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**Whiting Oil and Gas Corporation
Crude Oil Pipeline –Billings and Stark Counties
Siting Application**

Case No. PU-11-102
OAH File No. 20110326

**RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

October 18, 2011

Appearances

Appearances: John W. Morrison, Attorney at Law, Crowley Fleck, PLLP, 400 East Broadway, Suite 600, Bismarck, North Dakota 58501, on behalf of the Applicant, Whiting Oil and Gas Corporation.

Mitchell D. Armstrong, Special Assistant Attorney General, on behalf of the Public Service Commission.

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

Allen C. Hoberg, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street, Suite 303, Bismarck, North Dakota 58503, as Substantive 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 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 March 31, 2011, Whiting Oil and Gas Corporation (“Whiting”) filed a Letter of Intent with the Public Service Commission (“Commission”). Whiting proposes to construct

approximately 6.8 miles of 8 inch diameter pipeline from a location in Stark County to an interconnection with the Skunk Hill Pipeline Station, operated by Bridger Pipeline LLC (“Bridger”) in Billings County, North Dakota (the “Pipeline”). The Pipeline is intended to transport oil produced in Stark and Billings Counties from a central storage location to the Skunk Hill Pipeline Station for further transport.

On April 20, 2011, the Commission acknowledged Whiting’s Letter of Intent, shortened the waiting period for filing the siting application to thirty days, and assessed a filing fee of \$16,800.00

On July 11, 2011, Whiting filed a combined application for a certificate of corridor compatibility and route permit authorizing the construction of the Pipeline. As part of its application, Whiting requests that the Commission waive the procedures set forth in North Dakota Century Code §§ 49-22-08 and 49-22-08.1 to allow a single consolidated application, notice, and hearing for a corridor certificate, and a route permit for this project.

On August 10, 2011, the Commission requested the Director of the Office of Administrative Hearings to appoint an Administrative Law Judge to preside as a substantive hearing officer in this case. On August 17, 2011, Allen C. Hoberg was designated as administrative law judge to conduct the hearing, make recommended findings of fact and conclusions of law, and issue a recommended order.

On August 30, 2011, the application was deemed complete and a Notice of Filing and Notice of Hearing was issued for a public hearing on October 10, 2011, at 10:00 a.m. CDT at the Belfield City Hall, 107 Second Avenue Northeast, Belfield, North Dakota. The issues to be considered in this matter include:

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?
3. 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?
4. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?
5. 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 September 20, 2011, Whiting filed an amendment to its application. The amendment consisted of three pipeline route realignments.

On October 10, 2011, the public hearing was held as scheduled.

On October 10, 2011, Whiting filed a Certification Relating to Order Provisions - Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications.

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. Whiting is a Delaware corporation with its principal place of business located at 1700 Broadway, Suite 2300, Denver Colorado.
2. Whiting is an energy company that owns and operates oil and gas properties in various regions of the United States, including the Williston Basin.

Size, Type, and Preferred Location of Facility

3. The Pipeline will be an 8-inch steel line approximately 6.8 miles in length. The initial capacity of the Pipeline will be 60,000 barrels per day. The first 4.8 miles of the route is adjacent to existing county road right-of-ways and the final two miles of the route is adjacent to an existing pipeline owned and operated by Bridger.
4. There will be block valves at both the beginning of the Pipeline at the Belfield Oil Terminal and at its terminus at the Skunk Hill Pipeline Station; there will be no block valves along the route. A pump station will be located at the Belfield Oil Terminal but there will be no new or additional pumping stations for the Pipeline. A telemetry system will provide 24-hour monitoring of the Pipeline operations, including pressures, temperatures and flow rates.
5. Whiting's September 20, 2011, filing amended its original proposed corridor and original proposed route with three route realignments. The first reroute moves the first .2 miles of the route slightly to the south to accommodate the final design of the Belfield Oil Station. The second reroute moves the route between mileposts 0.25 and 2.6, ten feet to the west to result in a 100 foot setback between the centerline of the county road and the centerline of the route. The third re-route moves the final .2 miles of the route to enter the Skunk

Hill Pipeline Station facilities from the west, thereby avoiding crossing of other pipeline facilities.

