

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Plains Terminals North Dakota LLC
Johnson Corner to Dakota Access Pipeline Project
Siting Application**

Case No. PU-16-140

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

July _____, 2016

Appearances

Danielle M. Krause, 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, 316 North Fifth Street, Bismarck, North Dakota 58502, as Substantive Hearing officer.

Preliminary Statement

On March 28, 2016, Plains Terminals North Dakota LLC (“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 3.5-mile, 24-inch diameter, crude oil pipeline in McKenzie County, North Dakota, that will originate at the Plains Johnsons Corner Terminal (“JCT”) and will extend to the northwest to terminate at the Dakota Access Pipeline Johnsons Corner Terminal Facility (“DAPL Terminal”) (hereinafter referred to as the “Project”).

Also on March 28, 2016, 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 May 5, 2016, the Commission deemed Plains’s Application complete and issued a Notice of Filings and Public Hearing scheduling a hearing for June 27, 2016, at 11:00 a.m. Central Time at Teddy’s Residential Suites, 113 9th Avenue SE, Watford City, North Dakota 58854.

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 June 27, 2016, 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 Hearing Officer 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 Delaware limited liability company authorized to do business in the State of North Dakota, as evidenced by the corporate papers filed with the Commission on March 28, 2016, in Case No. PU-16-139.
3. The Project will consist of approximately 3.5 miles of pipeline and associated facilities to be located in McKenzie County. The Project will be constructed to allow crude to flow in either direction. The Project will originate at the JCT, east of Johnsons Corner, North Dakota and will extend to the northwest to terminate at the DAPL Terminal.

4. Following the filing of the Application, Plains determined a 16-inch diameter pipeline will meet the needs required for the Project. Accordingly, the Project will utilize 16-inch outside diameter pipe. The line pipe will have a wall thickness of 0.312-inches and the bore pipe will have a wall thickness of 0.375-inches.
5. The maximum capacity of the Project will be 150,000 barrels per day.
6. Outside of the existing terminals, above-ground facilities associated with the Project will include one mainline valve.
7. The total cost of the Project is estimated to be \$5 million.

Study of Preferred Location

8. Plains conducted a Class I cultural resource literature search on a one-mile-wide study area centered on the proposed Project route (“Study Area”).
9. Plains conducted a Class III cultural resource inventory of a 250-foot-wide survey corridor (“Survey Corridor”) centered on the proposed Project route.
10. Field surveys were also conducted of the 250-foot-wide Survey Corridor to inventory any potential resource issues such as wetlands, water bodies, protected species, and/or critical habitats. 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.
11. 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”).
12. In a response received January 6, 2016, the Department of Trust Lands indicated that no North Dakota School Trust land will be affected by the Project.
13. In a response received January 8, 2016, 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.
14. In a response dated January 26, 2016, 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.
15. In a response dated February 2, 2016, 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.

16. In a response dated February 26, 2016, SHPO 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

17. 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.

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

19. 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.

20. No Exclusion Areas are present within the Survey Corridor.

21. 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.

22. 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.

23. No Avoidance Areas are present within the Survey Corridor.

24. Wetland determinations were completed along the proposed route. Two (2) streams were identified within the Survey Corridor, and one of the streams 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.

25. 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.

26. 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 and constructing 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

27. 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.

28. 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.

29. The Project's permanent right-of-way ("ROW") will typically be twenty five (25) feet wide, while its temporary construction ROW will be seventy five (75) feet wide. Plains does not intend to construct any permanent roads as part of the Project.

30. 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 Hearing Officer 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 Hearing Officer now issues the following:

Recommended Order

1. Plains's application for a waiver of procedures and time schedules is granted.
2. A Certificate of Corridor Compatibility shall be issued to Plains Terminals North Dakota LLC designating a corridor for the construction, operation, and maintenance of an approximately 3.5-mile, 16-inch crude oil pipeline and associated facilities in McKenzie County, North Dakota. For purposes of the Certificate, the Corridor will consist of a 250-foot-wide corridor centered on the pipeline route as surveyed and depicted in Hearing Exhibit No. 2.
3. A Route Permit shall be issued to Plains Terminals North Dakota LLC designating a route for the construction, operation, and maintenance of an approximately 3.5-mile, 16-inch crude oil pipeline and associated facilities in McKenzie County, North Dakota. For purposes of the Permit, the designated route is the proposed route depicted in Hearing Exhibit No. 2.
4. The June 24th, 2016 Certification Relating to Order Provisions – Transmission Facility Siting ("Certification"), with accompanying Tree and Shrub Mitigation Specifications, is 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.

Dated at Bismarck, North Dakota this _____ day of July, 2016.

Patrick J. Ward
Administrative Law Judge
Office of Administrative Hearings

59089311_1.docx