

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Plains Pipeline, L.P.
Nelson to Ross Pipeline — Mountrail County
Siting Application

Case No. PU-12-40
OAH File No. 20120082

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

April 19, 2012

Appearances

Patrick J. Ward, Administrative Law Judge, Substantive Hearing Officer, Zuger Kirmis & Smith, PO Box 1695, Bismarck, ND 58502.

Mollie M. Smith and Jillian R. Rupnow, Attorneys-at-Law, Fredrikson & Byron, P.A., 200 North Third Street, Suite 150, Bismarck, North Dakota 58501, on behalf of Plains Pipeline, L.P.

Mark E. Gruman, Legal Counsel, Public Service Commission, 600 East Boulevard, Bismarck, North Dakota 58505.

Christopher A. Marohl, Public Utility Analyst, Public Service Commission, 600 East Boulevard, Bismarck, North Dakota 58505.

Preliminary Statement

Under North Dakota Century Code Section 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 February 6, 2012, Plains Pipeline, L.P. (“Plains”), filed with the North Dakota Public Service Commission (“Commission”) a consolidated application for a Certificate of Corridor Compatibility and Route Permit (“Application”) to authorize construction of a crude oil pipeline (“Project”) in Mountrail County, North Dakota.

On February 6, 2012, Plains also filed an application requesting waiver of the following procedures and time schedules: (1) separate hearings on Plains’ waiver request, Certificate of Corridor Compatibility Application, and Route Permit Application; (2) separately filed applications for a Corridor Certificate and a Route Permit, and separate publication of notices of filing the applications; and (3) submission of mylar maps and stereo-pair aerial photographs per the Commission’s Application Guidelines for a Corridor Certificate and a Route Permit.

On February 29, 2012, the Commission appointed Patrick J. Ward to preside as substantive hearing officer (“Hearing Officer”).

On February 29, 2012, Allen C. Hoberg, on behalf of the Hearing Officer, issued a Notice of Filings and Notice of Hearing stating that the Application was deemed complete and scheduling a public hearing for April 13, 2012, at 10:00 am CDT at the Mountrail County Ag Building, 6160 Hwy 8, Stanley, North Dakota 58784.

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

1. Will the location, construction, and operation of the proposed facilities produce minimal adverse effects 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 13, 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. Plains is a Texas limited partnership that is headquartered in Houston, Texas.
2. Plains has been authorized to do business in the State of North Dakota since April 27, 2000, as evidenced by the Certificate of Fact issued by the North Dakota Secretary of State on June 24, 2011 (*see* Case No. PU-11-568).

Size, Type, and Preferred Location of Facility

3. The Project will consist of the construction of approximately 17.2 miles of pipeline that will originate at Plains' Robinson Lake 8" Pipeline System and extend westward to connect with the Ross Rail Terminal, now known as the Manitou Rail Terminal.
4. The Project will utilize 10.75-inch outside diameter crude oil steel pipe and the maximum operating pressure will be 1,480 pounds of pressure per square inch gauge. The maximum capacity will be 47,000 barrels per day. The maximum operating temperature will be 120 degrees Fahrenheit, but normal operating conditions are 90 degrees Fahrenheit at 1100 psig.
5. Aboveground facilities include a mainline check valve, a mainline block valve, pig launching and receiving stations, cathodic protection equipment, and pipeline markers.

Need for the Facility

6. Plains has concluded that there is a need for the facility because there is insufficient capacity from existing and planned pipeline infrastructure to meet the anticipated future transportation needs of producers in the Bakken and Three Forks development area. The Project will provide an additional means of transporting Bakken and Three Forks crude oil to an existing rail facility, from which the crude oil can be transported to markets within the United States.

Study of Preferred Route(s)

7. In its Application, Plains defined a one-mile wide study area centered on the preferred pipeline route. Plains identified a survey corridor of between 100 feet and 830 feet wide for the purpose of conducting cultural resource field surveys, biological and wetland/waterbody field surveys, and other environmental field assessments. Field surveys were also conducted for all Project facility locations and temporary workspace areas. The field survey corridor for the Project, which encompasses the final proposed Project route, is identified in the maps provided in Appendix A to Exhibit 2.
8. Plains analyzed a number of alternatives and factors, including engineering, economic, and environmental factors to determine the most feasible route. The alternatives considered included a no action alternative, a trucking alternative, development of a rail terminal at the eastern terminus of the Project, and routing alternatives.
9. The following agencies were contacted by Plains and provided written comments: North Dakota Game and Fish Department; North Dakota Department of Trust Lands; North Dakota Parks and Recreation Department; North Dakota Department of Health; and State Historical Society of North Dakota, State Historic Preservation Office ("SHPO").
10. Plains 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. Additionally, environmental data collected included information on soils, land use, wetlands and

waterbody crossings, noxious weeds, trees, saplings, and shrubs, and protected species and habitats.

