

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



**Bakken Oil Express, LLC
Crude Oil Pipeline Project — Dunn and Stark Counties
Siting Application**

Case No. PU-13-825

OAH File No. 20130468

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

December 10, 2013

Appearances

Commissioners: Brian P. Kalk, Randy Christmann, and Julie Fedorchak

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

Sarah Cardwell, Public Utility Analyst, Public Service Commission, 600 East Boulevard, Bismarck, North Dakota 58505.

Brian D. Schmidt, Legal Counsel, 122 East Broadway Avenue, Bismarck, North Dakota 58502, on behalf of Public Service Commission.

Jillian R. Rupnow, Attorney at Law, Fredrikson & Byron P.A., 200 North Third Street, Suite 150, Bismarck, North Dakota 58501, on behalf of Bakken Oil Express, LLC.

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 October 4, 2013, Bakken Oil Express, LLC ("BOE"), 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 and operation of a crude oil pipeline ("Project") in Dunn and Stark Counties, North Dakota. BOE also filed an application requesting waiver of the following procedures and time schedules.

On October 16, 2013, the Commission submitted a request for an Administrative Law Judge to the Office of Administrative Hearings. On October 21, 2013, Allen C. Hoberg, Director of the Office of Administrative Hearings, designated Patrick J. Ward as Administrative Law Judge in the above-captioned matter.

On October 17, 2013, BOE filed with the Commission a Wetland Delineation for the Project. On October 25, 2013, BOE filed a Class III Cultural Resource Inventory for the Project.

On October 23, 2013, the Commission issued a Notice of Filings and Notice of Hearing stating that the Application was deemed complete and scheduling a public hearing for December 9, 2013 at 10:00 a.m. CDT at Killdeer City Hall, 165 Railroad Street SE, Killdeer, North Dakota 58640.

On November 8, 2013, the BOE filed with the Commission a letter from the North Dakota State Historic Preservation Office, concurring that no significant cultural sites would be affected by the Project.

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 Application:

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 December 9, 2013, the public hearing was held as scheduled.

On December 19, 2013, BOE filed with the Commission a request for a minor route and corridor adjustment, affecting approximately 2.7 miles of the Project.

Having allowed all interested persons an opportunity to be heard and having heard, reviewed, and considered all testimony and evidence presented, the Commission makes the following:

Findings of Fact

1. BOE is a North Dakota limited liability company.
2. BOE has been authorized to do business in the State of North Dakota since September 10, 2009, when it filed its Articles of Incorporation with the North Dakota Secretary of State, as

evidenced by the corporate papers filed with the Commission on October 17, 2013 (*see* Case No. PU-13-836).

Size, Type, and Preferred Location of Facility

4. The Project consists of approximately 38 miles of pipeline that will originate at a tanker truck unloading and pumping facility currently being constructed near Killdeer, in Dunn County, North Dakota, and terminates at an existing Rail Hub facility, owned and operated by BOE, located to the southwest of Dickinson, in Stark County, North Dakota.

5. The Project will utilize 16-inch diameter steel crude oil pipeline and the maximum operating pressure will be 1,480 pounds of pressure per square inch gauge. The maximum daily output will be 165,000 barrels per day.

6. Aboveground facilities will include mainline valves, block valves, pig launching and receiving stations, rectifiers, and pipeline markers.

Need for the Facility

7. BOE concluded there is a need for the facility because the recent and significant increase in oil extraction has outpaced efficient transportation methods. Current crude oil transportation from oil wells to distribution points is primarily accomplished by tanker truck, or limited pipeline transportation. Increased production of crude oil and limited pipeline access combine to increase tanker truck traffic on North Dakota highways. In turn this increases road damage, the need to update or repair highways, increases emissions levels and raises concern for driver safety. The construction of additional pipelines would have a positive effect on efficient transportation of crude oil and would relieve some of the impacts resulting from trucking the crude oil. Construction of the Project would provide a reliable transportation method for up to 165,000 bpd; equivalent to reducing the traffic activity from Killdeer to Dickinson via Highway 22 by up to 825 tanker trucks per day.

