

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Whiting Oil and Gas Corporation
Robinson Lake Gas Plant Expansion – Mountrail Cty
Siting Application

Case No. PU-13-835

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

May 28, 2014

Appearances

Commissioners Brian P. Kalk and Randy Christmann.

John W. Morrison, Attorney at Law, Crowley Fleck, PLLP, 100 West Broadway, Suite 250, Bismarck, North Dakota 58501, on behalf of the Applicant, Whiting Oil and Gas Corporation.

Zachary E. Pelham, Special Assistant Attorney General, 314 East Thayer Avenue, P.O. Box 400, Bismarck, ND 58502-0400, on behalf of the North Dakota Public Service Commission.

Julie S. Prescott, Public Utility Analyst, North Dakota Public Service Commission, 600 East Boulevard, Bismarck, North Dakota 58505.

Patrick J. Ward, Administrative Law Judge, Office of Administrative Hearings, P.O. Box 1695, Bismarck, North Dakota 58502-1695, as Substantive Hearing Officer.

Preliminary Statement

On October 11, 2013, Whiting Oil and Gas Corporation (Whiting) filed with the Public Service Commission (Commission) an application for a certificate of site compatibility for its Robinson Lake Gas Plant (Plant), both the existing Plant at 97.5 million standard cubic feet per day (MMSCFD) and an expansion of the Plant to 110 MMSCFD. When originally constructed in 2007 with a processing capacity of less than 100 MMSCFD, the Plant did not require siting by the Commission.

On October 11, 2013, Whiting also filed an application for waivers of procedures and time schedules established under N.D.C.C. chapter 49-22-07.2 and N.D. Admin. Code section 69-06-06 requiring separate hearings on such applications.

On December 18, 2013, the Commission deemed the applications of Whiting complete and issued a Notice of Filings and Notice of Hearing scheduling a public hearing for March 4, 2014, in Stanley, North Dakota. On March 4, 2014, due to inclement weather, the Commission issued a Notice of Rescheduled Hearing for April 10, 2014, in Stanley, North Dakota.

The Notice of Filings and Notice of Hearing and the Notice of Rescheduled Hearing identified the following issues to be considered:

1. Is the proposed facility of such length, design, location, or purpose that it 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?
3. Will the location, construction and operation of the proposed facility produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
4. Is the proposed facility compatible with the environmental preservation and the efficient use of resources?
5. Will the proposed facility location 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 February 24, 2014, Commissioner Julie Fedorchak filed with the Commission a letter of recusal from the decision in Case No. PU-13-835, due to a possible conflict.

On April 10, 2014, 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 Commission makes the following:

Findings of Fact

1. Whiting is a foreign business corporation with principal offices in Denver, Colorado, and has been authorized to transact business in the State of North Dakota since September 9, 1994.

Size, Type and Preferred Location of Facility

2. The Plant was originally constructed in 2007 with a design capacity of 3 MMSCFD. Since being placed into service, the capacity of the Plant has been modified in order meet increased regional demand for additional gas processing capacity . Whiting proposes further expansion of the Plant from 97.5 MMSCFD to 110 MMSCFD.
3. The location for which Whiting requests a site certificate consists of a 35-acre plot owned by Whiting located in the NW¼ Section 23, Township 153 North, Range 91 West, Mountrail County, North Dakota (Project Site).
4. The addition of processing capacity to the Plant at its existing location will have economic benefits and will minimize environmental disturbance by facilitating the use of existing infrastructure, including access roads, utilities, gathering systems, and delivery pipelines.
5. Whiting indicates that further expansion of the Plant will likely occur in the future. Whiting anticipates that it could increase the capacity of the Plant to as much as 175 MMSCFD by adding an additional refrigeration unit, up to six additional inlet/residue compressors, and related equipment. These activities would not change the purpose or function of the Plant and would all occur within the Project Site .

Need for Facility

6. Gas production from the Bakken Shale and Three Forks formations has exceeded the limited processing capacity available at existing facilities, and construction of additional processing capacity is required to meet the demand of area producers. Absent the construction of additional processing capacity, gas produced in association with oil from these wells must be flared, which is a loss of revenue to the producers, royalty owners, and the state of North Dakota.

