

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF NORTH DAKOTA

Hess Corporation.  
Tioga NGL Project  
Williams County  
Siting Application

CASE NO. PU-11-104

**PROPOSED FINDINGS OF FACT**

**CONCLUSIONS OF LAW, AND ORDER**

\_\_\_\_\_, 2012

**Appearances**

John W. Morrison, Attorney at Law, Crowley Fleck PLLP, 400 East Broadway, Suite 600, Bismarck, North Dakota 58501 on behalf of the Applicant, Hess Corporation.

Mark E. Gruman, Attorney at Law, Legal Counsel for the Public Service Commission.

Christopher A. Marohl, Public Service Commission.

Allen C. Hoberg, Administrative Law Judge, Office of Administrative Hearings, 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 April 1, 2011, Hess Corporation (“Hess”) filed a Letter of Intent with the Public Service Commission (“Commission”). Hess proposes to construct three pipelines, each approximately 3.6 miles in length, with one being an 8-inch diameter pipeline and two being 6—inch diameter pipelines, to be located in Williams County, North Dakota (the “Project”). The pipeline will deliver an average of 31,500 barrels per day of natural gas liquids (“NGL”) from the Hess Tioga Gas Plant (the “Plant”) to the Hess Tioga Rail Terminal (the “Terminal”), both of which are located near Tioga, North Dakota. The pipelines will have a total capacity of 63,000 barrels per day.

On March 8, 2012, Hess filed applications for a certificate of corridor compatibility and for a route permit authorizing the construction of the Project. Hess also filed an application requesting 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 for a corridor certificate and a route permit for the Project.

On March 19, 2012, the Commission requested the designation of an Administrative Law Judge from the Office of Administrative Hearings to preside as a Substantive Hearing Officer (“Hearing Officer”) in this case. On March 20, 2012, Allen C. Hoberg was designated to conduct the hearing, make recommended findings of fact and conclusions of law, and issue a recommended order.

On April 10, 2012, the Hearing Officer issued a Notice of Filings and Notice of Hearing scheduling a public hearing on April 30, 2012, at 10:00 a.m. CDT at City Hall, 12 1<sup>st</sup> Street NE, Tioga, North Dakota, 58852.

The issues to be considered in Hess’ request for a waiver of procedures and time schedules are as follows:

1. Are the proposed facilities of such length, design, location, or purpose that they will produce minimal adverse effects such that adherence to the 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 issues to be considered in Hess’ applications for certificate of corridor compatibility and route permit are as follows:

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

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

### **Findings of Fact**

1. Hess is a Delaware corporation authorized to transact business in the State of North Dakota.

2. Hess is the operator of both the Plant and the Terminal.

#### Size, Type and Preferred Location of Facility

3. As a by-product of processing natural gas at the Plant, NGL will be available at the tailgate of the Plant. Hess proposes to construct three pipelines, two six-inch pipelines and one eight-inch pipeline, from the Plant to the Terminal, a distance of approximately 3.6 miles. The capacity of the pipeline will be approximately 63,000 barrels per day, but the anticipated average deliveries will be approximately 31,500 barrels per day. The proposed route was chosen to collocate the pipeline route between two fixed assets within existing corridors to the extent possible.
4. Each of the three pipelines will include two mainline valves, one at the Plant and one at the Terminal. A supervisory control and data acquisition (“SCADA”) system will be included.

#### Need for Facility

5. The pipelines will transport 31,500 barrels per day of NGL from the Plant to the Terminal but will have the capacity to transport approximately 63,000 barrels per day.
6. Alternatives to construction of the pipelines consist of trucking or shipping NGL by rail to the Terminal. At maximum capacity, it would require approximately 265 trucks per day to be loaded at the Plant, driven to the Terminal, and unloaded at the Terminal. This would result in an unacceptable amount of heavy vehicle traffic for area residents and excessive wear and tear on roads. Such transportation would also be subject to disruptions, which would result in a shutdown of the Plant and the flaring of natural gas. Construction of a rail spur would result in excessive environmental impacts and also not financially feasible.

#### Study of Preferred Location

7. 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 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.

