

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

ORDER ADOPTING ALJ RECOMMENDED FINDINGS of FACT, CONCLUSIONS of  
LAW and ORDER

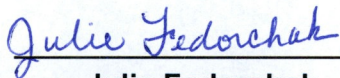
April 29, 2020

On April 17, 2020, the Hearing Officer in Case No. PU-19-369 filed an ALJ Recommended Findings of Fact, Conclusions of Law and Order.

Order

The Commission orders the Hearing Officer's April 17, 2020 ALJ Recommended Findings of Fact, Conclusions of Law and Order, a copy of which is attached to and made a part of this Order, is ADOPTED as the Commission's approval to grant Whiting Oil and Gas Corporation, Robinson Lake Oil Conditioning Facility – Mountrail County, Siting Application, and Issue Certificate of Site Compatibility Number 61 designating a location for the construction, operation and maintenance of an oil conditioning facility and associated facilities in Mountrail County, North Dakota.

PUBLIC SERVICE COMMISSION



Julie Fedorchak  
Commissioner



Brian Kroshus  
Chairman



Randy Christmann  
Commissioner

**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**

**RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

**April 17, 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 14<sup>th</sup> 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 (“the 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 10 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 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 ("the Project Site").
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 Project Site (“the Study Area”).
8. Whiting conducted several surveys and a habitat assessment across an approximately 1 mile area generally centered on the Project site (“the 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 (NDSHPO) standards and submitted a report of its findings to the NDSHPO.
10. In its October 23, 2019 response, the NDSHPO 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; (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) 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; (vi) North Dakota State Water Commission; and (vii) North Dakota Game and Fish Department;
  - 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 Project.

#### 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 NDSHPO 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 will not begin construction until all applicable permits or required agency approvals are 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:

#### RECOMMENDED ORDER

1. Whiting shall construct, operate, and maintain the Project in accordance with the Commission's Findings of Fact.
2. Certificate of Site Compatibility No. 61 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 17<sup>th</sup> day of April 2020.

State of North Dakota  
Public Service Commission



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Timothy Dawson  
Administrative Law Judge  
Office of Administrative Hearings

**PUBLIC SERVICE COMMISSION**  
**STATE OF NORTH DAKOTA**

**Certificate of Site Compatibility**  
**Number 61**


*This is to certify that the Commission has designated an energy conversion facility site for Whiting Oil and Gas Corporation for the construction, operation and maintenance of an oil conditioning facility and associated facilities in Mountrail County, North Dakota.*

*The facility may be sited in this designated location in compliance with the energy conversion facility siting criteria. This certificate is issued in accordance with the Order Adopting ALJ Recommended Findings of Fact, Conclusions of Law and Order of the Commission in Case No. PU-19-369 dated April 29, 2020, and is subject to the conditions and limitations noted in that order.*

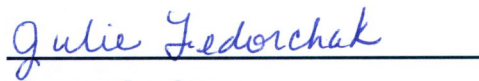
*Bismarck, North Dakota, April 29, 2020.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**



**Executive Secretary**



**Commissioner**

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

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

**Case No. PU-19-369**

**CERTIFICATION RELATING TO ORDER PROVISIONS  
ENERGY CONVERSION FACILITY SITING**

I am Shane Fross, a representative of Whiting Oil and Gas Corporation (“Company”) with authority to bind Company to requirements to be set forth by the Commission in its Order and I certify the following:

1. Company understands and agrees that the Certificate of Site Compatibility will be issued by the Commission subject to the conditions and criteria set forth in Chapter 49-22 of the North Dakota Century Code and Chapter 69-06-08 of the North Dakota Administrative Code, and that Company shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. Company agrees to comply with the rules and regulations of all other agencies having jurisdiction over any phase of the proposed energy conversion facility including all city, township, and county zoning regulations.
3. Company understands and agrees that it shall obtain all other necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission prior to construction activity associated with the energy conversion facility that requires said license or permit.
4. Company understands and agrees that the Certificate of Site Compatibility is subject to suspension or revocation and may, in an appropriate and proper case, be suspended or revoked for failure to comply with the Commission’s order, the conditions and criteria of the certificate or subsequent modification, or failure to comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies.
5. Company agrees to maintain records that will demonstrate that it has complied with the requirements of the Commission’s order and the Certificate of Site Compatibility, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.
6. Company understands and agrees that the authorizations granted by the Certificate of Site Compatibility for the energy conversion facility are subject to modification by

order of the Commission if deemed necessary to protect further the public or the environment.

