



OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF NORTH DAKOTA
2911 North 14th Street - Suite 303
Bismarck, North Dakota 58503

Allen C. Hoberg
DIRECTOR

September 27, 2011

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Illona Jeffcoat-Sacco
General Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505

RECEIVED

SEP 27 2011

PUBLIC SERVICE COMMISSION

Re: Rangeland Pipeline, LLC, PU-10-637
OAH File No. 20110081

Dear Ms. Jeffcoat-Sacco:

Enclosed are the original Recommended Findings of Fact, Conclusions of Law, and Recommended Order in regard to the above-titled matter. If you agree with my recommendations, you may issue a final Order adopting my recommendations and serve it on the parties. Alternatively, you may issue your own findings of fact and conclusions of law and your own separate order based on them.

Please send me a copy of your final Order. Also, please send me a copy of the findings of fact and conclusions of law upon which the order is based, if they are different from my recommended findings and conclusions.

Please send me a copy of any decision or order issued by the district court or the supreme court as a result of an appeal of this matter.

I am closing our file and returning that portion of the record I have in my possession to you for filing with the official agency record of this matter, as appropriate. Also enclosed is an exhibit list from the hearing. I have already returned the hearing tape to the Commission.

Sincerely,

Allen C. Hoberg
Administrative Law Judge

ACH/lmw

Encl.

cc: Mollie Smith, counsel for Rangeland Pipeline, LLC
Mitch Armstrong, Special Assistant Attorney General
Patrick Fahn, Public Service Commission

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Rangeland Pipeline, LLC
Crude Oil Pipeline – Williams County
Siting Application

Case No. PU-10-637
OAH File No. 20110081

RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW
AND RECOMMENDED ORDER

September 27, 2011

Appearances

Allen C. Hoberg, Administrative Law Judge, Substantive Hearing Officer, Office of Administrative Hearings, 2911 North 14th Street – Suite 303, Bismarck, ND 58503.

Mollie M. Smith, Attorney-at-Law, Fredrikson & Byron, P.A., 200 North Third Street - Suite 150, Bismarck, North Dakota 58501, on behalf of Rangeland Pipeline, LLC.

Mitchell D. Armstrong, Special Assistant Attorney General, Legal Counsel for North Dakota Public Service Commission.

Patrick Fahn, Director – Compliance and Competitive Markets Division, North Dakota Public Service Commission, 600 East Boulevard, Bismarck, North Dakota 58505.

Preliminary Statement

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

On February 11, 2011, Rangeland Pipeline, LLC ("Rangeland"), filed with the North Dakota Public Service Commission (Commission) a consolidated application for a Certificate of Corridor Compatibility and Route Permit (Application) to authorize construction of a crude oil pipeline project (Project) in Williams County, North Dakota. Rangeland also filed an application requesting waiver of the following procedures and time schedules: (1) separate hearings on Rangeland's waiver request, Certificate of Corridor Compatibility application and Route Permit application; (2) separately filed applications for a Corridor Certificate and a Route Permit, and separate publication of notices of filing the applications; and (3) submission of mylar maps and stereo-pair aerial photographs, per the Commission's Application Guidelines for a Corridor Certificate and a Route Permit.

On March 9, 2011, the Commission acknowledged the appointment of Administrative Law Judge Allen C. Hoberg as substantive hearing officer ("Hearing Officer").

On March 17, 2011, Rangeland filed with the Commission supplemental information with respect to its Application.

On March 24, 2011, the Commission accepted the Application as complete and issued a Notice of Filing and Notice of Hearing, scheduling a public hearing for May 20, 2011, in Tioga, North Dakota.

On May 10, 2011, Rangeland submitted amended information regarding the Project and requested that the public hearing be postponed pending resolution of routing issues.

On May 11, 2011, the Hearing Officer issued a Notice of Postponement and Indefinite Continuance.

On July 20, 2011, Rangeland filed with the Commission certain supplemental materials in support of the Application and the waiver application.

On August 1, 2011, the Hearing Officer issued a Notice of Rescheduled Hearing scheduling a public hearing for August 31, 2011, at 10:00 am at the Tioga City Hall, 12 1st Street NE, Tioga, North Dakota.

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

1. Is the proposed facility of such length, design, location, or purpose that it will produce minimal adverse effects, or, does a demonstrable emergency exist which requires immediate construction and that adherence to the procedures and time schedules would jeopardize the utilities system?
2. 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?
3. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?
4. 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?

On August 24, 2011, Rangeland filed a letter with the Commission providing a map depicting a route amendment.

On August 31, 2011, the public hearing was held as scheduled.

On September 13, 2011, Rangeland filed late-filed Exhibit 7 and late-filed Exhibit 11 with the Commission.

