

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Magellan Pipeline Company, L.P.
Fargo Relocation Project – Cass County
Siting Application

Case No. PU-12-42
OAH File No. 20120081

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

April 17, 2012

Appearances

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

Mollie M. Smith, Attorney-at-Law, Fredrikson & Byron, P.A., 200 North Third Street, Suite 150, Bismarck, North Dakota 58501, on behalf of Magellan Pipeline Company, 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 8, 2012, Magellan Pipeline Company, L.P. (“Magellan”), 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 refined petroleum products pipeline relocation project (“Project”) in West Fargo, Cass County, North Dakota.

On February 8, 2012, Magellan also filed an application requesting waiver of the following procedures and time schedules: (1) separate hearings on Magellan’s 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 12, 2012, at 10:00 am CDT at the West Fargo Commission Room, 800 4th Ave E, West Fargo, North Dakota.

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 12, 2012, the public hearing was held as scheduled.

On April 16, 2012, Magellan filed late-filed Exhibit 11, which is a map accurately depicting the current location of Magellan’s pipelines.

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. Magellan is a Delaware limited partnership that is headquartered in Tulsa, Oklahoma.
2. Magellan has been authorized to do business in the State of North Dakota since September 29, 2004, as evidenced by the Certificate of Fact issued by the North Dakota Secretary of State on January 6, 2012 (*see* Case No. PU-12-36).

Size, Type, and Preferred Location of Facility

3. The Project will consist of the relocation of approximately 2,300 feet of two existing co-located refined petroleum product pipelines that must be moved to accommodate a North Dakota Department of Transportation (“DOT”) roadway reconstruction project. The Project will be located entirely within the city limits of West Fargo, Cass County, North Dakota.
4. The Project will utilize 6-inch and 8-inch steel pipe and the maximum operating pressure will be 1,062 and 1,182 pounds per square inch, respectively. The 6-inch pipeline will have a maximum flow rate of approximately 450,000 gallons per day (“gpd”), and the 8-inch pipeline will have a maximum flow rate of approximately 1.1 million gpd.
5. Other than pipeline markers at road crossings, no above ground facilities will be required for the relocated portion of the co-located pipelines.

Need for the Facility

6. The Project is needed in order to accommodate a DOT roadway reconstruction project. Specifically, the DOT requested that Magellan relocate the segments of the pipelines at issue so that the pipelines would be outside of the working area for the DOT’s relocation of a portion of 17th Street East and its work on Main Avenue East, a/k/a U.S. Highway 10, in West Fargo, North Dakota. At the public hearing, a DOT representative testified that the DOT has already begun construction on its roadway project and needs Magellan’s relocation Project to be completed as soon as possible in order to accommodate the DOT’s construction schedule.

Study of Preferred Route(s)

7. In its application, Magellan defined its study area as a one-mile-wide study area centered on the proposed Project route. Within the study area, Magellan identified an approximately 250-foot wide survey corridor centered on the preferred pipeline route for the purpose of conducting biological and wetland/waterbody field surveys.
8. Magellan analyzed a number of alternatives and factors, including engineering, economic, and environmental factors, to determine the most feasible route. The potential alternatives considered included a no action alternative and a number of routing alternatives.
9. The following agencies were contacted by Magellan and provided written comments: United States Fish and Wildlife Service; 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. Magellan conducted a Class I cultural resource inventory on the one-mile wide study area. Additional environmental data collected included information on soils, land use, wetlands and waterbodies, trees, saplings, and shrubs, and protected species and habitat.

11. The SHPO has concurred with the determination that no historic properties and no significant sites will be affected by the Project provided the Project is of the nature and in the location set forth in the Class I Cultural Resource Inventory Report.

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.

15. Several residences and businesses are located within 500 feet of the proposed route. Magellan presented testimony and evidence demonstrating that there is no reasonable alternative to the proposed route. In addition, Magellan has obtained or is in the process of obtaining waivers and/or easements from all of the landowners crossed by the proposed route, and Magellan has also obtained waivers from a number of land and business owners within 500 feet of the proposed route (*see* Exhibit 5).

16. Exhibit 3 is comprised of four alternative routes and corridors, each which had disadvantages compared to the proposed route. Cory Davis, Magellan Project Manager, provided testimony regarding Magellan's, and the North Dakota Department of Transportation's, preference of the proposed route over the four alternatives.

