

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Plains Pipeline, L.P.
Highway 1804 Re-Route North Pipeline Project
Siting Application

Case No. PU-15-614

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

November ____, 2015

Appearances

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

Lawrence Bender and Danielle M. Krause, Attorneys 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 July 31, 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 8.5-mile, 10-inch diameter crude oil pipeline that would replace the northern portion of the existing Fort Buford to Highway 1804 6-inch pipeline that originates at the McCreary Junction Block Valve and extends northeast to terminate at the Side Hill Junction Block Valve. The replacement for the northern portion of the existing pipeline will originate at the Highway 1804 Re-Route South Tie-in and terminate at the Side Hill Junction Block Valve (hereinafter referred to as the "Project").

Also on July 31, 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.

Plains submitted a supplement to the Application on August 11, 2015. On September 15, 2015, Plains submitted an Amendment of Application for Route Permit.

On September 16, 2015, the Commission deemed Plains's Application complete and issued a Notice of Filings and Public Hearing scheduling a hearing for October 29, 2015, at 9:00 a.m. Central Time at the Ernie French Center, NDSU Williston Research Campus, 14120 Highway 2, Williston, North Dakota 58801.

The Notice of Filings and Public 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 Public 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 October 29, 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 replacement of a portion of the existing transmission pipeline 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 would provide firm, reliable transport of 15,000 barrels per day up to 40,000 barrels per day of crude oil between the Highway 1804 Re-Route South Tie-in and the Side Hill Junction Block Valve. The product would then continue through Plains's pipeline system and be shipped via rail to refineries across the United States.
5. The Project will also increase the distance of the existing Fort Buford to Highway 1804 6-inch pipeline from Lake Trenton and the city of Trenton.

Size, Type, and Preferred Location of Facility

6. The Project will consist of approximately 8.5 miles of pipeline located in Williams County. The Project will replace the northern portion of the existing Fort Buford to Highway 1804 6-inch pipeline that originates at the McCreary Junction Block Valve and extends northeast to terminate at the Side Hill Junction Block Valve. The Project will originate at the Highway 1804 Re-Route South Tie-in and terminate at the Side Hill Junction Block Valve. The southern portion of the existing Fort Buford to Highway 1804 pipeline, known as the Highway 1804 Re-Route South Project, is proceeding under a siting exclusion certification which has been submitted to the Commission in Case No. PU-15-657.
7. The proposed pipe will have a 10-inch outside diameter and wall thickness of 0.250-inches.
8. The maximum allowable operating pressure of the pipeline will be 1,440 pounds per square inch, but Plains intends to operate the pipeline at approximately 500 pounds per square inch. The designed maximum throughput of the Project is approximately 40,000 barrels of oil per day.
9. No above-ground facilities are anticipated for the Project.
10. The total cost of the Project is estimated to be \$7 million.

Study of Preferred Location

11. Plains conducted a Class I cultural resource literature search on a one-mile-wide study area centered on the proposed Project route ("Study Area").
12. Plains conducted a Class III cultural resource inventory of a 200-foot-wide survey corridor ("Survey Corridor") centered on the proposed Project route.

13. Field surveys were also conducted of the 200-foot-wide Survey Corridor 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.

14. The following agencies were contacted by Plains regarding the Project, with comments being received: the North Dakota Game and Fish Department (“NDGFD”), the North Dakota Parks and Recreation Department (“NDPRD”), the North Dakota Department of Trust Lands, and the North Dakota State Historical Preservation Office (“SHPO”).

15. In a response dated May 26, 2015, 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.

16. In a response dated May 26, 2015, the Department of Trust Lands indicated that no North Dakota School Trust land is involved in the Project.

17. In a response dated June 18, 2015, 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.

18. In a response dated June 18, 2015, 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.

19. The SHPO has concurred with the determination that no 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 Reports.

Siting Criteria

20. 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.

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

22. Exclusion Areas must be excluded from consideration of a route for a transmission facility. An Exclusion Area may not encompass more than fifty percent (50%) of a corridor width unless there is no reasonable alternative. 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.

23. Cultural resources are present within the Survey Corridor, but impacts to cultural resources will be avoided. Two previously recorded cultural resources and two newly recorded cultural resources were identified during the Class III field inventories. The two previously recorded cultural resources are not eligible for inclusion into the National Register of Historic Places. As proposed, the Project will avoid the two newly recorded cultural resources by more than fifty (50) feet, which the SHPO has agreed will fully mitigate any potential impacts.

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

25. An Avoidance Area is a geographic area that may not be considered in the routing of a transmission facility unless the applicant 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.

26. 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.

27. Plains confirmed the presence of reservoirs and municipal water supplies within the Study Area. Specifically, the City of Williston Wellhead Protection Area Community and the Western Area Water Supply are located within the Survey Corridor. Plains consulted with the appropriate contacts regarding potential impacts to these Avoidance Areas. No concerns were raised regarding the Project. The Project would not have an adverse impact on these Avoidance Areas through proper construction, maintenance, and operation. Six (6) wells were identified within the Study Area, but none were located within the Survey Corridor and none are crossed by the route.

28. Plains confirmed that the Survey Corridor crosses the Williams Rural Water District, but the route does not intersect with source waters inside the district boundaries.

29. Pursuant to North Dakota Century Code Section 49-22-05.1, areas within five hundred (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 seven (7) potentially occupied structures. Waivers have been executed for all seven (7) structures.

30. Accordingly, no Avoidance Areas will be impacted by the Project.

31. Wetland determinations were completed along the proposed route. Streams were recorded within the Survey Corridor 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.

32. Areas containing trees and shrubs are present within the Survey Corridor, and have been avoided by the route to the extent practicable. An inventory of trees and shrubs with the potential to be affected by the Project has been completed. Trees and shrubs will be replaced in accordance with the Commission's Tree and Shrub Mitigation Specifications.

33. 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.

34. 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.

35. 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

36. 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.

37. 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.

38. The Project's permanent right-of-way ("ROW") will typically be fifty (50) feet wide, while its temporary construction ROW will be one hundred (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.

39. 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

8.5-mile, 10-inch crude oil pipeline in Williams 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 8.5-mile, 10-inch crude oil pipeline in Williams 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**