Need for Facility

6. Whiting is currently developing new fields in Stark and Billings Counties, North Dakota.
7. Whiting is installing a gathering system which will gather the crude oil from producing wells to the Belfield Oil Terminal near Belfield, North Dakota, which will include a 20,000 barrel oil storage tank and a truck transport loading and unloading facility. In order to market the crude oil produced in this area, Whiting proposes to construct the Pipeline to transport oil from the Belfield Oil Terminal to an interconnect with Bridger's Skunk Hill Pipeline Station. This interconnection will allow Whiting to market crude oil (1) at Guernsey, Wyoming via Bridger's Little Missouri and Heart River systems and the Butte pipeline system; (2) at Clearbrook, Minnesota, through Enbridge Pipelines (North Dakota), LLC's pipeline using Belle Fourche Pipeline Company's connection at Alexander; and (3) at the Mandan Refinery through Tesoro High Plains Pipeline Company, LLC's pipeline via Belle Fourche Pipeline Company's existing connection at Tree Top.
8. Alternatives to construction of the Pipeline consist of trucking or shipping the oil by rail to the Terminal. Trucking would require approximately 273 truck runs per day. This level of trucking activity would result in an additional burden on infrastructure, and would impact area residents.

Study of Preferred Route(s)

9. Whiting evaluated a one-mile wide area centered on the original proposed route (“study area”) for the exclusion, avoidance, selection and policy criteria of the Commission. Within the study area, Whiting identified a 120-foot wide corridor centered on the original pipeline route for the purpose of conducting cultural resource field surveys, biological and wetland/waterbody field surveys and environmental assessments (“survey corridor”).
10. Whiting will use an 80-foot construction right-of-way centered on the route. All construction work will occur within the construction right-of-way.
11. 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 § 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 demonstrates 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. In accordance with the Commission’s Selection 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.

12. Whiting conducted a Class I cultural resource survey of the study area and a Class III cultural resource survey of the survey corridor that identified three previously recorded sites and one newly recorded historic site. The original proposed route and its 80-foot construction right-of-way will not impact the sites. The State Historic Preservation Office's (SHPO's) June 13, 2011, letter concurred that no historic properties and no significant sites will be affected by Whiting's project provided the project area remains as depicted in the Class I and Class III cultural resource inventory. The SHPO concurrence and Whiting's Class I and Class III cultural resource inventory took place prior to Whiting's September 20, 2011, filing amending its original proposed corridor and original proposed route with three route realignments.
13. The second reroute is entirely located within the area covered by the Class III survey and will not impact any historic, scenic, archeological, or paleontological properties or sites. The first and third re-routes are located outside the area covered by the Class III survey.
14. Whiting conducted a Natural Resources and Wetland Determination in the survey corridor.
15. The construction right-of-way will cross several small wetlands and Whiting will either bore under the wetlands or avoid them in construction activities.
16. Whiting conducted investigations to determine the potential impact of the Pipeline upon vegetation and plant species, including consultations with the North Dakota Game and

Fish Department, the United States Fish and Wildlife Service, and the North Dakota Parks and Recreation Department. Botany and wildlife surveys were conducted in the survey corridor.

17. There are no areas critical to the life stages of threatened or endangered animal or plant species or areas where animal or plant species that are unique or rare to North Dakota would be irreversibly damaged by the Pipeline project.
18. A number of sites related to sensitive animal and plant species, or species of concern, are located within the survey corridor. The proposed route is within the migration corridor of the whooping crane and contains suitable foraging and stopover habitat for the whooping crane. Whiting has agreed to cease construction activities within one mile of an area where a whooping crane is sited until the birds leave the area. Whiting's construction schedule will avoid any impact on the other sensitive animal and plant species.
19. Any impact on vegetation and wildlife from construction of the Pipeline will be temporary.
20. There are no residences, schools or places of business within 500 feet of the proposed route.
21. One parcel of Conservation Reserve Program ("CRP") land is located within the study area but is not crossed by the construction right-of-way and will not be impacted.
22. The route will cross or impact trees in three locations, including one windbreak tree row and two small clusters of trees. Whiting intends to bore under the tree row and replant trees in the two clusters at the ratio of 2:1 for each tree removed.