11. The SHPO has concurred with the determination that no historic properties or significant sites will be affected by the Project so long as the Project remains of the nature and in the location described in the Class I and Class III Cultural Resource Inventory Report and the Addendum to the Class I and Class III Cultural Resource Inventory Report, and Plains follows any site avoidance measures set forth in those reports.

12. The Commission has established criteria pursuant to Section 49-22-05.1 of the North Dakota Century Code to guide the Commission in evaluating the suitability of granting a Certificate of Corridor Compatibility and Route Permit. The criteria, as set forth in Section 69-06-08-02 of the North Dakota Administrative Code, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

13. A transmission facility route must not be sited within an Exclusion Area. No Exclusion Areas will be impacted by the proposed route.

14. A transmission facility route must not be sited within an Avoidance Area unless the applicant shows 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. No Avoidance Areas will be impacted by the Project.

15. In accordance with the Commission's Selection Criteria, a transmission facility route shall be approved if it is demonstrated that no significant adverse impacts will result from the location, construction, and operation of the transmission facility. Plains 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.

16. A wetlands and waterbodies inventory was completed along the proposed route. Wetlands and waterbodies are present within the study area and will be crossed by the route. Plains will take steps to protect wetlands and waterbodies, and no permanent impacts to wetlands or waterbodies are anticipated.

17. Some woodlands are present within the study area, and have been avoided by the route to the extent practicable. To avoid impacts to trees, Plains testified that it plans to bore under trees where practicable. An inventory of trees and shrubs that may be affected by the Project has been completed, and any trees or shrubs removed during construction of the Project will be replaced in accordance with the Commission's Tree and Shrub Mitigation Specifications.

18. The Project may result in modification of habitat and temporary displacement of wildlife, due to clearing and construction. The Project will have no significant impact on fish and wildlife resources and no impacts are anticipated to endangered, threatened, or sensitive plant or animal species.

19. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the transmission facility. Plains has analyzed the relevant Policy Criteria and has committed to designing, constructing, and operating the pipeline in accordance with all applicable federal, state, and local laws and regulations; 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. Plains submitted evidence to demonstrate its commitment to maximize the benefits of the proposed transmission facility to the extent possible so as to meet the Policy Criteria.

20. It is appropriate to authorize a corridor only for the area for which Plains performed the more thorough field surveys.

Measures to Minimize Impact

21. Plains has agreed to a number of steps to mitigate the impact of the Project, as indicated by the April 9, 2012 Certification Relating to Order Provisions – Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications, which is attached to this Order.

22. The Project's permanent right-of-way ("ROW") will be 30 feet wide, while its temporary ROW will generally be 70 feet wide. Additional temporary workspace may be required at certain locations (*e.g.*, road, railroad, and waterbody crossings). The construction ROW will be reduced to 50 feet wide in wooded areas. Plains will generally use existing public roads to access the ROW, but may need to construct short gravel roads to access valve sites.

23. The design, construction, and operation of the pipeline will be in accordance with the United States Department of Transportation regulations governing the transportation of crude oil.

24. Plains will participate in the North Dakota One-Call Excavation Notice System.

25. Plains' existing Emergency Response Plan will include the Project.

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

Conclusions of Law

1. The Commission has jurisdiction over the Application, Plains Pipeline, L.P., and over the subject matter of the Application under Chapter 49-22 of the North Dakota Century Code.

2. Plains is a utility as defined in Section 49-22-03(13) of the North Dakota Century Code.

3. The proposed pipeline is a transmission facility as defined in Section 49-22-03(12) of the North Dakota Century Code.

4. The location, construction, and operation of the Project 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 Project 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, in accordance with Section 49-22-07.2 of the North Dakota Century Code.

8. It is appropriate for the Commission to waive those certain procedures and time schedules as requested in the Application and provided under Section 49-22-07.2 of the North Dakota Century Code.

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

Recommended Order

1. That Plains Pipeline, L.P.'s application for a waiver of procedures and time schedules be granted.

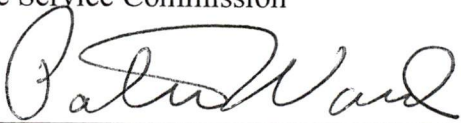
2. That a Certificate of Corridor Compatibility be issued to Plains Pipeline, L.P., designating a corridor for the construction, operation, and maintenance of a 10.75-inch crude oil pipeline and associated facilities in Mountrail County, North Dakota. For purposes of the Certificate, the Corridor will consist of the field survey corridor identified in the maps provided in Appendix A of Exhibit 2.

3. That a Route Permit be issued to Plains Pipeline, L.P., granting authority to construct and operate a 10.75-inch crude oil pipeline and associated facilities in Mountrail County, North Dakota.

4. That the April 9, 2012 Certification Relating to Order Provisions – Transmission Facility Siting be incorporated by reference and attached to the Order issued by the Commission.

State of North Dakota
Public Service Commission

Date: 4/19/12

By: 

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