

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Whiting Oil and Gas Corporation
Robinson Lake Oil Conditioning Facility – Mountrail County
Siting Application

Case No. PU-19-369

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

April ____, 2020

Appearances

Wade Mann, Attorney at Law, Crowley Fleck PLLP, 100 West Broadway Ave., Suite 250, Bismarck, North Dakota 58501, on behalf of Whiting Oil and Gas Corporation

Brian Johnson, Special Assistant Attorney General, 600 E. Boulevard Ave., Dept. 408, Bismarck, North Dakota 58501, as Counsel for the Public Service Commission.

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

Preliminary Statement

On November 25, 2019, Whiting Oil and Gas Corporation (Whiting) filed an application for a certificate of site compatibility authorizing an expansion of its existing Robinson Lake Oil Conditioning Facility in Mountrail County, North Dakota (Project).

On January 16, 2020, and January 17, 2020 Whiting filed information supplementing its consolidated application.

On February 5, 2020, the Commission deemed the application complete and issued a Notice of Filing and Public Hearing for a public hearing to be held March 30, 2020, at 9:00 a.m. Central Time at Teddy's Residential Suites, 951 Eagle Drive, New Town, North Dakota, 58763. The issues to be considered in this matter include:

1. Will the location, construction, 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 facilities 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 March 30, 2020, the hearing was held as scheduled. Exhibits 1 through 9 were admitted at the hearing.

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 Delaware corporation authorized to do business in the State of North Dakota, as evidenced by the Certificate of Good Standing filed with the Commission on December 19, 2019, in case PU-19-369 Docket item No. 3.

Size, Type, and Preferred Location of Facility

2. The Project will increase the oil conditioning capacity from the current 45,000 barrels per day to up to 65,000 barrels of oil per day.
3. Project infrastructure for the expansion includes the addition of larger control valves and may include an additional heater, pump, heat exchanger and vapor compressor.
4. The Project will allow for the conditioning of additional volumes of oil gathered from the Sanish field. Vapors will be removed from the gathered oil at the facility, decreasing the vapor pressure of the oil. The captured vapors removed from the oil are directed to the adjacent Robinson Lake Gas Plant.
5. The Project will be constructed entirely within the 5-acre tract of land (Project Site) owned by Whiting and located approximately 7.9 miles northeast of New Town in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, Township 153 North, Range 91 West, Mountrail County.
6. The estimated cost of the Project is up to approximately \$1.2 million dollars.

Study of Preferred Location

7. Whiting conducted a Class I cultural resource literature review and a desktop analysis for wetlands, waterbodies, woodlands, and other sensitive environmental resources across a one-mile diameter area centered on the existing Project Site (Study Area).
8. Whiting conducted several surveys and a habitat assessment across an approximately 1 mile area generally centered on the Project site (Survey Area). Whiting conducted a natural resources survey across the Survey Area, which included wetland and waterbody surveys, noxious weed surveys, and a general habitat assessment for state- and federally-listed species. Whiting also conducted a tree and shrub survey, an eagle nest survey, and a biological survey.
9. Whiting conducted a Class III Cultural Resource Inventory pedestrian field survey of the Project Site in accordance with the North Dakota State Historic Preservation Office (ND SHPO) standards and submitted a report of its findings to the ND SHPO.
10. In its October 23, 2019 response, the ND SHPO confirmed that it had reviewed Whiting's Cultural Resource Inventory report and found it acceptable, concurring with a determination of "No Historic Properties Affected" for the Project.
11. Section 49-22.1-13(4) of the North Dakota Century Code provides that a site shall not be designated that violates the rules of any state agency, and that compliance with an agency's rules shall be presumed if the agency fails to present its position with respect to the proposed facility at the public hearing.
12. Whiting initiated correspondence with federal, state and local departments, agencies, and entities as follows :
 - a. Federal: (i) U.S. Fish and Wildlife Service (USFWS); (ii) U.S. Army Corps of Engineers; (iii) U.S. Department of Defense; and (iv) U.S. Department of Agriculture (v) USDA Farm Service Agency
 - b. State: (i) North Dakota State Historic Preservation Office (NDSHPO); (ii) North Dakota Parks and Recreation Department; (iii) North Dakota Department of Trust Lands; (iv) North Dakota Department of Environmental Quality; (v) North Dakota Geological Survey (NDGS); (vi) North Dakota State Water Commission; and (vii) North Dakota Game and Fish Department (NDGFD);

- c. Local: (i) Western Area Water Supply Authority (ii) Mountrail County Planning and Zoning Department (iii) Mountrail County Water Resources Board (iv) Mountrail County Weed Control Board.