Study of Preferred Location

7. In its application, Whiting identified a study area consisting of a one-mile wide buffer area centered on the Project Site. The study area was identified for the purpose of conducting cultural resource surveys, biological, and wetland and water body field surveys.
8. Whiting initiated consultations with the United States Fish and Wildlife Service, the North Dakota Game and Fish Department, the North Dakota Parks and Recreation Department, the North Dakota State Historic Preservation Office, and the North Dakota Department of Health.
9. The Commission has established criteria pursuant to N.D.C.C. section 49-22-05.1, to guide the Commission in evaluating the suitability of granting an application for a Certificate Site Compatibility. The criteria, as set forth in N.D. Admin. Code section

69-06-08-01, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria and Policy Criteria.

10. With the exception of prime and unique farmland, an energy conversion facility must not be sited within an Exclusion Area.

11. Prime farmlands exist within the Study Area but are not present within the Project Site. No Exclusion Areas are present within the Project Site.

12. An energy conversion facility must not be sited within an Avoidance Area unless the applicant demonstrates 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.

13. Woodlands and occupied structures exist within the Study Area. Occupied structures exist within the Study area and are located at a distance greater than 500 feet from the Project Site. No avoidance areas are present within the Project Site.

14. Whiting conducted a Class I Cultural Resources Literature Search of all lands within one mile of the Project Site and a Class III Cultural Resource Inventory of the Project Site. While five previously recorded cultural resources were located within one mile of the Project Site, none were within the Project Site and no cultural resources were identified by the Class III study within the Project Site.

15. The Commission's policy criteria provide that preference may be given to an applicant demonstrating certain benefits of the energy conversion facility. Whiting has committed to conducting its business in compliance with applicable laws and regulations, fostering a work culture that rewards and holds employees and contractors accountable for work safety, to reduce discharges and waste, and to minimize land disturbance. Whiting has additionally sited and designed the Plant to conserve energy through location, process, and design; to utilize a raw material located within the state; and to take advantage of economies of scale. The proposed Plant expansion will not require relocation of residents.

Measures to Minimize Impact

16. Whiting has made other representations and covenants as indicated in the Certification Relating to Order Provisions – Energy Conversion Facility Siting as executed by Whiting on February 28, 2014.

17. Whiting anticipates further future expansions of the Plant and has committed to providing the Commission with certifications in accordance with N.D.C.C. section 49-22-

03(3)(a) and an additional certification that any expansion would not materially increase the level of noise outside the boundaries of the Project Site.

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

Conclusions of Law

1. The Commission has jurisdiction over the applicant, Whiting, and over the subject matter of this application under N.D.C.C. chapter 49-22.
2. Whiting is a utility as defined in N.D.C.C. section 49-22-03(13).
3. The Plant is an energy conversion facility as defined in N.D.C.C. section 49-22-03(5).
4. The location, construction, and operation of the proposed energy conversion facility will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
5. The proposed energy conversion facility is compatible with environmental preservation and the efficient use of resources.
6. The proposed energy conversion facility 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 proposed energy conversion facility is of such design and location that it will produce minimal adverse effects, as defined under N.D.C.C. section 49-22-07.2.
8. Pursuant to N.D.C.C. section 49-22-03(3)(a), further expansion of the Plant which consists of construction activities conducted within the boundaries of the Project Site and which do not affect any known exclusion or avoidance areas do not constitute "construction" requiring an additional or amended certificate of site compatibility if Whiting certifies certain matters to the Commission in accordance with section 49-22-03(3)(a)(3).
9. It is appropriate for the Commission to waive those certain procedures and time schedules as requested in the application and provided under N.D.C.C. section 49-22-07.2., and to waive the requirement for separate hearings on such applications as provided under N.D. Admin. Code section 69-06-06.

From the foregoing Findings of Fact and Conclusions of Law, the Commission now issues its:

Order

The Commission orders:

1. Whiting Oil and Gas Corporation's application for a waiver of procedures and time schedules is granted.
2. Certificate of Site Compatibility for Energy Conversion Facility No. 38 is issued to Whiting Oil and Gas Corporation for the construction, operation and maintenance of the Robinson Lake Gas Plant. For purposes of this Certificate, the designated site consists of a 35-acre plot owned by Whiting located in the NW $\frac{1}{4}$ Section 23, Township 153 North, Range 91 West, Mountrail County, North Dakota.
3. The Certification Relating to Order Provisions – Energy Conversion Facility Siting executed on February 28, 2014, is incorporated by reference and attached to this Order.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner



Brian P. Kalk
Chairman

(recused)

Julie Fedorchak
Commissioner

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Whiting Oil and Gas Corporation
Robinson Lake Gas Plant Expansion – Mountrail Cty
Siting Application

Case No. PU-13-835

CERTIFICATION RELATING TO ORDER PROVISIONS - ENERGY CONVERSION
FACILITY SITING

I am Rick Ross, a representative of Whiting Oil and Gas Corporation ("Company") with authority to bind Company to requirements to be set forth by the Commission in its Order and I certify the following:

1. Company understands and agrees that the Certificate of Site Compatibility will be issued by the Commission subject to the conditions and criteria set forth in Chapter 49-22 of the North Dakota Century Code and Chapter 69-06-08 of the North Dakota Administrative Code, and that Company shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. Company agrees to hold a preconstruction conference prior to commencement of any construction, which must include a Company representative, its construction supervisor, and a representative of Commission Staff, to ensure that Company fully understands the conditions set forth in the Commission's order.
3. Company agrees to comply with the rules and regulations of all other agencies having jurisdiction over any phase of the proposed energy conversion facility including all city, township, and county zoning regulations.
4. Company understands and agrees that it shall obtain all other necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission prior to construction activity associated with the energy conversion facility that requires said license or permit.
5. Company agrees to inform the Commission and the Commission's third-party construction inspector of its intent to start construction on the energy conversion facility prior to the commencement of construction. Once construction has started, Company shall keep the Commission and the Commission's third-party construction inspector updated of construction activities on a weekly basis.
6. Company understands and agrees that the Certificate of Site Compatibility is subject to suspension or revocation and may, in an appropriate and proper case, be suspended or revoked for failure to comply with the Commission's order, the conditions and criteria of the certificate or subsequent modification, or failure to

comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies.

7. Company agrees to maintain records that will demonstrate that it has complied with the requirements of the Commission's order and the Certificate of Site Compatibility, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.
8. Company agrees to construct and operate the energy conversion facility in accordance with all applicable safety requirements.
9. Company agrees to construct and operate the energy conversion facility in the manner described in Company's application, in any late filed exhibits, and supplemental materials, (Application). To the extent there are any conflicts or inconsistencies between Company's Application and the provisions in this Certification Relating to Order Provisions, the Certification provisions control.
10. Company agrees to report promptly to the Commission the presence in or near the approved site of any critical habitat of threatened species, endangered species, bald eagles, or golden eagles that Company becomes aware of and which were not previously reported to the Commission.
11. Company understands and agrees that all cultural resource mitigation plans must be submitted to the North Dakota State Historic Preservation Office and approved prior to the start of any fieldwork and construction activity in the affected area.
12. Company understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made by the State Historical Society, a report of such examination is filed with the Commission, and clearance to proceed is given by the Commission.
13. Company understands and agrees that all buried facility crossings of graded roads shall be bored unless the responsible governing agency specifically permits Company to open cut the road.
14. Company understands and agrees that all pre-existing township and county roads and lanes used during construction must be repaired or restored to a condition that is equal to or better than the condition prior to the construction of the energy conversion facility and that will accommodate their previous use, and that areas used as temporary roads or working areas during construction must be restored to their original condition.

15. Company understands and agrees that construction must be suspended when weather conditions are such that construction activities will cause irreparable damage to roads or land, unless adequate protection measures approved by the Commission are taken.
16. During construction, at least 12 inches of topsoil, where available (or topsoil to the depth of cultivation, whichever is greater), over and along areas where facilities will be placed must be stripped and segregated from subsoil. Any area on which excavated subsoil will be placed must first be stripped of topsoil. After backfilling with subsoil is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must not be placed within the footprint of the facilities, and must be placed over areas containing topsoil.
17. Company understands and agrees that reclamation, fertilization, and reseeding is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
18. Company understands and agrees that its obligation for reclamation and maintenance of the approved site will continue throughout the life of the energy conversion facility.
19. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
20. Company understands and agrees that it shall repair or replace all fences and gates removed or damaged during all phases of construction and operation of the proposed energy conversion facility.
21. Company understands and agrees that it shall repair or replace all drainage tile broken or damaged as a result of construction and operation of the proposed energy conversion facility.
22. Company understands and agrees that it shall work with landowners and residents to mitigate any increase in television and residential radio interference that results from the construction of the energy conversion facility.
23. Company understands and agrees that staging areas or equipment shall not be located on land owned by a person other than Company unless otherwise negotiated with landowners.


24. Company understands and agrees that it shall remove all waste that is a product of construction and operation, restoration, and maintenance of the site, and properly dispose of it on a regular basis.
25. Company agrees that it shall, as soon as practicable upon the completion of the construction of the energy conversion facility, restore the area affected by the activities to as near as is practicable to the condition as it existed prior to the beginning of construction.
26. Company understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the energy conversion facility.
27. Company understands and agrees that it shall advise the Commission of any extraordinary events which take place at the site of the energy conversion facility, including injuries to any person, the death of any threatened or endangered species, within five business days of such event.
28. Company understands and agrees that it shall implement a procedure for how complaints concerning the proposed energy conversion facility will be handled by Company
29. Upon request, Company agrees to provide the Commission with engineering design drawings showing surveyed structure prior to construction.
30. Company understands and agrees that it shall inform the Commission in writing of any plans to modify the energy conversion facility, or of any plans to modify the site plan for the energy conversion facility. Company understands and agrees to obtain written approval from the Commission prior to any modifications to the site plan or the energy conversion facility, associated facilities, and roadway locations. Approval may be granted after notice and opportunity for hearing.
31. Company agrees to provide the Commission with both an electronic and a paper copy of the site approved by the Commission and the facility design specifications for the construction of the energy conversion facility showing the location of the energy conversion facility as built, and will provide this information within 3 months of the completion of the construction. Company also agrees to provide an electronic version of the site approved by the Commission and the facility design specifications for the construction of the energy conversion facility showing the location of the energy conversion facility as built that can be imported into ESRI GIS mapping software within 3 months of the completion of the construction. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data

must be in the appropriate vertical datum for the coordinate system used. All submissions must specify the datum in which the data was developed.

32. Company understands and agrees that the authorizations granted by the Certificate of Site Compatibility for the energy conversion facility are subject to modification by order of the Commission if deemed necessary to protect further the public or the environment.
33. Company understands and agrees that in the event Company desires to construct, within any site granted by a Certificate of Site Compatibility in this proceeding, an energy conversion facility that was not requested in Company's application in this proceeding, Company shall apply for a Certificate of Site Compatibility for the facility.
34. Company shall notify the Commission, as soon as reasonably possible, if any damage, as defined by North Dakota Century Code Chapter 49-23, occurs to underground facilities during construction conducted under the certificate or permit issued in this proceeding. In the event of any damage to underground facilities, Company shall suspend construction in the vicinity of the damage until compliance with One-Call Excavation Notice System requirements under North Dakota Century Code Chapter 49-23 has been determined and clearance to proceed has been given by the Commission.
35. The certificate of site compatibility is subject to suspension or revocation and may, after hearing, be suspended or revoked for failure to comply with the Commission's order, requirements of the One-Call Excavation Notice System under North Dakota Century Code Chapter 49-23, the conditions and criteria of the certificate or permit or subsequent modification, or failure to comply with applicable statutes, or rules, regulations, standards, and permits of other state or federal agencies.

Dated this 28th day of February, 2014.