Study of Preferred Route(s)

8. In its Application, BOE defined a five-mile-wide study area centered on the preferred pipeline route. BOE identified a survey corridor a minimum of 200 feet wide for the purpose of conducting cultural resource field surveys, biological and wetland/waterbody field surveys, and other environmental field assessments. The survey corridor was widened to approximately 400 feet in certain areas, as depicted in the map incorporated by reference and attached hereto.

9. BOE analyzed a number of alternatives and factors, including engineering, economic, and environmental factors to determine the most feasible route. The alternatives considered included a larger or smaller diameter pipeline, as well as an alternative pipeline route from the tanker truck unloading and pumping facility currently being constructed to an existing BOE Rail Hub facility.

11. The following agencies were contacted by BOE and provided comments: Natural Resource Conservation Service, North Dakota Department of Commerce, North Dakota Department of Transportation, North Dakota Forest Service, North Dakota Department of

Health, State Historical Society of North Dakota, State Historic Preservation Office (“SHPO”), North Dakota Game and Fish Department, North Dakota Geological Survey Division, North Dakota Parks and Recreation Department, North Dakota State Water Commission, U.S. Fish and Wildlife Service North Dakota Field Office, Army Corps of Engineers, Bureau of Indian Affairs, Bureau of Reclamation, the United States Department of Transportation, and the City of Killdeer.

12. BOE conducted a Class I literature search and a Class III cultural resource inventory for the entire proposed Project 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.

13. 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 BOE follows any site avoidance measures set forth in those reports.

14. 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.

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

16. 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.

17. 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. BOE 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.

18. A wetlands and waterbodies inventory was completed along the proposed route. Eighteen wetlands or waterbodies are present within the study area. Wetlands will be avoided to the extent possible and all wetlands that are crossed by the Project route will be bored to avoid impacts. No permanent impacts to wetlands or waterbodies are anticipated. There is no economically significant forestry resource located within the Project Corridor. Any trees or shrubs removed during construction of the Project will be replaced in accordance with the Commission’s Tree and Shrub Mitigation Specifications.

19. The Project may result in temporary 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.

20. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the transmission facility. BOE 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 capacity in the most minimally intrusive and most efficient way possible; and coordinating with state and local officials. BOE 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.

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

Measures to Minimize Impact

22. BOE has agreed to a number of steps to mitigate the impact of the Project, as indicated by the December 4, 2013 Certification Relating to Order Provisions – Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications, which is incorporated by reference and attached to this Order.

24. The Project's permanent right-of-way ("ROW") will be 30 feet wide, while its temporary construction ROW will be 80 feet wide. BOE will construct temporary access roads for Project construction, which will be restored to pre-construction conditions following Project construction. No permanent roads will be constructed as part of the Project.

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

26. BOE participates in the North Dakota One-Call Excavation Notice System.

27. BOE's existing emergency response plan includes the Project.

From the foregoing Findings of Fact, the Commission now makes the following:

Conclusions of Law

1. The Commission has jurisdiction over the Application, Bakken Oil Express, LLC, and over the subject matter of the Application under Chapter 49-22 of the North Dakota Century Code.

2. BOE 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 Commission now issues the following:

Order

1. The Bakken Oil Express, LLC's application for a waiver of procedures and time schedules be granted.
2. That a Certificate of Corridor Compatibility be issued to Bakken Oil Express, LLC, designating a corridor for the construction, operation, and maintenance of a 16-inch crude oil pipeline and associated facilities in Dunn and Stark Counties, North Dakota. For purposes of the Certificate, the Corridor will consist of the minimum 200-foot-wide field survey corridor identified in the map incorporated by reference and attached to this Order.
3. That a Route Permit be issued to Bakken Oil Express, LLC, granting authority to construct and operate a 16-inch crude oil pipeline and associated facilities in Dunn and Stark Counties, North Dakota.
4. That the December 4, 2013 Certification Relating to Order Provisions – Transmission Facility Siting be incorporated by reference and attached to this Order.

**State of North Dakota
Public Service Commission**

**Commissioner
Julie Fedorchak**

**Chairman
Brian Kalk**

**Commissioner
Randy Christmann**

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