23. Agriculture is the predominant land use within the study corridor but the effects of construction would be minor and short term. Construction will occur after crop harvest and will have no impact on the current growing season. After construction, agricultural lands will be returned to preconstruction uses. There is one CRP parcel within the study area but it will not be impacted by the Pipeline project.
24. Any impact to family farm operations due to construction of the Pipeline will be temporary.
25. Any impact the Pipeline will have on surface drainage and groundwater flow patterns, will be temporary resulting from construction activities.
26. Other than temporary noise associated with construction and the short-term visual effects resulting from construction, the Pipeline project will have no impact on noise sensitive land uses or visual effects on the adjacent area.
27. At the peak of construction the Pipeline will use a labor force of up to 30 construction laborers, including up to 10 local workers. Those workers will impact the local economy. After construction is complete, the Pipeline will add to the tax base of Billings and Stark Counties.

Measures to Minimize Impact

28. Whiting has agreed to a number of steps to mitigate the impact of the Pipeline project, as indicated by the October 10, 2011, Certification Relating to Order Provisions – Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications.

29. Whiting will use an 80-foot construction right-of-way centered on the route. All construction work will occur within the construction right-of-way. After completion of construction, the right-of-way will be reduced to 60 feet centered on the route.
30. The design, construction, and operation of the Pipeline for the transmission of crude oil will conform to the pipeline safety regulations contained in 49 CFR Parts 194 and 195-Transportation of Hazardous Liquids by Pipeline under the jurisdiction of the Department of Transportation – Pipeline and Hazardous Materials Safety Administration.

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

Conclusions of Law

1. The Commission has jurisdiction over the applicant, Whiting, 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 § 49-22-03(13).
3. The Pipeline proposed by Whiting is a transmission facility as defined in North Dakota Century Code § 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 the environmental preservation and the efficient use of resources.
6. The location, construction, and operation of 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 Pipeline project is of such length, 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.
9. To insure that the first and third reroutes, located at the north and south ends of the Pipeline, do not impact any historic, scenic, archeological, or paleontological properties or sites, Whiting is not permitted to commence construction activities on the first .2 miles or the final .2 miles of the Pipeline until it files a supplemental Class III survey at least 80-foot wide centered on the reroutes and evidence of concurrence in the results of the supplemental survey by SHPO. If any historic properties or significant sites are discovered by the supplemental survey and SHPO does not concur with any protective or remediation measures that are proposed by Whiting or its consultant to prevent any impact to such properties or sites, the Commission may reopen this matter and hold a further hearing.

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


Recommended Order

1. That Whiting's application for waiver of procedures and time schedules be granted.
2. That Certificate of Corridor Compatibility _____ be issued to Whiting designating a corridor for the construction, operation, and maintenance of the Pipeline.

For purposes of the Certificate, the corridor will consist of an 80-foot wide area centered on the Pipeline route for the length of the route.

3. That Route Permit _____ be issued to Whiting granting authority to construct and operate the Pipeline. The route that is approved is the route identified on Exhibit 3 at the hearing.
4. That Whiting's permit to construct the initial and final .2 mile segments of the Pipeline be conditioned on filing the supplemental Class III survey and SHPO concurrence that no historic properties or sites will be affected as discussed in Conclusion of Law number 9.
5. That the October 10, 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.
6. That to the extent there are any conflicts or inconsistencies between the application and the October 10, 2011, Certification provisions, the Certification provisions control.

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
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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 18 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 18 day of October 2011, to:

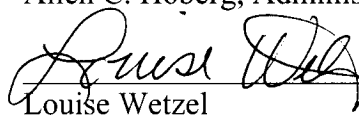
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OFFICE OF ADMINISTRATIVE HEARINGS
Allen C. Hoberg, Administrative Law Judge



Louise Wetzel