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PUBLIC SERVICE COMMISSION

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**ONEOK Rockies Midstream, L.L.C.
Stateline to Riverview NGL Pipeline -Williams County
Siting Application**

**Case No. PU-11-683
OAH File No. 20120056**

RECOMMENDED FINDINGS OF FACT,

CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

March 30, 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, ONEOK Rockies Midstream, L.L.C.

Matthew A. Sagsveen, Assistant Attorney General, Legal Counsel for the Public Service Commission.

Patrick Fahn, Director, Compliance and Competitive Markets Division, 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 October 21, 2011, ONEOK Rockies Midstream, L.L.C. (“ONEOK”) filed a Letter of Intent with the Public Service Commission (“Commission”). ONEOK proposes to construct approximately 53 miles of 10.75 inch diameter pipeline and associated facilities, of which approximately 13 miles of pipeline and associated facilities will be located in Williams County, North Dakota, with the remainder located in Richland County, Montana (the North Dakota portion of the pipeline and associated facilities is the “Project” for purposes of this recommended decision). The pipeline is proposed to transport natural gas liquids (“NGL”) from the tailgate of the Stateline 1 and 2 Gas Processing Plants (the “Plants”), near Williston, North Dakota, to a

point on the North Dakota and Montana border and then to the Riverview Rail Terminal (the "Terminal") in Richland County, Montana.

On December 22, 2011, ONEOK filed applications for a certificate of corridor compatibility and for a route permit authorizing the construction of the Project in North Dakota. ONEOK 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. ONEOK further requests that the Commission reduce the minimum width of the study area for the Project, from 1.3 miles, as required by North Dakota Administrative Code § 69-06-04-02, to one mile.

On February 7, 2012, ONEOK filed a supplemental page to the applications.

On February 7, 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 February 8, 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 February 17, 2012, the Hearing Officer issued a Notice of Filings and Notice of Hearing scheduling a public hearing on March 23, 2012, at 10:00 a.m. CDT at Williston City Hall, 22 East Broadway, Williston, North Dakota, 58801. The issues to be considered in this case 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?
3. Will the location, construction, and operation of the proposed facilities produce minimal adverse affects on the environment, natural resources, 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 impacts 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. ONEOK is a Delaware limited liability company authorized to transact business in the State of North Dakota.

2. ONEOK is not a common pipeline carrier as defined in N.D.C.C. § 49-19-01 for the Project.
3. ONEOK is in the process of constructing the Plants and also operates the Terminal.

Size, Type and Preferred Location of Facility

4. As a by-product of processing natural gas at the Plants, NGL will be available at the tailgate of the Plants. ONEOK proposes to construct a new 10.75-inch pipeline approximately 13 miles from the Plants to a point on the North Dakota and Montana border and then on to the Terminal, a total distance of 53 miles, to transport NGL to a location where it can be shipped by railcar. The carrying capacity of the pipeline will be approximately 61,000 barrels per day. The proposed route was chosen to collocate the pipeline route between two fixed assets within existing corridors to the extent possible; approximately 2.5 miles of the 13 miles located within North Dakota parallels an existing pipeline route.
5. The pipeline will include block valves, three located in North Dakota. There will be a single pumping station for the pipeline that will be located at the Plants. A supervisory control and data acquisition (“SCADA”) system, will be located at the Plants.

Need for Facility

6. The Pipeline will transport 61,000 barrels of NGL per day from the Plants to the Terminal. The Terminal allows the NGL to be shipped by rail to end users until 2013 when a new pipeline will be constructed to ship product from the Terminal. ONEOK states in the application that without a means of transporting NGL to market, the Plants, which have already been sited by the Commission, would either be unable to operate or would be required to operate at significantly reduced volumes.
7. Alternatives to construction of the pipeline consist of trucking or shipping NGL by rail to the Terminal. A ONEOK witness testified that if ONEOK trucked 61,000 barrels of NGL per day from the Plants, it would require approximately 270 trucks per day to be loaded at the Plants, driven to the Terminal, and unloaded at the Terminal. The witness also testified that the level of trucking activity would result in wear and tear of infrastructure, unduly burden area residents, and render the operation of the Plants susceptible to interruption as a result of inclement weather, road repairs, and load restrictions. Rail is not currently a feasible alternative.

Study of Preferred Location

8. 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.