**Construction:**

7. Company agrees to hold a preconstruction conference prior to commencement of any construction, which must include a Company representative, its construction supervisor, and a representative of Commission Staff, to ensure that Company fully understands the conditions set forth in the Commission's order.
8. Company understands and agrees that all cultural resource mitigation plans must be approved by the North Dakota State Historic Preservation Office prior to the start of any fieldwork and construction activity in the affected area.
9. Company understands and agrees that topsoil removal will begin when the Commission's third party construction inspector is present at the Project site to observe that topsoil is properly removed and kept segregated from subsoil until replacement occurs. Company shall establish the date and time for the Commission's third-party construction inspector's topsoil removal oversight in the preconstruction conference.
10. Company agrees to inform the Commission and the Commission's third-party construction inspector of its intent to start construction on the energy conversion facility prior to the commencement of construction. Once construction has started, Company shall keep the Commission and the Commission's third-party construction inspector updated of construction activities on a monthly basis.
11. Company agrees to construct and operate the energy conversion facility in accordance with all applicable safety requirements.
12. Company understands and agrees that it shall bury all underground lines to a depth of at least 48 inches to the top of the lines.
13. Company understands and agrees that topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas, roadways, and locations of associated facilities must be carefully stripped and segregated from the subsoil. Any area on which excavated subsoil will be placed must first be stripped of topsoil. The stripped topsoil must not be stockpiled in natural drainages, and must be protected from water erosion. Care must be taken to protect topsoil from unnecessary compaction by heavy machinery. Unless otherwise approved by the Commission, topsoil must be removed before topsoil freezes in the late fall/ early winter to the point that frost inhibits proper soil segregation. After backfilling with subsoil is completed, any excess subsoil must be placed over the excavation area,

blending the grade into existing topography. Topsoil must be replaced over areas from which it was stripped only after the subsoil is replaced.

14. Company understands and agrees that all buried facility crossings of graded roads shall be bored unless the responsible governing agency specifically permits Company to open cut the road.
15. Company understands and agrees that staging areas or equipment shall not be located on land owned by a person other than Company unless otherwise negotiated with landowners.
16. Company understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made by the State Historical Society, and a report of such examination is filed with the Commission.
17. Company understands and agrees that construction must be suspended when weather conditions are such that construction activities will cause irreparable damage to roads or land, unless adequate protection measures are taken by Company.
18. Company understands and agrees that the Commission has authority to stop Project construction activities in the event of a probable violation of the siting laws, siting rules, or applicable Commission Orders if, in the opinion of the Commission, construction activities are likely to result in irreparable or significant harm.

**Restoration and Maintenance:**

19. Company agrees that it shall, as soon as practicable upon the completion of the construction of the energy conversion facility, restore the area affected by the activities to as near as is practicable to the condition as it existed prior to the beginning of construction.
20. Company understands and agrees that all pre-existing township and county roads and lanes used during construction must be repaired or restored to a condition that is equal to or better than the condition prior to the construction of the energy conversion facility and that will accommodate their previous use, and that areas used as temporary roads or working areas during construction must be restored to their original condition.
21. Company understands and agrees that reclamation, fertilization, and reseeding is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.

