

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Targa Badlands LLC
8-Inch Crude Pipeline Project – McKenzie County
Siting Application

Case No. PU-16-695

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

April _____, 2017

Appearances

Commissioners Randy Christmann, Julie Fedorchak, and Brian Kroshus.

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 Targa Badlands LLC.

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

Timothy Dawson, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street, Suite 303, Bismarck, North Dakota 58503.

Preliminary Statement

On November 15, 2016, Targa Badlands LLC (“Targa”), filed with the North Dakota Public Service Commission (“Commission”) a consolidated application for a Certificate of Corridor Compatibility and Route Permit (“Application”) concerning the conversion of an approximately 54.35-mile, 8-inch existing crude oil gathering pipeline, and associated facilities, with origin near Johnsons Corner, North Dakota, and a terminus near Alexander, North Dakota in McKenzie County (the “Project”) to a transmission line.

Also on November 15, 2016, in connection with the Application, Targa 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 January 30, 2017, Targa filed supplemental information with respect to the Application.

On January 31, 2017, the Commission deemed Targa’s Application complete and issued a Notice of Filings and Public Hearing (“Notice”) scheduling a hearing for March 27, 2017, at

9:00 a.m. Central Time at Teddy's Residential Suites, 113 9th Ave SW, Watford City, North Dakota 58854.

The Notice 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 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 March 27, 2017, 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. Targa is a Delaware limited liability company. Targa has been authorized to do business in the State of North Dakota since January 11, 2013, as evidenced by the corporate papers filed with the Commission on September 10, 2014, in Case No. PU-14-711. A current Certificate of Good Standing from the North Dakota Secretary of State for Targa was filed with the Commission on November 15, 2016 in connection with the Application.

Size, Type, and Preferred Location of Facility

2. The Project consists of approximately 54.35 miles of existing gathering pipeline located in McKenzie County. The Project also consists of two tank facility locations and one valve station, specifically the Johnsons Corner tank facility near Johnsons Corner, North Dakota, the Alexander tank facility near Alexander, North Dakota, and the Midway valve station. The Project was constructed by another midstream company as a gathering facility and was acquired by Targa in 2012.

3. The Project utilizes an 8-inch diameter steel pipeline capable of transporting a maximum of 50,000 barrels of oil per day. In most areas, the Project involved the installation of pipe with a 0.219-inch wall thickness. In certain areas, such as railway or roadway crossings, natural drainages, ponds, sloughs, or other wetlands, and on each side of aboveground valve stations, the pipe has a wall thickness of 0.322 inches.
4. The pipeline has a maximum operating pressure of 1,480 pounds per square inch and was designed and constructed in compliance with Code of Federal Regulations Title 49 Part 195 hazardous liquids pipeline safety standards.
5. The pipeline associated with the Project was completed in December 2011, and has been operating as a gathering pipeline since December 2011.
6. Construction of the Johnson Corner tank facility was completed in December 2012. The tank facility near Johnsons Corner is 31.84 acres and includes a pig receiver, sump tank, booster pump station, outlet meter station, two 20,000-barrel-capacity tanks, tank inlet and outlet manifolds, an inlet meter station, a mainline pump station, a pig launcher, and a control building.
7. Construction of the Alexander tank facility was completed in February 2012. The tank facility near Alexander is 16.10 acres and includes a pig receiver, sump tank, control valve manifold, leak detection equipment, 30,000-barrel-capacity tank, strainer station, transfer pump station, and an asset custody transfer station.
8. The Midway valve station is 39.19 acres, is presently largely undeveloped, and includes an aboveground valve station and pig launchers.
9. The Johnsons Corner and Alexander tank facilities are not currently being utilized for storage with the gathering pipeline. Targa desires to convert the system from gathering to transmission to allow for utilization of the storage tanks at Johnsons Corner and Alexander to store crude oil before the oil is transported. Additionally, Targa desires to flow crude oil in either direction through the Project, thereby enabling delivery of crude oil to recipients at either the Alexander or Johnsons Corner Facilities.
10. The total cost of the Project was approximately \$85 million.

Need for the Facility

11. Targa concluded there is a need to convert the Project to a transmission line to allow for ease of operation of the Project and to more safely operate the Project. Conversion of the current gathering line and utilization of the tanks would provide a reliable transportation method for up to 50,000 barrels per day. Utilization of the tanks would also allow Targa to better manage operations and have the ability to safely shut down the flow of oil in the event of an unanticipated interruption of service or unavailability of the delivery point in Alexander. Finally, the use of the storage tanks will reduce overall pressure in the pipeline, further increasing safety of the Project.

Study of Preferred Location(s)

12. Targa conducted a Class I literature review on a one-mile-wide study area centered on the route ("Study Area"). A Class III intensive pedestrian survey was conducted of the 200-foot-wide corridor, both tank facility sites, and the Midway valve station ("Survey Area").