Having allowed all interested persons an opportunity to be heard and having heard, reviewed and considered all testimony and other evidence presented, the Hearing Officer makes the following:

Findings of Fact

1. Rangeland is a Delaware limited liability company that is headquartered in Sugar Land, Texas.
2. Rangeland has been authorized to do business in the State of North Dakota since February 7, 2011, as evidenced by the 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 include approximately 20.5 miles of underground pipeline that will extend between the proposed Rangeland Terminals, LLC's COLT Hub near Epping, North Dakota, and a 120,000-barrel above-ground storage tank that will be located on a 16-acre site approximately 8 miles south of Tioga, North Dakota, referred to by Rangeland as the Beaver Lodge Meter Station Site. From there, the Project will connect to the Enbridge Pipelines (North Dakota) LLC ("Enbridge") and Tesoro High Plains Pipeline Company LLC ("Tesoro") transmission pipelines. The pipeline will be bi-directional. The Project will be located entirely in Williams County, North Dakota.
4. The Project will utilize 10-inch steel pipe and the maximum allowable operating pressure will be 1,480 pounds per square inch gauge. The pipeline will have a maximum capacity of 75,000 barrels per day.
5. Surface facilities installed as part of the Project will include: two pump stations; two meter stations; two "pig" launching and receiving stations; a 120,000-barrel above-ground storage tank; a block valve assembly; cathodic protection equipment; security fences; two approximately 20 foot by 30 foot buildings to house equipment; and pipeline markers. A pump station, a meter station, a "pig" launching and receiving station, the 120,000-barrel above-ground storage tank and the two small buildings will be located on the Beaver Lodge Meter Station Site.
6. Except at the endpoints and where the proposed Project route needs to avoid existing infrastructure, the Project will generally be located adjacent and parallel to the existing Enbridge 10-inch crude oil pipeline.

Need for the Facility

7. Rangeland has concluded that there is a need for the facility. A number of pipeline and rail facilities are planned to address a need for additional capacity to transport crude oil produced in northwestern North Dakota and northeastern Montana to market, and the Project will provide a safe and economic method for transporting crude oil to this incremental export capacity. Specifically, the Project will provide additional outlets for transporting crude oil to market, either via Rangeland Terminals, LLC's COLT Hub, or via existing Enbridge or Tesoro pipelines.

Rangeland also plans to interconnect the Project to future pipelines in the area, as appropriate, which will further increase the options for transporting crude oil to market.

Study of Preferred Route(s)

8. In its application, Rangeland defined its study area as the one-mile wide corridor certificated by the Commission for the Enbridge 10-inch crude oil pipeline in Case No. PU-06-330. Within the study area, Rangeland identified an approximately 200-foot wide survey corridor centered on the preferred pipeline route for the purpose of conducting cultural resource field surveys, biological and wetland/waterbody field surveys and environmental assessments. The entire Beaver Lodge Meter Station Site was also surveyed for cultural, biological, wetland/waterbody and environmental resources.

9. Rangeland analyzed a number of alternatives and factors, including engineering, economic, and environmental factors to determine the most feasible route. The potential alternatives considered included a trucking alternative, a rail alternative and routing alternatives.

10. The following agencies were contacted by Rangeland and provided written comments: United States Department of Agriculture – Natural Resources Conservation Service; United States Army Corps of Engineers (USACE); North Dakota Department of Transportation; North Dakota Game and Fish Department; North Dakota Parks & Recreation Department; North Dakota Department of Health (NDDH); North Dakota State Water Commission; North Dakota State Land Department; and State Historical Society of North Dakota, State Historic Preservation Office (SHPO).

11. Rangeland conducted Class I literature searches on the one-mile wide study area, and Class III cultural resource inventories were completed on the 200-foot wide survey corridor and the Beaver Lodge Meter Station Site. Additionally, environmental data collected included information on soils, land use, wetlands and water body crossings, trees and shrubs and protected species.

12. The SHPO has concurred with the determination that no historic properties will be affected by the Project as long as the project is of the nature stated and so long as certain sites are avoided as recommended in the Class III cultural resources report.

13. The Commission has established criteria pursuant to North Dakota Century Code Section 49-22-05.1 to guide the Commission in evaluating the suitability of granting 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.

14. A transmission facility route must not be sited within an Exclusion Area. One Exclusion Area, a municipal park, is located within the study area; however, the park will not be crossed by the proposed Project route.

15. A transmission facility route must not be sited within an Avoidance Area unless the applicant shows that 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. Three types of Avoidance Areas are located within the study area: cultural resources; a place of business and residences; and a reservoir or municipal water supply.

