is equal to an average of 729 trucks per day, each carrying 200 barrels of oil. Given the potential increased impact on public safety and the burden on North Dakota's roadway infrastructure from increased crude oil production, Enbridge has shown that the Project is a safe and efficient preferred alternative mode of transporting increased production.

8. Enbridge conducted studies of the ROW centered on the preferred pipeline route. A Class I Literature Search was completed on a one-mile wide corridor area centered on the preferred pipeline route, and a Class III Cultural Resource Inventory was completed for the 250 foot ROW center of the preferred pipeline route. Additionally, environmental data that was collected included information on soils, land use, wetlands and water body crossings, and protected species.

Enbridge consulted with various governmental agencies, including the State Historical Society of North Dakota, State Historic Preservation Office (SHPO); North Dakota Parks and Recreation Department; North Dakota Game and Fish Department; North Dakota Department of Health; and the U.S. Fish and Wildlife Service (USFWS).

9. The State Historic Preservation Office has concurred with the determination that no historic properties will be affected by the Project.
10. The North Dakota Department of Health indicated that it believes the environmental impacts from the Project will be minor.
11. The USFWS comments focused on threatened and endangered species, migratory birds, bald and golden eagles, wetlands, and high value habitat avoidance.
12. The Commission has established criteria pursuant to North Dakota Century Code § 49-22-05.1, to be used in identifying exclusion and avoidance areas and to guide the site, corridor, and route suitability evaluation and designation process. In addition, inhabited rural residences must be designated avoidance areas. The Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria are set forth in North Dakota Administrative Code § 69-06-08-01.
13. With the exception of prime and unique farmland, a transmission facility must not be sited within an Exclusionary Area. The exception for prime and unique farmland under North Dakota Administrative Code § 69-06-08-01(d) is that if the Commission finds that

the prime and unique farmland that will be removed from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural production, then the exclusion shall not apply. No Exclusion Areas were identified along the proposed Project route.

14. A transmission facility must not be sited within an Avoidance Area unless the applicant shows that under the circumstances there is no reasonable alternative. The one-mile corridor for the Project contained two Avoidance Areas, the first consists of five archaeological sites. None of these sites contain any significant buried cultural material and each can be avoided during construction by narrowing or realigning the centerline construction corridor, and marking a 50-foot buffer around the archaeological site features. SHPO concurred with these recommendations. The second avoidance area results from the fact that the proposed pipeline will pass within 500 feet of seven rural residences and one business. Waivers have been obtained from each of the affected parties.
15. Wetland delineations were completed along the proposed corridor and within the boundary of the associated facilities. The delineations found that no permanent impacts to any wetlands are anticipated as a result of the Project. After completion of the initial surveys, Enbridge expanded the Beaver Lodge Station and Berthold Terminal survey boundary. Additional survey work was completed and the results were recently filed with the Commission. Based on previous discussion with the Corps of Engineers and the fact that no permanent loss of wetlands is anticipated, Enbridge anticipates that the U.S. Army Corps of Engineers will authorize the project under a Nationwide Permit 12.
16. The Project may result in short term wildlife habitat removal, due to clearing and construction. The Project will have no significant impact on fish and wildlife resources and no impacts are anticipated to endangered or threatened sensitive plant or animal species.
17. In accordance with the Commission's Selection Criteria, a transmission facility shall be approved only if it is demonstrated that no significant adverse impact will result from the location, construction and operation of the facility. Enbridge has analyzed the impacts of the Project in relation to all of the relevant Selection Criteria. No significant adverse impacts will result from the location, construction and operation of the Project.
18. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the transmission facility. Enbridge has analyzed the relevant Policy Criteria and is expressly committed to conducting its business in compliance with all applicable environmental laws and regulations; committing to energy conservation through the facility's location, process, and design; training and utilizing available labor in the state; constructing the Project to take advantage of economies of scale; achieving transmission capacity in the most minimally

intrusive and most efficient way possible; and coordinating with state and local officials. Enbridge submitted evidence to demonstrate commitment to maximize the benefits of the proposed transmission facility so as to meet the Policy Criteria.

19. Representatives of Mountrail County and Idaho Township and Farmers Union Oil of Stanley, North Dakota appeared at the public hearing and offered testimony raising concerns with the proposed pipeline route as it passes to the south of the City of Stanley near a parcel of land on which Mountrail County is developing new facilities and along a township road scheduled for widening. Enbridge met and conferred with representatives of Idaho Township and Mountrail County and has committed to coordinating the construction of the Project with the County and Township in a manner that permits all facilities to safely coexist and without increased cost to the local government bodies.

Measures to Minimize Impact

20. Enbridge has agreed to a number of steps to mitigate the impact of the Project as indicated by the January 20, 2011, Certification Relating to Order Provisions-Transmission Facility Siting with accompanying Tree and Shrub Mitigation Specifications, which is attached to this Order.
21. The 250 foot-wide Project ROW will provide room for topsoil separation, work equipment and pipe stringing. This ROW will consist of both a permanent easement and temporary work space that will be utilized only during construction and includes material staging areas and temporary access roads.
22. Enbridge has developed an Environmental Mitigation Plan for the Project, which describes the environmental guidelines and practical mitigation measures that Enbridge will implement during Project construction and restoration. In addition, Enbridge has developed a Spill Prevention, Containment and Control Plan (“SPCCP”) that describes the planning, prevention and control measures to minimize impacts of any Project related spills.
23. The design, construction and operation of the transmission facility will be in accordance with the United States Department of Transportation (“USDOT”) regulations governing the transportation of crude oil, as prescribed under Parts 194 and 195 of Title 49 of the Code of Federal Regulations.
24. Enbridge will implement an emergency response program in compliance with standards set by the USDOT Pipeline and Hazardous Materials Safety Administration. Enbridge’s emergency response plan has been submitted to and accepted by the USDOT.
25. It is appropriate to authorize a corridor only for the area for which Enbridge performed the more thorough cultural resource study.

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

Conclusions of Law

1. The Commission has jurisdiction over Enbridge and over the subject matter of this application under North Dakota Century Code Chapter 49-22.
2. Enbridge is a utility pursuant to North Dakota Century Code § 49-22-03(13) solely for purposes of this Project.
3. The pipeline facility as proposed by Enbridge is a transmission facility as defined in North Dakota Century Code § 49-22-03(12)(b).
4. The location, construction, and operation of the proposed transmission facility will produce only minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
5. The location, construction, and operation of the proposed transmission facility are compatible with environmental preservation and the efficient use of resources.
6. The proposed transmission facility 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 transmission facility is of such design and location that it will produce minimal adverse effects, as defined under North Dakota Century Code § 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 § 49-22-07.2.

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

Order

The Commission orders:

1. Enbridge's application for a waiver of procedures and time schedules is granted.
2. Certificate of Corridor Compatibility No. ___ is issued to Enbridge designating a corridor for the construction, operation and maintenance of the proposed transmission facilities. For purposes of the Certificate of Corridor Compatibility, the corridor consists of a 250

foot-wide area centered on the pipeline route for the length of the route, and the land included within the Beaver Lodge, Stanley and Berthold stations.

3. Route Permit No. ___ is issued to Enbridge granting authority to construct and operate the transmission facilities in Williams, Mountrail and Ward Counties as further described in this Application and at the public hearing of January 20, 2011.
4. The January 17, 2011, Certification Relating to Order Provisions-Transmission Facility Siting is incorporated by reference and attached to this Order.

PUBLIC SERVICE COMMISSION

Tony Clark
Commissioner

Kevin Cramer
Commissioner

Brian Kalk
Commissioner