- 13. There is no evidence of any agency objecting to the Project.
- 14. Whiting has received a building permit from Mountrail County for the Facility.

Siting Criteria

- 15. The Commission has developed criteria pursuant to North Dakota Century Code section 49-22.1-03 to guide in evaluating the suitability of granting an application for a certificate of site compatibility. The criteria, as set forth in North Dakota Administrative Code Section 69-06-08-01, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.
- 16. Whiting evaluated the Study Area and the Project Site for exclusion and avoidance areas and the selection and policy criteria of the Commission.
- 17. An energy conversion facility must not be sited within an exclusion area.
- 18. The Project Site is not within an exclusion area.
- 19. An energy conversion facility must not be sited within an Avoidance Area unless the applicant demonstrates that under the circumstances there are no reasonable alternatives. In determining whether an avoidance area should 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 sites.
- 20. The Project Site is not within any avoidance area. The Study Area includes historic resources that do not meet the exclusion area criteria. These resources are of sufficient distance from the Project and its associated activities that they will remain unaffected as confirmed by the ND SHPO in its October 23, 2019 concurrence letter.
- 21. In accordance with the Commission's selection criteria, a site shall be approved only if it is determined that any significant adverse effects that will result from the location, construction and operation of the facility as they relate to the selection criteria will be at an acceptable minimum, or will be managed and maintained at an acceptable minimum. Whiting analyzed the impacts of the Project Site in relation to all relevant selection criteria. No significant adverse effects will result

from the location, construction and operation of the Project.

22. In accordance with the Commission's policy criteria, preference may be given to an application demonstrating certain benefits of the energy conversion facility. Whiting has committed to maximize the benefits of the Project so as to meet the policy criteria.

Measures to Minimize Impact

23. Whiting has agreed to take steps to mitigate the impact of the Project, as indicated by the Certification Relating to Order Provisions – Energy Conversion Facility Siting, which is incorporated by reference and attached to this Order.
24. Development of the Project at the existing facility site will significantly reduce any environmental disturbance and impact by utilizing existing infrastructure.
25. Whiting has identified noxious weeds and has implemented measures to mitigate and control the noxious weeds.
26. Whiting has not obtained an air quality construction permit from the North Dakota Department of Environmental Quality. Whiting will not begin construction until this permit is obtained.
27. Whiting will continue to coordinate with local authorities and emergency managers regarding emergency response measures and follow Whiting's emergency response plan for the Project.
28. Whiting will comply with all applicable safety laws and standards and standard operating procedure will conform to applicable OSHA, ASME and API standards. Post construction testing on the Project will include weld x-rays, piping pressure tests and electrical inspections.
29. The Project will be equipped with automatic shutdowns and call out alarms which monitor pressures, temperatures and levels. Weekly visual inspections of the Project will be conducted.

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

Conclusions of Law

1. The Commission has jurisdiction over the applicant, Whiting, and over the subject matter of this application under North Dakota Century Code Chapter 49-22.1.

2. Whiting is a utility as defined in North Dakota Century Code Section 49-22.1-01(13).
3. The Project is an energy conversion facility as defined in North Dakota Century Code Section 49-22.1-01(6).
4. The location, construction, operation and maintenance of the Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
5. The Project is compatible with the environmental preservation and the efficient use of resources.
6. The construction, operation, and maintenance of the Project minimizes 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.

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

Order

The Commission orders:

1. Whiting shall construct, operate, and maintain the Project in accordance with the Commission's Findings of Fact.
2. Certificate of Site Compatibility No. ___ is issued to Whiting Oil and Gas Corporation designating a site for the construction, operation and maintenance of the Robinson Lake Oil Conditioning facility. For purposes of this Certificate, the designated site consists of the 5-acre Project Site in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, Township 153 North, Range 91 West, Mountrail County, North Dakota.
3. The Certification Relating to Order Provisions – Energy Conversion Facility Siting with attached Tree and Shrub Mitigation Specifications executed March 27, 2020 (received as Hearing Exhibit No. 10, Docket No. 45), is incorporated by reference and attached to this Order.
4. To the extent there are any conflicts or inconsistencies between Whiting's application and the Certification, the Certification provisions control.

Dated this ____ day of April, 2020.

Timothy Dawson
Administrative Law Judge
Office of Administrative Hearings