

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**Enbridge Pipelines (North Dakota) LLC
Grenora Station Upgrade Project – Williams County
Siting Application**

CASE NO. PU-11-605

OAH File No. 20110470
RECEIVED

RECOMMENDED FINDINGS OF FACT

MAR 14 2012

CONCLUSIONS OF LAW AND RECOMMENDED ORDER PUBLIC SERVICE COMMISSION

March 14, 2012

Appearances

Brian Bjella, Attorney at Law, Crowley Fleck PLLP, 400 East Broadway, Suite 600, Bismarck, North Dakota 58501, on behalf of Enbridge Pipelines (North Dakota) LLC.

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

Christopher A. Marohl, Public Utility Analyst, 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 certificate of site compatibility or a route permit. The facility must be constructed, operated and maintained in conformity with the certificate or permit and any terms, conditions or modifications of the certificate or permit.

On October 21, 2011, Enbridge Pipelines (North Dakota) LLC ("Enbridge") filed its applications for a certificate of corridor compatibility and route permit with the Public Service Commission ("Commission") to authorize the redesign, construction and installation of certain new station facilities to upgrade Enbridge's existing Grenora Pump Station ("Project") located in Williams County, North Dakota. Enbridge also filed an application for waivers on the following requirements: (1) that the Commission hold a separate hearing on Enbridge's waiver request, certificate of corridor compatibility application and route permit application; and (2) separately file applications for a Corridor Certificate and a Route Permit, and separate publication of notices of filing the applications.

On November 25, 2011, Administrative Law Judge Allen C. Hoberg was designated as Substantive Hearing Officer ("Hearing Officer"). On December 7, 2011, the Commission approved a motion acknowledging a request for the appointment of an Administrative Law Judge to preside as Hearing Officer.

On November 30, 2011, the Hearing Officer issued a Notice of Filings and Notice of Hearing stating that the applications were deemed complete and scheduling a public hearing for February 23, 2012, at 10:00 a.m. CST in Courtroom 2 at the Williams County Court House, 205 East Broadway, Williston, North Dakota.

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

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

On February 10, 2012, Enbridge filed a Supplemental Filing to the Application for Corridor Certificate and Route Permit with the Commission including the Army Corps of Engineers Jurisdictional Determination, U.S. Fish and Wildlife Service correspondence, and an updated list of required permits.

On February 17, 2012, Enbridge filed with the Commission its Certification Relating to Order Provisions: Transmission Facility Siting dated February 16, 2012, binding Enbridge to requirements to be set forth by the Commission in its Order.

On February 23, 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 testimony and evidence presented, the Hearing Officer makes the following:

Findings of Fact

1. Enbridge is a Delaware limited liability company authorized to transact business in the State of North Dakota.

Size, Type and Preferred Location of Facility

2. The Project includes the expansion, redesign and reconfiguration of the existing Grenora Pump Station which will include a new shipper-owned and operated truck unloading facility to allow for increased injection capacity from its current capacity of 16,800 barrels per day ("bpd") to a capacity of 59,670 bpd. Enbridge also plans to install a new 40,000 barrel tank for the receipt of new supply volumes. All Project construction and work activities will be performed within the existing pump station boundaries.
3. The Project includes the following new facilities in addition to the currently existing facilities at the Grenora Pump Station: station piping, including piping from the new truck unloading facility to tankage; 1 new 40,000 barrel tank, 2 new receivers, new electrical shelter building to house new variable frequency drives for mainline pumps, new 10-inch tank fill manifold, new 12-inch tank suction header, 2 new booster pumps, 2 new Coriolis mass meter assemblies, 2 new mainline pumps, new drag reducing agent skid, new pig launcher at station discharge and new sump tank with sump pump.

Need for Facility

4. Enbridge recognizes there is greatly increased production of oil from the Bakken and Three Forks Formations within the Williston Basin of North Dakota. This creates a need for additional pipeline capacity to transport the oil to key refining markets outside of North Dakota. Without increased transportation capacity out of the Williston Basin, crude oil production may be curtailed by shippers on Enbridge's North Dakota system due to lack of adequate transportation facilities. The purpose of the Project is to create additional transportation capacity for crude oil produced primarily from the Bakken and Three Forks Formations in the Williston Basin of North Dakota. Upon completion of the Project, the shippers using this increased capacity will have additional access to refinery markets.

Study of Preferred Location

5. In its Application, Enbridge defined a survey area consisting of a 152-acre parcel in the NE¼ of Section 14, Township 159 North, Range 103 West, Williams County, North Dakota for the purpose of conducting cultural resource field surveys, biological and wetland/waterbody field surveys. The Project area occupies only a small portion of the

survey area. Enbridge also assessed a roughly one-half mile wide study area along the perimeter of the survey area boundary.

6. On December 12, 2011, the Williams County Commission approved the rezoning of this 152-acre parcel from agricultural to industrial.
7. Enbridge analyzed a number of alternatives and factors, including engineering, economic, and environmental factors. The alternatives considered included a no action alternative, a trucking alternative, a rail alternative, and routing alternatives.
8. The following agencies were contacted by Enbridge and provided written comments: U.S. Fish and Wildlife Service, North Dakota Game and Fish Department; North Dakota Parks & Recreation Department; North Dakota Department of Health; and the State Historic Preservation Office ("SHPO"). Enbridge also consulted with the North Dakota Department of Transportation ("NDDOT"). Enbridge testimony was that NDDOT had no concerns with the Project.
9. A Class III cultural resource inventory was completed on the 152-acre survey area, including all areas that will be used in conjunction with construction of the upgrade Project. Additionally, environmental data collected included information on soils, land use, wetlands and waterbody crossings, noxious weeds, trees and shrubs, and protected species and habitat.
10. The SHPO has concurred with the determination that no historic properties and no significant sites will be affected by the Project.
11. The Commission has established criteria pursuant to North Dakota Century Code § 49-22-05.1, 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.
12. A transmission facility route must not be sited within an Exclusion Area. No Exclusion Areas are present within the corridor.
13. A transmission facility must not be sited within an Avoidance Area unless the applicant shows that under the circumstances there is no reasonable alternative. 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. The only avoidance area identified in the study area is a municipal water supply associated with the City of Grenora. It is not located within the actual Project area. The North Dakota Department of Health considers the identified water supply as a "not likely susceptible" aquifer but has identified a Wellhead Protection Area

("WPA") associated with the water supply. The WPA is not located within the Project area and no impacts are anticipated.

