

**RECEIVED**

**MAR 14 2012**

**STATE OF NORTH DAKOTA**

**PUBLIC SERVICE COMMISSION**

**PUBLIC SERVICE COMMISSION**

**Enbridge Pipelines (North Dakota) LLC  
Little Muddy Station Connection Project –Williams County  
Siting Application**

**CASE NO. PU-11-606**

**OAH File No. 20110469**

**RECOMMENDED FINDINGS OF FACT,**

**CONCLUSIONS OF LAW AND RECOMMENDED ORDER**

**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 November 14, 2011, Enbridge Pipelines (North Dakota) LLC ("Enbridge") filed an application for a certificate of corridor compatibility and an application for route permit with the Public Service Commission ("Commission") to authorize construction of a crude oil pipeline and associated facilities ("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 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 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 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 will consist of an underground 10-inch diameter pipeline approximately 6 miles long running in a northwest to southeast direction from Enbridge's new Little Muddy Station to its existing East Fork Booster Station, all located within Williams County. The Project will include the installation of a new pump station and terminal facility, including all associated facilities at the new Little Muddy Station, on a 40-acre parcel located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 17, Township 156 North, Range 100 West, Williams County, North Dakota.
3. The Project includes the following facilities at the new Little Muddy Station: 2 new 30,000 barrel tanks, 2 new mainline pumps and variable frequency drives, 2 new booster pumps, a new metering facility, with all valves and appurtenances, a new sump pump and tank, a new pig launcher, a new 12 inch tank suction header, a new 10 inch tank fill manifold, a new control building and new cable and wiring to power, control and communicate with the new equipment. In addition to the existing pumping unit, skid mounted drag reducing agent injection equipment, suction and discharge piping, valves, sump tank and drain lines, and instrumentation and control building already in place at the East Fork Station, the following new facilities will be added: a pig receiver, metering facility, including 2 x 6" meters and all valves and appurtenances, an electric transformer, and cable and wiring to power, control and communicate with the new equipment. The Project will also include approximately 6 miles of new 10-inch diameter steel pipe connecting the facilities.

### 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 Locations

5. In its Application, Enbridge defined a one-mile wide study area centered on the preferred pipeline route, and a one-half mile buffer around the perimeter of the new Little Muddy Station. For the majority of the Project, Enbridge identified an approximately 400-foot wide survey corridor centered on the preferred pipeline route for the purpose of conducting cultural resource field surveys, biological and wetland/waterbody field surveys.
6. On December 12, 2011, the Williams County Commission approved the rezoning of the 40 acres for the Little Muddy Station 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: North Dakota Game and Fish Department; North Dakota Parks & Recreation Department; North Dakota State Land Department; 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. Enbridge conducted a Class I literature search on the one-mile wide study area, and a Class III cultural resource inventory was completed on the narrower field survey corridor, including all areas that will be used in conjunction with construction of the 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 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. No avoidance areas are present within the corridor.

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 along the proposed route and within the associated facilities. The delineations found that no permanent impacts to any wetlands are anticipated as a result of the Project. The Corps of Engineers responded to Enbridge's Jurisdictional Determination Request on December 13, 2011, concluding that the delineated features in the project are not jurisdictional waters of the United States and therefore not subject to the Corps' regulatory authorities or permitting. Approximately 0.2% of the study area contained woodlands or wooded areas. These areas will be avoided to the extent practicable. An inventory of trees and shrubs will be conducted and any that could be impacted by the Project will be replaced in accordance with the Commission's tree and shrub mitigation specifications.
16. The Project may result in wildlife habitat removal due to clearing and construction. 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. The Project's permanent right-of-way (ROW) will be 50 feet wide, while the temporary ROW, to be used only during construction, will be 60 feet in upland areas and 35 feet in wetlands. Additional temporary workspace of up to 75 feet in width and 300 feet in length may be required at road and railroad crossings

20. 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.
21. 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.
22. 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.
23. Enbridge will use environmental monitors and inspectors to comply with all applicable permits.
24. Enbridge will participate in the North Dakota One-Call Excavation Notice System.
25. 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 Little Muddy Station upon a 40-acre parcel, the 10-inch, six-mile pipeline, and associated facilities in Williams County, North Dakota. For purposes of the Certificate, the Corridor will consist of a 400 foot-wide area centered on the pipeline route for the length of the route, and the land included within the Little Muddy and East Fork stations 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 Little Muddy Station upon a 40-acres parcel, 10-inch, six-mile pipeline, and associated facilities in Williams County 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  
Office of Administrative Hearings  
2911 North 14<sup>th</sup> Street – Suite 303  
Bismarck, North Dakota 58503  
Telephone (701) 328-3200

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Enbridge Pipelines (North Dakota) LLC**  
**Little Muddy Station Connection Project –Williams County**  
**Siting Application**

**CASE NO. PU-11-606**  
**OAH File No. 20110469**

**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:

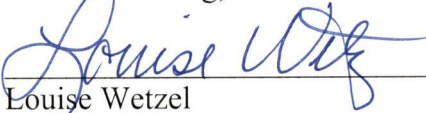
Brian Bjella  
Crowley Fleck  
P O Box 2798  
Bismarck, ND 58502-2798

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 14 day of March 2012, to:

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

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

  
Louise Wetzel