13. 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.

14. The following agencies were contacted by Targa regarding the Project and provided comments: North Dakota State Historical Preservation Office ("SHPO"); North Dakota Department of Transportation ("DOT"); Department of the Army, Corps of Engineers; North Dakota State Water Commission ("NDSWC"); North Dakota Game and Fish Department ("NDGFD"); U.S. Department of Transportation, Federal Aviation Administration ("FAA"); North Dakota Department of Trust Lands; North Dakota Geological Survey; and North Dakota Department of Health ("NDDOH").

15. In a response dated July 18, 2016, the FAA indicated no objection provided the FAA is notified of construction or alternations as required by Federal Aviation Regulations.

16. In a response dated July 18, 2016, the Department of the Army, Corps of Engineers, indicated a Department of the Army permit may not be required, and a permit is only required if the project will result in fill material being placed in waters of the U.S. or if the action requires work through, under, or over a Section 10 water.

17. In a response date July 19, 2016 the North Dakota Department of Trust Lands requested clarification as to the land involved for the Project. Upon confirming the location of the Project, the Department of Trust Lands did not raise any concerns.

18. In a response dated July 21, 2016, the NDDOH recommended that measures be taken to minimize fugitive dust emissions and that associated complaints be responded to in an efficient and effective manner; that care should be taken during construction activities near waters of the state to minimize impacts to water bodies from disturbance, reclamation, and oil, gas, or fuel spills associated with construction equipment; that a stormwater discharge permit may be necessary; that construction should not take place during early morning or late evening hours and that noise levels be minimized by use of mufflers on construction equipment. The NDDOH also noted it owns no land in or adjacent to the proposed improvements, nor does it have any projects in the area. The NDDOH believes the proposed activities are consistent with the State Implementation Plan for the Control of Air Pollution for the State of North Dakota.

19. In a response dated July 25, 2016, the NDSWC indicated that there are no floodplains identified and/or mapped where the Project is to take place and requested that Targa contact the NDSWC if gaging stations or water wells are affected or damaged by the Project. The NDSWC further indicated that Targa is responsible for contacting all local, state, and federal agencies for

required approvals, permits, and easements, and noted that all waste material associated with the Project must be disposed of properly and not placed in identified floodway areas.

20. In a response dated July 27, 2016, the DOT indicated the Project should have no adverse effect on the North Dakota DOT highways.

21. In a response dated August 9, 2016, the NDGFD indicated that the Project should have no significant adverse effects on wildlife or wildlife habitat.

22. In a second response dated February 7, 2017, the NDDOH recommended that measures be taken to minimize fugitive dust emissions and that associated complaints be responded to in an efficient and effective manner; aggregate to be used for road construction should not contain any erionite; that care should be taken during construction activities near waters of the state to minimize impacts to water bodies from disturbance, reclamation, and oil, gas, or fuel spills associated with construction equipment; that a stormwater discharge permit may be necessary; care should be taken to avoid spills of any material that may have an adverse effect on groundwater quality and all spills must be immediately reported to the NDDOH and appropriate remedial actions performed; that projects that involve construction of pipelines should select locations that minimize the potential for impacts to human health and the environment during and after construction by avoiding, when possible, source water protection areas and sensitive surface and groundwater environments; when possible, pipeline routes should select areas with natural barriers to both surface and ground waters; human health and the environment should be further protected by developing a spill response plan that emphasizes rapid deployment of prepositioned assets necessary to contain spills and subsequent cleanup; and proper surveillance and monitoring for early detection of leaks should be required. The NDDOH also noted it owns no land in or adjacent to the proposed improvements, nor does it have any projects in the area. The NDDOH believes the proposed activities are consistent with the State Implementation Plan for the Control of Air Pollution for the State of North Dakota.

23. In a response dated February 28, 2017, the office for the North Dakota Geological Survey noted that landslides have been mapped in the vicinity of the existing pipeline route, and an enhanced level of monitoring and periodic inspection of the line may be warranted. Targa testified its inspections will monitor for the concerns of the North Dakota Geological Survey.

24. 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 the addendum, and Targa follows any site avoidance measures set forth in the report.

25. Targa received a Conditional Use Permit ("CUP") from the McKenzie County Board of County Commissioners for the Project. In granting the CUP, McKenzie County Planning and Zoning and the McKenzie County Board of County Commissioners, over the objection of one landowner whose home was less than 500 feet from the pipeline, concluded the Project does not substantially impair or diminish the value or enjoyment of other property in the area, does not impede the normal orderly development of the surrounding property, or have a detriment to or endanger the public health, safety, comfort, or general welfare of the citizens of McKenzie County.