16. Cultural resources were identified within the study area. One cultural resource site is located on the Beaver Lodge Meter Station site and two cultural resource sites are located near, but are not crossed by, the proposed Project route. With respect to the cultural resource site located on the Beaver Lodge Meter Station Site, Rangeland will avoid it by fencing the cultural resource site out of the Beaver Lodge Meter Station Site. With respect to the other two cultural resource sites, Rangeland will avoid potential impacts to the sites by narrowing the construction right-of-way (ROW) to a width of 50 feet for a linear distance of 300 feet adjacent to the site and having a qualified archaeological monitor present during all earth disturbing activities adjacent to the site.

17. One place of business, a feed lot, and eleven residences are present within the study area. Three occupied residences and one unoccupied residence are within 500 feet of the proposed Project route; however, no schools or places of business are within 500 feet of the route. Rangeland has obtained written waivers of the avoidance area criterion from the owners of each of the four residences that are within 500 feet of the proposed Project route.

18. The Ray aquifer, which is the water source for the town of Ray, North Dakota, is located within the study area; however, the town of Ray's well is located approximately three miles away from the proposed Project route and will not be impacted by the Project. In addition, given the depth of the Ray aquifer, the aquifer will not be impacted by the proposed Project route. Other small agricultural reservoirs are located within the study area, but will not be crossed by the proposed Project route.

19. In accordance with the Commission's Selection Criteria, a transmission route shall be approved if it is demonstrated that any significant adverse impacts that will result from the location, construction, and maintenance of the transmission facility will be at an acceptable minimum or managed and maintained at an acceptable minimum. Rangeland has analyzed the impacts of the Project in relation to all of the relevant Selection Criteria. The Project will have no significant adverse impacts on the Commission's Selection Criteria.

20. Wetland determinations were completed along the proposed Project route. Wetlands are present within the study area, but wetlands and waterbodies will be avoided by the route to the extent practicable. If avoidance is not possible, Rangeland will take steps to protect wetlands and waterbodies. No permanent impacts to wetlands or waterbodies are anticipated. Small amounts of woodlands are present within the corridor, and have been avoided by the route to the extent practicable. An inventory of trees and shrubs that would be affected by the Project has been completed, and trees and shrubs will be or have been counted and will be replaced in accordance with the Commission's tree and shrub mitigation specifications.

The Project may result in temporary displacement of wildlife, due to clearing and construction, but impacts are expected to be temporary and minimal. The Project will have no significant

impact on fish and wildlife resources and no impacts are anticipated to endangered, threatened or sensitive plant or animal species.

21. The U.S. Fish and Wildlife Service (the "FWS") comments focused on threatened and endangered species, candidate species, migratory birds, bald and golden eagles, and high value habitat avoidance. Rangeland will comply with the FWS recommendations as found in Exhibit 1 of the July 2011, supplemental materials submitted in support of the Application.

22. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the transmission facility. Rangeland has analyzed the relevant Policy Criteria and has expressly committed to designing, constructing and operating the pipeline in accordance with all applicable federal, state and local laws and regulations; energy conservation through the facility's location 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. Rangeland submitted evidence to demonstrate commitment to maximize the benefits of the proposed transmission facility as far as is possible so as to meet the Policy Criteria.

23. It is appropriate to authorize a corridor only for the area for which Rangeland performed the more thorough cultural resource field surveys, biological and wetlands/waterbody field surveys and environmental assessments, also called the survey corridor.

Measures to Minimize Impact

24. Rangeland has agreed to a number of steps to mitigate the impact of the Project, as indicated by the August 30, 2011 Certification Relating to Order Provisions – Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications.

25. The Project's permanent ROW will be 30 feet wide. The Project's temporary ROW will generally be 80 to 100 feet wide, except the temporary ROW may be between 150 to 200 feet wide at certain locations, *e.g.*, beginning and end of the Project; approaching wetlands, waterbodies, roads and railroads; rocky soil; steep slopes; rugged terrain; and where horizontal directional drilling or boring will be done. The construction ROW may be reduced to 70 feet wide or less in wetlands, and will be reduced to 50 feet wide in wooded areas. The proposed ROW will generally be located 100 feet north of the existing Enbridge pipeline ROW, except at the end points and where existing infrastructure needs to be avoided. Rangeland will use existing public roads to access the ROW, although a short driveway may need to be constructed to facilitate ingress and egress to the block valve site. Dirt roads or two-track trails may require grading and/or filling, and temporary access roads may be required.

26. A stick nest survey will be conducted along the route and impacts to active nests identified by the survey will be avoided.

27. The design, construction and operation of the pipeline will be in accordance with the United States Department of Transportation (DOT) regulations governing the transportation of crude oil, as prescribed under 49 CFR Parts 194 and 195.