8. Hess evaluated a one-mile wide study area centered on the proposed route for the exclusion, avoidance, selection and policy criteria of the Commission.
9. The only exclusion area included within the corridor is a newly recorded segment of the historic Great Northern Railway Mainline, but the segment is classified as a non-contributing portion of larger resource and Hess intends to avoid the site by boring underneath the site. As a result, Hess' consultants recommended a determination of "No Historic Properties Affected" and "No Significant Sites Affected" and the State Historic Preservation Officer ("SHPO") concurred with this recommendation. .
10. The only avoidance area included within the corridor is a waterfowl protection area but the route alignment will avoid the area and will not impact the area.
11. Hess, through its consultants, conducted a Class I literature search within the one-mile corridor and a Class III cultural resource inventory on a 300-foot wide survey area centered on the proposed pipeline alignment with additional survey coverage provided as necessary to encompass all temporary additional workspace. The Class I inventory identified 17 previously recorded cultural resources and the Class III inventory identified the Great Northern Railway mainline segment identified in Finding of Fact No. 9 above. SHPO agreed that none of the 17 previously recorded resources will be impacted and its recommendation on the railway segment is discussed in Finding of Fact No. 9 above.
12. Any impact on vegetation and wildlife from construction of the pipeline will be temporary.
13. A tree/sapling/shrub inventory was completed and approximately 5 trees or shrubs were identified which may be impacted by construction. Hess will comply with the Commission's Tree and Shrub Mitigation Specifications.
14. The proposed pipeline will cross one water body consisting of a stream but Hess will utilize horizontal directional drill installation for the crossing of this stream. Six wetlands were recorded in the vicinity of the route covering approximately 3.6 acres and 0.8 acres may be directly impacted by construction, but Hess will implement appropriate mitigation including avoidance and other Best Management Practices to minimize any impacts.
15. The majority of the lands crossed by the pipeline are agricultural. Approximately 44 acres will be temporarily impacted and 71% of those are cultivated. Impacts will be temporary and landowners will be compensated for impact. Any impact to family farm operations will be temporary.
16. Any impact to surface drainage and groundwater flow patterns will be temporary.

17. Other than temporary noise associated with construction and the short-term visual effects resulting from construction, the Project will not have any impact on noise sensitive land uses or visual effects on the adjacent area.

#### Mitigation to Minimize Impact

18. All Project construction work will occur within a construction right-of-way of 200 feet. After completion of construction, the right-of-way for the pipeline will be 100 feet.
19. Hess will have personnel available in Tioga to respond to any conditions 24 hours a day, seven days a week. The mainline valves will allow the pipeline to be quickly shut down in the event of any system failure. The SCADA system will report pipeline operations and facilitate early response to any breach or failure of the pipeline.
20. The design, construction and operation of the Project will be in accordance with the United States Department of Transportation regulations governing the transportation of NGL as prescribed under 49 CFR Part 195.
21. Hess has agreed to a number of steps to mitigate the impact of the Project as indicated by the April 28, 2012 Certification Relating to Order Provisions – Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications.
22. Hess will use environmental monitors and inspectors to comply with all applicable permits.
23. Hess will participate in the North Dakota One-Call Excavation Notice System.
24. It is appropriate to authorize a corridor only for the area for which Hess performed the more thorough cultural resource study.

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

#### **Conclusions of Law**

1. The Commission has jurisdiction over the applicant, Hess, and over the subject matter of this application under North Dakota Century Code Chapter 49-22.
2. Hess is a utility as defined in North Dakota Century Code Section 49-22-03(13).
3. The pipeline proposed by Hess is a transmission facility as defined in North Dakota Century Code Section 49-22-03(12).

4. The location, construction, and operation of the proposed pipeline will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
5. The proposed pipeline corridor and route are compatible with the environmental preservation and the efficient use of resources.
6. The proposed pipeline corridor and route 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 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.

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

#### **Order**

The Commission orders:

1. Hess's application for waiver of procedures and time schedules is granted.
2. Hess is issued Certificate of Corridor Compatibility for a Transmission Facility Corridor No. \_\_\_\_ and Route Permit for Construction of a Transmission Facility No. \_\_\_\_ to construct the 3.6 -mile 6-inch and 8-inch diameter pipelines. The route that is approved for this purpose is the route identified on Appendix B to the Application which was marked as Exhibit 1 at the hearing.
3. Hess shall obtain approval from the Commission or Commission staff prior to any changes or deviations to the pipeline route.
4. The Certificate of Compatibility for a Transmission Facility Corridor No. \_\_\_\_ and Route Permit for Construction of a Transmission Facility No. \_\_\_\_ 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. Hess shall comply with all the rules and regulations of all other agencies having jurisdiction over any phase of the proposed project. Prior to commencing construction of any phase of the proposed project, Hess shall obtain all other necessary licenses and permits for construction of such phase, and provide copies to the Commission prior to construction of each phase.