Siting Criteria

26. 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.
27. Targa evaluated the Project for the Exclusion, Avoidance, Selection, and Policy criteria of the Commission.
28. An Exclusion Area may not encompass more than fifty percent of a corridor width unless there is no reasonable alternative. An Exclusion Area must be excluded in the consideration of a route for a transmission facility. A buffer zone of a reasonable width to protect the integrity of an Exclusion Area must be included in the siting of the transmission facility.
29. No Exclusion Areas are present within the Survey Area.
30. 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.
31. A transmission facility route may not be sited within an Avoidance Area unless the applicant demonstrates that under the circumstances there is no reasonable alternative. Economic considerations alone are not sufficient to establish no reasonable alternative.
32. Pursuant to North Dakota Century Code Section 49-22-05.1, areas within five hundred feet of an inhabited rural residence are designated as avoidance areas. In addition, North Dakota Administrative Code Section 69-06-08-02(2) designates areas within five hundred feet of a residence, school, or place of business as avoidance areas. The five hundred foot avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing.
33. The Project is within five hundred feet of fourteen rural residences and one business. Waivers have been obtained from the business and all but one residence. The outstanding waiver relates to the residence located on the Christensen property.
34. Targa presented testimony at the hearing that the gathering pipeline was constructed in 2011. Prior to construction, the previous owner of the Christensen property executed an easement to allow for construction of the pipeline. In the spring of 2013, and following construction of the pipeline, the present owner of the Christensen property located a rural residence within 500 feet of the Project. The owner of the Christensen property had notice that the Project was already constructed in its present location.

35. Targa has made diligent efforts to obtain a waiver from the landowner of the Christensen residence, but Targa has been unsuccessful. As noted, the landowner moved her residence within 500 feet of the Project with knowledge of the pipeline's existence. Under the circumstances, there is no reasonable alternative but to allow the Project to remain in its current location. Accordingly, a waiver is not required.

36. The Little Missouri National Grasslands, an Avoidance Area, are present within the Survey Area, but are not crossed by the route.

37. Land designated as State Private Land Open to Sportsmen is located within the Study Area, but no impacts were found.

38. Two previously recorded cultural sites fall within the Study Area. The two previously recorded sites are not eligible for the National Register of Historic Places. Twenty-one new resources were also identified within the Study Area. Of these twenty-one cultural resources, ten were recommended not eligible for the National Register of Historic Places, and two remain unevaluated for eligibility for the National Register of Historic Places. No avoidance was recommended for the newly discovered sites or for the previously recorded sites.

39. No other Avoidance Areas are present within the Survey Area.

40. A wetlands and waterbodies inventory was completed along the Project route. Several wetlands or waterbodies are present along the route, but any indirect impacts from pipeline placement were temporary. The Project will have no significant impact on wetlands or waterbodies.

41. The Project may have resulted 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.

42. 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. Targa 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.

43. In accordance with the Commission's policy criteria, preference may be given to an application demonstrating certain benefits of the transmission facility. Targa 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. Targa 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

44. Targa 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, Gathering Line Conversion to Transmission Line, with accompanying Tree and Shrub Mitigation Specifications, which is incorporated by reference and attached to this Order.
45. The Project's permanent right-of-way ("ROW") is 50 feet wide, while its temporary construction ROW was 100 feet wide.
46. Targa testified that Targa is a member of the Sakakawea Area Spill Response Company LLC.
47. Targa testified that it will participate in the North Dakota One-Call notification system.
48. The design, construction, and operation of the pipeline must 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.
49. Targa'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 Targa and the subject matter of the Application under Chapter 49-22 of the North Dakota Century Code.
2. Targa is a utility as defined in Section 49-22-03(13) of the North Dakota Century Code.
3. Upon conversion, the 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 the 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. That Targa's application for a waiver of procedures and time schedules is granted.
2. Certificate of Corridor Compatibility No. ___ is issued to Targa Badlands LLC designating a corridor for the construction, operation, and maintenance of an approximately 54.35-mile, 8-inch crude oil pipeline and associated tanks and facilities in McKenzie County, North Dakota. For purposes of the Certificate, the Corridor will consist of a 200-foot-wide corridor centered on the pipeline route, along with the Johnsons Corner, Alexander, and Midway Facility sites as surveyed.
3. Route Permit No. ____ is issued to Targa Badlands LLC granting authority to construct and operate an approximately 54.35-mile, 8-inch crude oil pipeline and associated tanks and facilities in McKenzie County, North Dakota. The designated route is shown on the map included as Figure 1 in the Consolidated Application for a Certificate of Corridor Compatibility and Route Permit.
4. That the Certification Relating to Order Provisions – Transmission Facility Siting, Gathering Line Conversion to Transmission Line, be incorporated by reference and attached to this Order.
5. To the extent there are any conflicts or inconsistencies between Targa's Applications and the Certification, the Certification provisions control.

**State of North Dakota
Public Service Commission**

**Julie Fedorchak
Commissioner**

**Randy Christmann
Chairman**

**Brian Kroshus
Commissioner**