28. Rangeland will conduct environmental monitoring, including utilizing environmental inspectors during construction and requiring post-construction monitoring.
29. Rangeland will participate in the North Dakota One-Call Excavation Notice System.
30. Rangeland will prepare an Emergency Response Plan with the assistance of local authorities and first responders as part of the pipeline commissioning activities.

From the foregoing Findings of Fact, the Hearing Officer makes the following:

Conclusions of Law

1. The Commission has jurisdiction over the applicant, Rangeland, and over the subject matter of this application under North Dakota Century Code Chapter 49-22.
2. Rangeland 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 Project 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 Project are compatible with environmental preservation and the efficient use of resources.
6. The Project 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 length, design, location and purpose that it will produce minimal adverse effects, in accordance with 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 Recommended Findings of Fact and Conclusions of Law, the Hearing Officer issues the following:

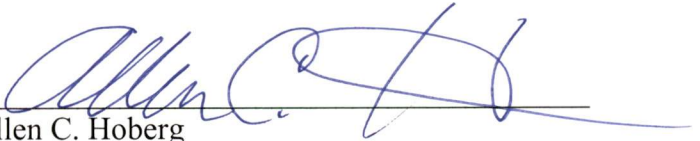
Recommended Order

1. That Rangeland Pipeline, LLC's application for a waiver of procedures and time schedules be granted.
2. That a Certificate of Corridor Compatibility _____ be issued to Rangeland Pipeline, LLC designating a corridor for the construction, operation, and maintenance of the proposed pipeline. For purposes of the Certificate, the Corridor will consist of a 200-foot wide

area centered on the pipeline route for the length of the route and the Beaver Lodge Meter Station Site.

3. That a Route Permit _____ be issued to Rangeland Pipeline, LLC granting authority to construct and operate a 10-inch crude oil pipeline and associated facilities in Williams County, North Dakota.
4. That the August 30, 2011 Certification Relating to Order Provisions – Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications, be incorporated by reference and attached to the Order issued by the Commission.
5. That to the extent there are any conflicts or inconsistencies between the Application and certification provisions, the certification provisions control.

State of North Dakota
Public Service Commission

By: 

Allen C. Hoberg
Administrative Law Judge
Substantive Hearing Officer
Office of Administrative Hearings
2911 North 14th Street — Suite 303
Bismarck, North Dakota 58503
Telephone: (701) 328-3200

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Rangeland Pipeline, LLC
Crude Oil Pipeline - Williams County
Siting Application

PU-10-637
OAH File No. 20110081

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the **RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND RECOMMENDED ORDER** was hand-delivered at the State Capitol on the 27 day of September 2011, to:

Illona Jeffcoat-Sacco
General Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

and that true and correct copies of the above document were mailed, regular mail, on the 27 day of May 2011, to:

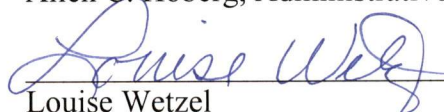
Mollie Smith
Fredrikson & Bryon, PA
P O Box 1855
Bismarck, ND 58502-1855

Mitchell Armstrong
Smith Bakke
P O Box 460
Bismarck, ND 58502-0460

and that a true and correct copy of the above document was hand-delivered at the State Capitol on the 27 day of September 2011, to:

Patrick Fahn
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505

OFFICE OF ADMINISTRATIVE HEARINGS
Allen C. Hoberg, Administrative Law Judge



Louise Wetzel

EXHIBIT LIST

Matter	Rangeland Pipeline, LLC - Siting Application Case No. PU-10-637; OAH File No. 20110081						
Hearing	August 31, 2011 R= Rangeland						
No.	Description	Mkd	Idd	Ofd	W/D	Adm	Note
1	Application and Supplemental Materials			R		x	February and July 2011 filings
2	Modification - route amendment			R		x	August 24, 2011, filing
3	Route Map			R		x	showing modifications
4	Certification Relating to Order Provisions Transmission Facility Siting			R		x	with attached Tree and Shrub Mitigation Specifications
5	Map of the Proposed Route			R		x	Project Overview
6	Three Waivers			R		x	
7	Cultural Resource Inventories - Class I and Class III			R		x	Late-filed
8	Natural Resources and Wetland Determination Report for the COLT Connector Pipeline			R		x	
9	DOA/COE letter - August 19, 2011, to Barr Engineering			R		x	
10	Table - Updated permits and approvals			R		x	
11	Confirmation of Natural Resource Surveys -SWCA			R		x	Late-filed
12	Wavier Agreement			R		x	Abandoned Residence