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Arrow Field Services, LLC
4 Bears to CDP Connect Project – McKenzie County
Siting Application

Case No. PU-11-99
OAH File No. 20110325

RECOMMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND RECOMMENDED ORDER

October 31, 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 Arrow Field Services, LLC.

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

Christopher A. Marohl, Public Utility Analyst, 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 July 22, 2011, Arrow Field Services, LLC (“Arrow”), 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 McKenzie County, North Dakota.

On August 1, 2011, Arrow filed an application requesting waiver of the following procedures and time schedules: (1) separate hearings on Arrow’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 August 10, 2011, the Commission approved a motion to request appointment of an Administrative Law Judge to preside as a substantive hearing officer ("Hearing Officer"). On August 17, 2011, Administrative Law Judge Allen C. Hoberg was designated as Hearing Officer.

On September 6, 2011, the Hearing Officer issued a Notice of Filings and Notice of Hearing stating that the Application was deemed complete and scheduling a public hearing for December 15, 2011, at 10:00 am CDT (9:00 am MDT) at the McKenzie County Court House, 201 5th Street NW, Watford City, North Dakota.

On September 20, 2011, the Hearing Officer issued a Notice of Filings and Notice of Rescheduled Hearing rescheduling the public hearing for October 24, 2011, at 1:30 pm CDT (12:30 pm MDT) at the McKenzie County Court House, 201 5th Street NW, Watford City, North Dakota.

The Notice of Filings and Notice of Rescheduled Hearing identified the following issues to be considered with respect to the application for waiver of procedures and time schedules:

1. Are the proposed facilities of such length, design, location, or purpose that they will produce minimal adverse effects and that adherence to applicable procedures and time schedules may be waived?
2. Is it appropriate for the Commission to waive any procedures and time schedules as requested in the application?

The Notice of Filings and Notice of Rescheduled Hearing identified the following issues to be considered with respect to the applications for a certificate of corridor compatibility and route permit:

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?

On October 24, 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 Hearing Officer makes the following:

Findings of Fact

1. Arrow is a Delaware limited liability company that is headquartered in Tulsa, Oklahoma.
2. Arrow has been authorized to do business in the State of North Dakota since July 16, 2009, as evidenced by the Certificate of Good Standing issued by the North Dakota Secretary of State on April 19, 2011.

Size, Type, and Preferred Location of Facility

3. The Project will consist of approximately 1.5 miles of underground pipeline that will extend between Arrow's existing Central Delivery Point ("CDP") Facility to an interconnect with the existing 4 Bears Pipeline. The Project will be located approximately 18 miles east of Watford City and will be located entirely in McKenzie County, North Dakota. The estimated cost of the project is \$2.2 million.
4. The Project will use 8-inch steel pipe and the maximum allowable operating pressure will be 1,440 pounds per square inch gauge. The pipeline will have a maximum capacity of up to 24,000 barrels per day of crude oil.
5. Above ground facilities will consist of aerial or pipeline markers and markers to identify cathodic protection test stations.

Need for the Facility

6. Arrow has concluded that there is a need for the facility. The Project will provide a critical transportation link between the existing 4 Bears Pipeline and the Arrow CDP Connect Facility that will reduce the need for surface transportation and enhance the marketability of crude oil produced in the Williston Basin.

Study of Preferred Route(s)

7. In its Application, Arrow defined its study area as a one-mile-wide study area centered on the proposed Project route. Within the study area, Arrow identified an approximately 200-foot wide survey corridor centered on the preferred pipeline route for the purpose of conducting cultural resource field surveys, and biological and wetland/waterbody field surveys.
8. Arrow 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 no action alternative, an increased storage facility capacity and ground transportation alternative, and routing alternatives.

9. The following agencies were contacted by Arrow and provided written comments: United States Fish and Wildlife Service (“USFWS”); North Dakota Game and Fish Department; North Dakota State Land Department; State Historical Society of North Dakota, State Historic Preservation Office (“SHPO”); and North Dakota Farm Service Agency – McKenzie County.

10. Arrow conducted a Class I literature search on the one-mile wide study area, and a Class III Cultural Resource Inventory on the 200-foot wide survey corridor. Additionally, environmental data collected included information on soils, land use, wetlands and waterbody crossings, trees and shrubs, noxious weeds, and protected species and habitat.

11. The SHPO has concurred with the determination that no historic properties will be affected by the Project provided the Project area remains as depicted in the Class I and Class III Cultural Resource Inventory report.

12. 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.

13. A transmission facility route must not be sited within an Exclusion Area. No Exclusion Areas are located within the study area or crossed by the route

14. 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. No Avoidance Areas are located within the study area or crossed by the route.

15. Cultural resources were identified within the study area. However, the two cultural resources identified within the route and analyzed during the Class III Cultural Resource Inventory were determined to not be eligible for the National Register of Historic Places, and neither avoidance nor mitigation are necessary.

16. 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. Arrow 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.

17. A wetland boundary determination and a wetland delineation were completed along the proposed route. No areas that meet the United States Army Corps of Engineer’s wetland criteria will be crossed by the route. The Project will cross Dry Creek using the horizontal direction drill method to cross beneath the stream bed. No permanent impacts to wetlands or waterbodies are anticipated. Small amounts of shrubland habitat are present within the study area, 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 have been counted and will be replaced in accordance with the Commission's tree and shrub mitigation specifications.

18. 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.

19. The USFWS comments focused on threatened and endangered species, candidate species, migratory birds, bald and golden eagles, and high value habitat avoidance. Arrow will comply with the USFWS's recommendations found in Exhibit 1.

20. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the transmission facility. Arrow 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. Arrow 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.

21. It is appropriate to authorize a corridor only for the area for which Arrow performed the more thorough cultural resource study.

Measures to Minimize Impact

22. Arrow has agreed to a number of steps to mitigate the impact of the Project, as indicated by the October 21, 2011 Certification Relating to Order Provisions – Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications.

23. The Project's temporary construction right-of-way ("ROW") will generally be 120 feet wide, except the construction ROW may be reduced to 80 feet wide at certain locations, such as approaching waterbodies. The construction ROW will be reduced to 50 feet wide in wooded areas. The Project's permanent ROW will be 50 feet wide. Arrow will use existing public roads to access the ROW.

24. 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.

25. Arrow will use environmental monitors and inspectors to comply with all applicable permits.

26. Arrow's existing Emergency Action Plan will include the Project.

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

Conclusions of Law

1. The Commission has jurisdiction over the applicant, Arrow Field Services, LLC, and over the subject matter of this application under North Dakota Century Code Chapter 49-22.
2. Arrow 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 now issues the following:


Order

1. That Arrow Field Services, LLC's application for a waiver of procedures and time schedules be granted.
2. That a Certificate of Corridor Compatibility be issued to Arrow Field Services, 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.
3. That a Route Permit be issued to Arrow Field Services, LLC granting authority to construct and operate an 8-inch crude oil pipeline and associated facilities in McKenzie County, North Dakota.

4. That the October 21, 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 the 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

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PUBLIC SERVICE COMMISSION

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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 31 day of October 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 31 day of October 2011, to:

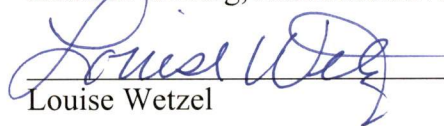
Mollie M. Smith
Fredrikson & Byron, PA
P O Box 1855
Bismarck, ND 58502-1855

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 31 day of October 2011, to:

Christopher A. Marohl
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505

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



Louise Wetzel