17. Kevin Gorder, Assistant District Engineer of the North Dakota Department of Transportation (NDDOT) and Project Manager for the 2012 Main Avenue East Construction Project, provided testimony to the effect that the NDDOT prefers the proposed route, in part, due to fewer bends in the pipeline, provides for a right angle crossing under Main Avenue East, reduces the likelihood of future disturbances of constructed road surfaces of 17th Street East and Main Avenue East in the event of pipeline repairs, and avoids existing easements for other utilities within the affected rights of way.

18. Three potential cultural resources were identified within the study area. One potential cultural resource, the portion of Main Avenue East, a/k/a U.S. Highway 10, within the proposed Project route, is recommended as a non-contributing portion of a National Register of Historic Places ("NRHP") eligible site; in addition, Magellan will bore under the roadway, thereby avoiding any potential impact. Another potential site is Magellan's pipelines, which are recommended not eligible for NRHP-listing. The remaining site is a site lead for the Magellan Pipeline Company Terminal, which is outside of the route for the Project.

19. In accordance with the Commission's Selection Criteria, a transmission facility route shall be approved if it is demonstrated that any significant adverse impacts that will result from the location, construction, and maintenance of the transmission facility will be at an acceptable minimum or managed and maintained at an acceptable minimum. Magellan 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.

20. A wetlands and waterbodies inventory was completed within a 250-foot-wide survey corridor along the proposed route. No wetlands or waterbodies are present within the survey corridor.

21. Twelve (12) trees will potentially be impacted by the proposed route. Magellan will replace any trees removed in accordance with the Commission's Tree and Shrub Mitigation Specifications.

22. 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.

23. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the transmission facility. Magellan 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 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. Magellan submitted evidence to demonstrate commitment to maximize the benefits of the proposed transmission facility to the extent possible so as to meet the Policy Criteria.

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

Measures to Minimize Impact

25. Magellan 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 hereto.

26. The Project's permanent right-of-way ("ROW") will be 50 feet wide. The Project's temporary construction ROW will generally be 75 feet wide, except that additional temporary ROW will be utilized on the north and south sides of Main Street East, a/k/a U.S. Highway 10, to facilitate horizontal directional drilling under the roadway. Magellan will reduce its construction ROW to 50 feet wide in wooded areas.

27. The design, construction and operation of the pipeline will be in accordance with the United States Department of Transportation regulations.

28. Magellan will participate in the North Dakota One-Call Excavation Notice System.

29. Magellan's 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 applicant, Magellan Pipeline Company, L.P., and over the subject matter of this application under Chapter 49-22 of the North Dakota Century Code.
2. Magellan is a utility as defined in Section 49-22-03(13) of the North Dakota Century Code.
3. The proposed pipelines are transmission facilities 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 length, design, location and purpose 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 Recommended Findings of Fact and Conclusions of Law, the Hearing Officer now issues the following:

Recommended Order

1. That Magellan Pipeline Company, L.P.'s application for a waiver of procedures and time schedules be granted.
2. That a Certificate of Corridor Compatibility be issued to Magellan Pipeline Company, L.P., designating a corridor for the construction, operation, and maintenance of the proposed Project. For 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.

3. That a Route Permit be issued to Magellan Pipeline Company, L.P., granting authority to relocate a portion of its existing 6-inch and 8-inch refined petroleum products pipelines in Cass 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.

Date: 4/17/2012

State of North Dakota
Public Service Commission
By: 
Patrick J. Ward
Administrative Law Judge
Substantive Hearing Officer
Zuger Kirmis & Smith
Post Office Box 1695
Bismarck, North Dakota 58502-1695
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CERTIFICATE OF SERVICE

The undersigned certifies that the original of the Recommended Findings of Fact and Conclusions of Law and Order was hand-delivered at the State Capitol on the 17th day of April, 2012, to:

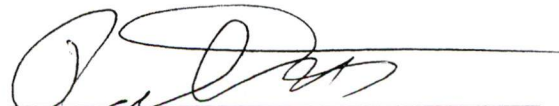
Mark Gruman
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

and that a true and correct copy of the above document was mailed, regular mail, on the 17th of April, 2012, to:

Mollie Smith
Attorney at Law
Fredrikson & Byron, P.A.
200 North Third Street, Suite 150
Bismarck, ND 58501

and that a true and correct copy of the above documents was hand-delivered at the State Capitol on the 17th day of April, 2012, to:

Christopher Marohl
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480



Patrick J. Ward
Administrative Law Judge
Substantive Hearing Officer