14. In accordance with the Commission's Selection Criteria, a transmission route shall be approved only if it is demonstrated that no significant adverse impact will result from the location, construction and operation of the facility. Enbridge 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.
15. Wetland delineations were completed within the survey area. The delineation indicated eight wetlands within the survey boundary. The Corps of Engineers responded to Enbridge's Jurisdictional Determination Request on October 25, 2011, concluding that the delineated wetlands in the project area are not jurisdictional waters of the United States and therefore not subject to the Corps' regulatory authorities or permitting. Enbridge has designed the Project to minimize impacts to wetlands and other drainage features. An access road will cross one wetland feature, resulting in minor temporary and permanent impacts. It is estimated that less than 0.1 acre of permanent impacts and 0.5 acre temporary impacts to this wetland will occur. Enbridge will install an appropriately sized culvert under the new access road to maintain the original hydrology of the feature.
16. The Project will have no significant impact on fish and wildlife resources and no impacts are anticipated to endangered or threatened sensitive plant or animal species.
17. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the transmission facility. Enbridge has analyzed the relevant Policy Criteria and is expressly committed to conducting its business in compliance with all applicable environmental laws and regulations; committing to energy conservation through the facility's location, process, 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. Enbridge 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.

Measures to Minimize Impact

18. Enbridge has agreed to a number of steps to mitigate the impact of the Project as indicated by the February 16, 2012, Certification Relating to Order Provisions-Transmission Facility Siting with accompanying Tree and Shrub Mitigation Specifications.
19. Enbridge has developed an Environmental Mitigation Plan for the Project, which provides guidelines and mitigation measures that Enbridge will implement during Project construction. In addition, Enbridge has developed a Spill Prevention, Containment and

Control Plan (“SPCCP”) that describes the planning, prevention and control measures to minimize impacts of any Project related spills.

20. The design, construction and operation of the transmission facility 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.
21. Enbridge will implement an emergency response program in compliance with standards set by the DOT Pipeline and Hazardous Materials Safety Administration. Enbridge’s emergency response plan has been submitted to and accepted by the DOT. Enbridge seeks input from local first responders in conjunction with the implementation of its emergency response program.
22. Enbridge will use environmental monitors and inspectors to comply with all applicable permits.
23. Enbridge 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 Enbridge 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, Enbridge, and over the subject matter of the applications under North Dakota Century Code Chapter 49-22.
2. Enbridge is a utility as defined in North Dakota Century Code § 49-22-03(13) for purposes of the Project.
3. The proposed pipeline, and associated facilities, is a transmission facility as defined in North Dakota Century Code § 49-22-03(12).
4. The location, construction, and operation of the proposed transmission facility will produce only minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
5. The location, construction, and operation of the proposed transmission facility 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.

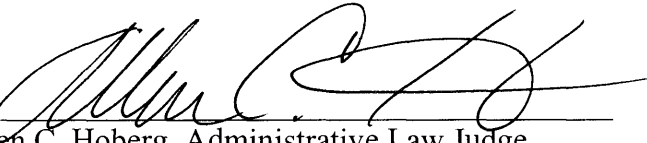
7. The Project is of such design and location that it will produce minimal adverse effects, as defined under North Dakota Century Code § 49-22-07.2.
8. It is appropriate for the Commission to waive those certain procedures and time schedules as requested in the application and provided under North Dakota Century Code § 49-22-07.2.

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

Order

1. That Enbridge's application for a waiver of procedures and time schedules be granted.
2. That a Certificate of Corridor Compatibility be issued to Enbridge designating a corridor for the construction, operation and maintenance of the proposed pump station upgrades and associated facilities at the Grenora Pump Station located on 152 acres in the NE¼ of Section 14, Township 159 North, Range 103 West, in Williams County, North Dakota. For purposes of the Certificate, the Corridor will consist of the field survey area included within the Grenora Pump Station boundary as described in the application and at the public hearing.
3. That a Route Permit be issued to Enbridge granting authority to construct and operate the upgrades to its Grenora Pump Station and associated facilities covering a 152-acre parcel in Williams County, North Dakota as described in the application and at the public hearing.
4. That the February 16, 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: 
Allen C. Hoberg, Administrative Law Judge
Substantive Hearing Officer
Officer of Administrative Hearings
2911 North 14th Street – Suite 303
Bismarck, North Dakota 58503
Telephone (701) 328-3200

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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 14 day of March 2012, 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 14 day of March 2012, to:

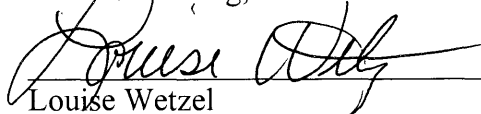
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and that a true and correct copy of the above document was hand-delivered at the State Capitol on the 14 day of March 2012, to:

Christopher Marohl
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Bismarck, ND 58505

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



Louise Wetzel