

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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Hess Corporation
NGL Pipelines - Williams County
Siting Application

JUL 16 2012

Case No. PU-11-104

OAH File No. 20120127

PUBLIC SERVICE COMMISSION

RECOMMENDED FINDINGS OF FACT

CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

July 16, 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, Assistant Attorney General, 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 ("LOI") with the Public Service Commission ("Commission") to submit an application for a certificate of corridor compatibility and for a route permit to construct three natural gas liquids ("NGL") pipelines to be located in Williams County, North Dakota (the "Project"). In the LOI, Hess requested a shortening of the prescribed one-year notice period between when the LOI is filed and when the application for a certificate of corridor compatibility and route permit is filed.

On April 20, 2011, the Commission acknowledged the LOI, shortened the one year

period to one month and assessed a filing fee.

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 certain procedures and time schedules set forth in North Dakota Century Code §§49-22-08 and 49-22-08.1.

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 1st 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?

On April 30, 2012, the public hearing was held as scheduled.

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.

Size, Type and Preferred Location of Facility

2. As a by-product of processing at the Hess Tioga Gas Plant ("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 Hess Tioga Rail Terminal ("Terminal"), a distance of approximately 3.6 miles. The capacity of the Project 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.
3. 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

4. The purpose of the Project is to transport NGL from the Plant to the Terminal where the NGL can be shipped via rail to end users. Processing NGL is essential to allow the NGL produced in association with crude oil to be saved and sold rather than flared. The Project 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.
5. Alternatives to construction of the Project consist of trucking or shipping NGL by rail to the Terminal. At maximum capacity, the trucking alternative 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. The trucking alternative would also be subject to disruptions, which could result in a shutdown of the Plant and the flaring of natural gas. Construction of a rail spur could result in excessive environmental impacts and is also not financially feasible.

Study of Preferred Location

6. 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.

7. Hess evaluated a one-mile wide study area centered on the proposed route for the exclusion, avoidance, selection and policy criteria of the Commission.
8. Hess, through its consultants, conducted a Class I literature search within the one-mile corridor and a Class II 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 indentified 17 previously recorded cultural resources and the Class II inventory indentified the Great Northern Railway mainline segment.
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 a 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. Also, SHPO agreed that none of the 17 previously recorded cultural resources will be impacted by the Project.
11. 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.
12. Any impact on vegetation and wildlife from construction of the pipeline will be temporary.
13. A tree, sapling, and 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 Project will cross one water body, a stream, but Hess will use 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; 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 Project are agricultural. Approximately 44 acres will be temporarily impacted; 71% of these 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 permanent right-of-way for the Project 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 pipelines 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 Parts 194 and 195.
21. Hess has agreed to a number of steps to mitigate the impact of the Project as stated in 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 field surveys.

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 Project is a transmission facility as defined in North Dakota Century Code Section 49-22-03(12).
4. The location, construction, and operation of the transmission facility 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 transmission facility are compatible with the environmental preservation and the efficient use of resources.
6. The 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 transmission facility 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.
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 Hearing Officer recommends the following:

Order

1. That Hess's application for waiver of procedures and time schedules be granted.
2. That a Certificate of Corridor Compatibility be issued to Hess designating a corridor for the construction, operation, and maintenance of the Project. For the purposes of the Certificate, the corridor will consist of the field survey area as described in the application and at the public hearing.
3. That a Route Permit be issued to Hess granting authority to construct and operate

the Project as described in the application and at the public hearing.

4. That the April 28, 2012, 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

State of North Dakota
Public Service Commission

By: 
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