6. Hess shall conduct a preconstruction conference to be held prior to the commencement of any construction. The conference must include a Hess representative, Hess's construction supervisor, and Commission staff, to ensure that Hess fully understands the conditions set forth in this order.
7. Hess shall comply with the Certification Relating to Order Provisions – Pipeline Siting filed in this proceeding and attached hereto.
8. Hess shall notify the Commission as soon as reasonably possible if any damage, as defined by North Dakota Century Code Chapter 49-23, occurs to underground facilities during construction conducted under the certificate issued in this proceeding. In the event of any damage to underground facilities, Hess shall suspend construction in the vicinity of the damage until compliance with One-Call Excavation Notice System requirements under North Dakota Century Code Chapter 49-23 has been determined and clearance to proceed has been given by the Commission.
9. The route permit is subject to suspension or revocation and may, after hearing, be suspended or revoked for failure to comply with the Commission's order, requirements of the One-Call Excavation Notice System under North Dakota Century Code Chapter 49-23, the conditions and criteria of the permit or subsequent modification, or failure to comply with applicable statutes or rules, regulations, standards, and permits of other state or federal agencies.

Dated this \_\_\_ day of \_\_\_\_\_, 2012.

**PUBLIC SERVICE COMMISSION**

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**Bonny M. Fetch**  
**Commissioner**

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**Kevin Cramer**  
**Commissioner**

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

Applicant requests that the North Dakota Public Service Commission (“Commission”) waive and/or reduce procedures and time schedules required by the Act or the Commission’s regulations set forth in Title 69-06 of the North Dakota Administrative Code to accomplish the purposes as requested herein. These include, but are not limited to: (1) waive, pursuant to North Dakota Century Code §§ 49-22-07.2, 49-22-13(2), and North Dakota Administrative Code § 69-06-01-02 and Chapter 69-06-06, those provisions of North Dakota Century Code §§ 49-22-08(5), 49-22-08.1(5), 49-22-13, and North Dakota Administrative Code § 69-06-01-02 which require separate filings of applications for corridor certificates and route permits, separate notices of such applications, separate hearings on such applications and certain time schedules as set forth in said statutes and rules; (2) allow consolidation of the certificate of corridor compatibility application and route permit application into a single consolidated application; (3) approve a one-mile wide corridor rather than the corridor which would otherwise be required pursuant to North Dakota Administrative Code § 69-06-04-02(1)(b); (4) find that the proposed facilities are of such design, length, location and purpose that they will produce minimal adverse affects; and (5) designate and approve the requested facilities as identified in this Application and issue the appropriate corridor certificate and route permit.

The Commission’s application guidelines for waiver of procedures and time schedules require the description of the facility, the need for the facility, the cost of the facility and separate justification for each provision of the Act for which the Applicant is requesting a waiver,

together with evidence that the project will produce minimal adverse effects or that a demonstrable emergency exists. As demonstrated in this Application, and summarized below, Applicant's requests for waivers and/or reductions of procedures and time schedules and the issuance of a corridor certificate and route permit are justified as the proposed facilities are of such design, length, location and purpose that they will produce minimal adverse effects, and that the pipeline for which approval is sought is essential to allow the expanded Tioga Gas Plant ("TGP"), for which siting has previously been approved by the Commission, to begin processing natural gas and operate at full capacity, thereby minimizing the flaring of natural gas produced in association with oil.

### **DESCRIPTION**

The proposed project ("Tioga Natural Gas Liquids Pipeline" or "TNGLP") consists of construction of three pipelines, including one 8-inch pipeline and two 6-inch pipelines, each of which will be approximately 3.6 miles in length and located in Williams County, North Dakota. The TNGLP will run originate at the TGP and terminate at the Tioga Rail Terminal ("TRT").

### **NEED**

The purpose of the TNGLP is to transport butane, propane and natural gasoline (collectively, "Natural Gas Liquids" or "NGLs") from the TGP to the TRT where the liquids can be shipped via rail to end users. Processing of the natural gas is essential to allow the natural gas produced in association with crude oil to be saved and sold rather than flared. Recovery of NGLs is an essential component of that processing. The TNGLP will allow 63,000 barrels per day of NGLs to be transported to market. Alternatives to the pipeline include trucking, which would result in 265 tanker trucks per day being loaded at the TGP, transported to the TRT, and



John W. Morrison, being first duly sworn on oath, deposes and says that he is the attorney for the applicant herein named, that he has read the above and foregoing application, knows the contents thereof, and that the same is true to the best of this affiant's knowledge, information, and belief.

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JOHN W. MORRISON

Subscribed and sworn to before me this \_\_\_ day of March, 2012.

( S E A L )

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Lisa Herberholz, Notary Public  
Burleigh County, North Dakota  
My Commission Expires: