

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Plains Pipeline, L.P.
8-inch Crude Oil Pipeline – Bison Pipeline Project
Siting Application

Case No. PU-15-035

[PROPOSED] FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

October _____, 2015

Appearances

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

Lawrence Bender, Attorney at Law, Fredrikson & Byron, P.A., 1133 College Drive, Suite 1000, Bismarck, North Dakota 58501, on behalf of Plains Pipeline, L.P.

Zachary E. Pelham, Special Assistant Attorney General, Legal Counsel for Public Service Commission, 314 E. Thayer Avenue, Bismarck, North Dakota 58502.

Patrick J. Ward, Administrative Law Judge, Zuger Kirmis & Smith, P.O. Box 1695, Bismarck, North Dakota 58502-1695.

Preliminary Statement

On January 16, 2015, 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”) for an approximately 10-mile, 8-inch crude oil pipeline with origin near New Town, North Dakota, located in Mountrail County (the “Project”). The Project will transport crude oil from the Robinson Lake Facility and extend southward to connect with Plains’s Van Hook Rail Facility.

Also on January 16, 2015, Plains filed an application for waiver of procedures and time schedules established under North Dakota Century Code sections 49-22-07.2, 49-22-08, 49-22-08.1, 49-22-13, and North Dakota Administrative Code chapter 69-06-06 and section 69-06-01-02, requiring separate filings and applications for a certificate of corridor compatibility and a route permit, separate notice of such applications, separate hearings on such applications, and certain time schedules.

On April 29, 2015, the Commission deemed Plains’s Application complete and issued a Notice of Filings and Notice of Hearing scheduling a hearing for June 24, 2015, at 9:00 a.m. CST at Stanley City Hall, 208 South Main Street, 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 Application:

1. Will the location 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 June 24, 2015, the 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. 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 conditions, or modifications of the permit.
2. Plains is a Texas limited partnership. Plains has been authorized to do business in the State of North Dakota since April 27, 2000, as evidenced by the corporate papers filed with the Commission on April 23, 2015, in Case No. PU-11-568.

Need for the Facility

3. Plains concluded there is a need for the Project because the recent and significant increase in oil extraction has outpaced efficient transportation methods. The construction of additional transmission 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.
4. Specifically, the Project is needed to address transportation of growing volumes of crude oil from the Bakken Formation to the east coast of the United States and to southern states.

Size, Type, and Preferred Location of Facility

5. The Project will consist of approximately ten (10) miles of pipeline located in Mountrail County. The Project will originate at the Robinson Lake Facility, located approximately eight (8) miles northeast of New Town, North Dakota, and run to the Van Hook Rail Facility, located approximately five (5) miles east of New Town, North Dakota.
6. The proposed pipe will have an 8-inch outside diameter and wall thickness of 0.280-inches.
7. The allowable operating pressure of the pipeline will be 1,440 pounds per square inch, but Plains intends to operate the pipeline at approximately 300 pounds per square inch. The designed maximum throughput of the Project is approximately 25,000 barrels of oil per day.
8. Above-ground facilities will consist of an above-ground block valve approximately 7.8 miles from the origination of the Project.
9. The total cost of the Project is estimated to be \$9 million.

Study of Preferred Location

10. Plains conducted a Class I cultural resource literature search on a one-mile-wide study area centered on the proposed pipeline route from the Robinson Lake Facility to the Van Hook Rail Facility.
11. A Class III intensive pedestrian survey was conducted of a 200-foot-wide survey corridor centered on the proposed pipeline route.
12. Field surveys were conducted to inventory any potential resource issues such as wetlands, water bodies, protected species, critical habitats, and/or cultural resources. 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 following agencies were contacted by Plains regarding the Project, with comments being received for the Project: the United States Fish and Wildlife Service (“USFWS”), the North Dakota Game and Fish Department (“NDGFD”), the North Dakota Parks and Recreation Department (“NDPRD”), the North Dakota Department of Trust Lands, the North Dakota State Historical Preservation Office (“SHPO”), the United States Air Force Cable Affairs Division (“USAF”), and the North Dakota Department of Health (“NDDoH”).
14. In a response dated November 12, 2014, the Department of Trust Lands, Mineral Management Division, agreed with the approximate location of the Project and the proximity of mineral interests to the Project.
15. In a response dated November 13, 2014, the Department of Trust Lands indicated that no North Dakota School Trust land is involved in the Project.

16. In a response dated December 5, 2014, the NDGFD indicated that the Project should not have any significant adverse effects on wildlife or wildlife habitat, including species of conservation priority, provided the recommendations of the NDGFD are implemented where appropriate.

17. In a response dated December 10, 2014, the NDPRD indicated that the Project will not affect state park lands managed by or Land and Water Conservation Fund recreation projects coordinated by their agency.

18. In a response dated May 15, 2015, the NDDoH indicated that the proposed construction for the Project will be minor and can be controlled by proper construction methods.

19. In a response dated June 22, 2015, the USAF noted it is aware of the Project and all concerns have been addressed.

20. 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 III Cultural Resource Inventory Report and that measures be taken as outlined by the SHPO.

Siting Criteria

21. The Commission has established criteria pursuant to North Dakota Century Code Section 49-22-05.1 to guide the Commission in evaluating the suitability of granting a certificate of corridor compatibility and route permit. The criteria, as set forth in North Dakota Administrative Code Section 69-06-08-02, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

22. Plains evaluated the Project for the Exclusion, Avoidance, Selection, and Policy Criteria of the Commission.

23. An Exclusion Area may not encompass more than fifty percent (50%) of a corridor width unless there is no reasonable alternative. Exclusion Areas must be excluded from consideration of a route for a transmission facility. A buffer zone of a reasonable width to protect the integrity of the area must be included. Natural screening may be considered in determining the width of the buffer zone.

24. Exclusion areas with respect to cultural resources were located within the survey corridor. One newly recorded cultural resource was identified during the Class III field inventory. To mitigate impacts, Plains modified the route to maintain a fifty (50) foot buffer, which the SHPO has agreed will fully mitigate any potential impacts to the site. A previously recorded section of railroad was also identified, which is not eligible for inclusion into the National Register of Historic Places. In addition, Plains will bore underneath the site, if necessary, thereby avoiding any potential impact.

25. Plains has confirmed the presence of an area within thirty (30) feet on either side of a direct line between Intercontinental Ballistic Missile launch or launch control facilities. However, Plains has consulted with the United States Air Force and the route will not impact operations.

26. Accordingly, no Exclusion Areas will be impacted by the Project.

27. An Avoidance Area is a geographic area that may not be considered in the routing of a transmission facility unless the application shows that, under the circumstances, there is no reasonable alternative. In determining whether an Avoidance Area should be designated for a transmission 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.

28. A transmission facility must not be sited within an Avoidance Area unless the applicant demonstrates that under the circumstances there are no reasonable alternatives. Economic considerations alone are not sufficient to establish no reasonable alternative.

29. Pursuant to North Dakota Century Code Section 49-22-05.1, areas within 500 feet of an inhabited rural residence must be designated avoidance areas. The 500 foot avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing. In addition, North Dakota Administrative Code Section 69-06-08-02(2) designates areas within 500 feet of a residence, school, or place of business as avoidance areas. The Project will be located within 500 feet of two (2) occupied structures. Waivers have been executed for the two (2) structures.

30. No other Avoidance Areas will be impacted by the Project.

31. In accordance with the Commission's Selection Criteria, a transmission facility route shall be approved if it is demonstrated that any significant adverse effects 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. Plains has analyzed the impacts of the Project in relation to all of the relevant Selection Criteria. The Project will have no significant adverse effects on the Commission's Selection Criteria.

32. In accordance with the Commission's Policy Criteria, preference may be given to an application 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 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.

Measures to Minimize Impact

33. Plains testified that a supervisory control and data acquisition system will be installed as part of the Project, which will monitor pressure, flow and temperature twenty-four (24) hours per day, seven (7) days per week at a control center in Midland, Texas. The control center will have the ability to remotely shut-down the Project.

34. Plains has agreed to a number of steps to mitigate the impact of the Project, as indicated by the executed 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.

35. The Project's permanent right-of-way ("ROW") will typically be fifty (50) feet wide, while its temporary construction ROW will be 100 feet wide. Plains will use existing public roads to access the construction ROW, and does not intend to construct any permanent roads as part of the Project.

36. The design, construction, and operation of the pipeline will be in accordance with the United State Department of Transportation regulations governing the transportation of crude oil, including U.S. Department of Transportation regulations as set forth in 49 C.F.R. Part 195.

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

Conclusions of Law

1. The Commission has jurisdiction over Plains and 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 Project 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 pursuant to North Dakota Century Code Section 49-22-07.2.

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

Order

1. Plains's application for a waiver of procedures and time schedules is granted.
2. Certificate of Corridor Compatibility No. ___ is issued to Plains Pipeline, L.P. designating a corridor for the construction, operation, and maintenance of an approximately 10-mile, 8-inch crude oil pipeline and associated facilities in Mountrail County, North Dakota. For purposes of the Certificate, the Corridor will consist of a 200-foot-wide corridor centered on the pipeline route as surveyed.
3. Route Permit No. ___ is issued to Plains Pipeline, L.P. designating a route for the construction, operation, and maintenance of an approximately 10-mile, 8-inch crude oil pipeline and associated facilities in Mountrail County, North Dakota.
4. That the Certification Relating to Order Provisions – Transmission Facility Siting be incorporated by reference and attached to this Order.
5. To the extent there are any conflicts or inconsistencies between Plains's Applications and the Certification, the Certification provisions control.

**State of North Dakota
Public Service Commission**

**Randy Christmann
Commissioner**

**Julie Fedorchak
Chairman**

**Brian Kalk
Commissioner**