9. ONEOK evaluated a one-mile wide study area centered on the proposed route for the exclusion, avoidance, selection and policy criteria of the Commission.
10. There are no exclusion areas in the study area, except as listed in the application and as noted in Finding of Fact No. 12, below.
11. There are no avoidance areas listed in the study area, except as listed in the application and noted in Finding of Fact No. 12, below.
12. ONEOK conducted a Class I literature search which identified 3 previously recorded cultural resources. ONEOK also conducted a Class III cultural resource inventory based upon a 250-foot wide survey area, centered on the proposed pipeline alignment, that identified 17 newly recorded cultural resources. The State Historic Preservation Office ("SHPO") has concurred with ONEOK's determination that no cultural resources will be affected by the project because ONEOK will avoid all of them.
13. ONEOK conducted investigations to determine the potential impact of the pipeline upon vegetation and plant species, including obtaining information and input from 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 along the entire proposed route. All field surveys were conducted based upon a 250-foot wide survey area, centered on the proposed pipeline alignment.
14. The United States Fish and Wildlife Service, Montana Field Office ("Service") recommended that ONEOK blade the entire construction right-of-way during construction as habitat manipulation to remove potential habitat for migratory birds. A ONEOK witness testified that the United States Fish and Wildlife Service, Bismarck Field Office has in the past recognized that mowing the right-of-way during construction was a sufficient means of habitat manipulation to prevent migratory bird nesting and that mowing would cause less erosion and other adverse impacts. The witness testified that ONEOK will use mowing the right-of-way habitat manipulation and not the habitat manipulation recommended by the Service.
15. Any impact on vegetation and wildlife from construction of the pipeline will be

temporary.

16. The pipeline will cross eight forested upland and shrub land areas. ONEOK will minimize the clearing of any wooded areas and will comply with the Commission's Tree and Shrub Mitigation Specifications.
17. The proposed pipeline will not cross any water bodies but three or four streams and three wetlands are located within the 100 foot wide construction right-of-way. ONEOK will implement appropriate mitigation at these locations including avoidance through workspace modification, horizontal directional drilling or the use of construction mats and other best management practices.
18. Agricultural and pasture land is located along the route and approximately 27% of the 388 acres which will be temporarily impacted by construction is cultivated land. Construction impacts will be temporary and landowners will be compensated for any impacts. After construction, agricultural lands will be returned to preconstruction uses.
19. Any impact to family farm operations associated with construction of the Pipeline will be temporary.
20. Any impact the pipeline's construction activities will have on surface drainage and groundwater flow patterns will be temporary.
21. 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

22. All Project construction work will occur within a construction right-of-way of 100 feet. After completion of construction, the right-of-way for the pipeline will be 50 feet.
23. ONEOK will have personnel available at locations along the entire pipeline route to respond to any conditions 24 hours a day, seven days a week. Block valves will allow for segments of the pipeline to be segregated for inspection and maintenance as well as in the event of a system failure. The SCADA system will report pipeline operations and facilitate early response to any breach or failure of the pipeline.
24. 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.
25. ONEOK has agreed to a number of steps to mitigate the impact of the Project as indicated by the March 21, 2012, Certification Relating to Order Provisions-Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications.
26. ONEOK will use environmental monitors and inspectors to comply with all applicable

permits.

27. ONEOK will participate in the North Dakota One-Call Excavation Notice System.
28. It is appropriate to authorize a corridor only for the area for which ONEOK 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, ONEOK, and over the subject matter of the applications under North Dakota Century Code chapter 49-22.
2. ONEOK 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 are 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 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 the 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 recommends the following :

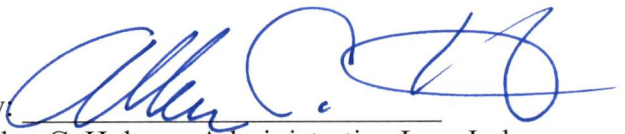
Order

1. That ONEOK's application for a waiver of procedures and time schedules be granted.
2. That a Certificate of Corridor Compatibility be issued to ONEOK designating a corridor for the construction, operation, and maintenance of the Project in Williams County North

Dakota. For the purposes of the Certificate, the corridor will consist of a 250 foot-wide area centered on the pipeline route for the length of the route, as described in the application and at the public hearing.

3. That a Route Permit be issued to ONEOK granting authority to construct a 13 mile 10.75-inch diameter pipeline and associated facilities in Williams County, North Dakota, with a 50 foot right-of-way after construction centered on the pipeline for the length of the pipeline route in North Dakota, as described in the application and at the public hearing.
4. That the March 21, 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
Office of Administrative Hearings
Substantive Hearing Officer
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 30 day of March 2012, to:

Illona Jeffcoat-Sacco
General Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

and that a true and correct copy of the above document was mailed, regular mail, on the 30 day of March 2012, to:

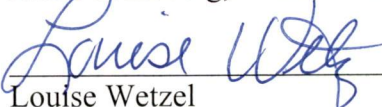
John Morrison
Crowley Fleck
P O Box 2798
Bismarck, ND 58502-2798

and that a true and correct copy of the above document was mailed, inside mail, at the State Capitol on the 30 day of March 2012, to:

Patrick Fahn
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600 East Boulevard Avenue
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OFFICE OF ADMINISTRATIVE HEARINGS
Allen C. Hoberg, Administrative Law Judge


Louise Wetzel