Whiting Oil and Gas Corporation

By 

Its VP OPERATIONS

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Whiting Oil and Gas Corporation
Robinson Lake Gas Plant Expansion – Mountrail Cty
Siting Application**

Case No. PU-13-835

Tree and Shrub Mitigation Specifications

Inventory

1. Trees and shrubs anticipated to be cleared, including those that are considered invasive species or noxious weeds (e.g., *Caragana arborescens*, *Elaeagnus angustifolia*, *Rhamnus cathartica*, *Tamarix chinensis*, *T. parviflora*, *T. ramosissima*, *Ulmus pumila*), must be inventoried before cutting. The inventory must record the location, number, and species of trees and shrubs.
2. In windbreaks, shelterbelts and other planted areas, trees or shrubs anticipated to be cleared, regardless of size, must be inventoried for replacement.
3. In native growth areas, trees anticipated to be cleared that are 1 inch diameter at breast height (dbh) or greater must be inventoried for replacement.
4. In native growth areas, shrubs anticipated to be cleared in the permanent right-of-way must be inventoried for replacement.
5. In native growth areas outside the permanent right-of-way, shrubs must be cut flush with the surface of the ground, taking care to leave the naturally occurring seed bank and root stock intact. If soil disturbance is necessary, the native topsoil must be preserved and replaced after construction. Shrubs must be allowed to regenerate naturally where native topsoil is preserved and replaced. Where native topsoil is not preserved and replaced, shrubs anticipated to be cleared must be inventoried for replacement.
6. In native growth areas, trees and shrubs may be inventoried by actual count or by a sampling method that will properly represent the woody vegetation

population. A sampling plan developed by the company, filed with the North Dakota Public Service Commission (Commission) and approved prior to the start of construction must define the sampling method to be used for trees, for tall shrubs and for low shrubs. The data from the sample plots must be extrapolated to the total acreage of the wooded area to be cleared to determine the species and quantity of trees and shrubs to be replaced.

Clearing for Construction

7. Trees and shrubs must be selectively cleared, leaving mature trees and shrubs intact where practical.
8. The maximum width of clear cuts through windbreaks, shelterbelts and all other wooded areas is 50 feet, unless otherwise approved by the Commission.
9. If the area of trees or shrubs actually cleared differs from the area inventoried, the difference in number of trees and shrubs to be replaced must be noted on the inventory.

Replacement

10. Prior to tree and shrub replacement, documentation identifying the number and variety of trees and shrubs removed, as well as the mitigation plan for the proposed number, variety, type, location and date of replacement plantings, must be filed with the Commission for approval.
11. Two 2-year-old saplings must be planted for every one tree removed. Two shrubs (stem cuttings) must be planted for every one shrub removed.
12. Except in the case of invasive or noxious species, trees and shrubs must be replaced by the same species or similar species, suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service. Invasive or noxious species must be replaced by similar non-invasive or non-

noxious species suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.

13. Landowners must be given the option of having replacement trees and shrubs planted on the landowner's property, either on or off the right-of-way. The landowner must also be given the opportunity to waive those options in writing in order to have replacement trees and shrubs planted off the landowner's property.
14. At the conclusion of the project, documentation identifying the actual number, variety, type, location and date of the replacement plantings must be filed with the Commission.
15. Tree and shrub replacements must be inspected annually, in September, for three years. The first annual inspection must be at least one year from the anniversary date of the original plantings. A report of each annual inspection must be submitted to the Commission by October 1 of each year, documenting the condition of plantings and any woodlands work completed as of September of each year. If after the third annual report the survival rate is less than 75%, the Commission may order additional planting(s).

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

Certificate of Site Compatibility Number 38

This is to certify that the Commission has designated an energy conversion facility site for Whiting Oil and Gas Corporation consisting of:

35 acres for the construction, operation and maintenance of a 110 million cubic feet per day gas processing plant (the Robinson Lake Gas Plant) in Mountrail County, North Dakota.

The facility may be located in this designated site in compliance with the energy conversion facility siting criteria. This certificate is issued in accordance with the Finding of Fact, Conclusion of Law and Order of the Commission in Case No. PU-13-835 dated May 28, 2014, and is subject to the conditions and limitations noted in the order.

Bismarck, North Dakota, May 28, 2014.

ATTEST:

PUBLIC SERVICE COMMISSION



Executive Secretary



Commissioner