22. Company will fulfil its obligation for reclamation and maintenance of the approved site continuing throughout the life of the energy conversion facility.
23. Company will repair all fences and gates removed or damaged during all phases of construction and operation of the proposed energy conversion facility.
24. Company will repair or replace all drainage tile broken or damaged as a result of construction and operation of the proposed energy conversion facility.
25. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
26. Company understands and agrees that it shall work with landowners and residents to mitigate any increase in television and residential radio interference that results from the construction of the energy conversion facility.
27. Company understands and agrees that it shall remove all waste that is a product of construction and operation, restoration, and maintenance of the site, and properly dispose of it on a regular basis.
28. Company understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the energy conversion facility.

**Communication with Landowners and PSC:**

29. Company agrees to provide the Commission with engineering design drawings showing surveyed structure and collection substation locations prior to construction.
30. Company understands and agrees that it shall advise the Commission as soon as reasonably possible of any extraordinary events which take place at the site of the energy conversion facility, including injuries to any person.
31. Company agrees to report to the Commission, as soon as reasonably possible, the presence in or near the approved site of any critical habitat of threatened or endangered species that Company becomes aware of and which were not previously reported to the Commission.
32. Company agrees to provide the Commission with both an electronic and a paper copy of the site approved by the Commission and the facility design specifications for the construction of the energy conversion facility showing the location of the energy conversion facility as built, and will provide this information within 3 months of the completion of the construction. Company also agrees to provide an electronic

version of the site approved by the Commission and the facility design specifications for the construction of the energy conversion facility showing the location of the energy conversion facility as built that can be imported into ESRI GIS mapping software within 3 months of the completion of the construction. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in the appropriate vertical datum for the coordinate system used. All submissions must specify the datum in which the data was developed.

33. Company shall notify the Commission, as soon as reasonably possible, if any damage, as defined by North Dakota Century Code Chapter 49-23, occurs to underground facilities during construction conducted under the certificate or permit issued in this proceeding. In the event of any damage to underground facilities, Company shall suspend construction in the vicinity of the damage until compliance with One-Call Excavation Notice System requirements under North Dakota Century Code Chapter 49-23 has been determined.
34. Company agrees that it shall provide, if requested, educational material for landowners within the site boundaries about the proposed energy conversion facility and any restriction or danger concerning the proposed energy conversion facility.
35. Company understands and agrees that it shall implement a procedure for how complaints concerning the proposed energy conversion facility will be handled by Company

**Modification of Energy Conversion Facility or Energy Conversion Site Plan:**


36. Before conducting any construction activities for any modification within the designated site, the Company will file the name and contact information for a key contact person for the purposes of notice and communication during the site modification application and will use the following procedures:
  - A. Before conducting any construction activities for any modification within the designated site, and such **construction activities will not affect any known exclusion or avoidance areas** within the designated site, the Company will file certification and supporting documentation:
    1. Affirming that construction activities will not affect any known exclusion or avoidance areas within the designated site;
    2. Including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated site and site modification(s); and
    3. Affirming that Company will comply with the Commission's order, law and rules designating the site.
  - B. Before conducting any construction activities for any modification within the designated site, and such construction activities will not affect any known

exclusion but **may affect an avoidance area** within the designated site, the Company will file:

1. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying:
    - a. the designated site and the site modification;
    - b. all exclusion and avoidance areas within the portion of the designated site containing the site modification.
  2. Certification and supporting documentation affirming that construction activities will not affect any known exclusion area.
  3. All field studies performed on the portion of the designated site containing the site modification;
  4. Specific information about any mitigation measures Company will take within the modification area;
  5. Certification that each owner of real property on which the modification is to be located and any applicable governmental entity with an interest in the same modification area do not oppose the modification;
  6. Certification that unless the Commission previously authorized the impact to the same avoidance area, that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist;
  7. Certification that Company will comply with the Commission's order, law and rules designating the site.
37. Company acknowledges and agrees that written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity.

Dated this 27 day of March, 2020.

Whiting Oil and Gas Corporation

By   
SHANE FROSS

Its V.P. OPERATIONS