

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

OE2 North LLC
B. Sanderson Gas Processing Plant – Williams Cnty.
Siting Application

Case No. PU-20-082

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

May ____, 2020

Appearances

Commissioners Brian Kroshus, Julie Fedorchak, and Randy Christmann.

Lawrence Bender, Attorney at Law, Fredrikson & Byron, P.A., 1133 College Drive, Suite 1000, Bismarck, North Dakota 58501, on behalf of OE2 North LLC.

Brian D. Schmidt, Special Assistant Attorneys General, 122 East Broadway Avenue, Bismarck, North Dakota 58502, on behalf of the North Dakota Public Service Commission.

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

Preliminary Statement

On February 20, 2020, OE2 North LLC (OE2), filed with the North Dakota Public Service Commission (Commission) an application for a Certificate of Site Compatibility for the Bill Sanderson Gas Processing Plant Project in Williams County, North Dakota (Plant).

Also on February 20, 2020, OE2 filed with the Commission an application for waiver or reduction of procedures and time schedules established under North Dakota Century Code chapter 49-22.1 and North Dakota Administrative Code section 69-06-01-02 and chapter 69-06-06, regarding separate notices and separate hearings on such applications.

In response to requests for additional information submitted to OE2 by the Commission, OE2 filed supplemental information in support of its application with the Commission on March 9 and April 9, 2020 (together with the original application, the “Application”).

On March 18, 2020, the Commission deemed the Application complete contingent on OE2 filing with the Commission, at least 15 days prior to the hearing date, responses to the Commission’s February 26, 2020 and February 27, 2020 requests for information letters.

Also on March 18, 2020, the Commission issued a Notice of Filing and Public Hearing scheduling a hearing for April 24, 2020, at 9:00 a.m. (CDT) at the City of Williston Public Works & Engineering Department, 1121 5th Street East, Williston, ND 58801 (Original Notice).

On April 9, 2020, the Commission issued an Amended Notice of Filing and Public Hearing stating that the April 24, 2020 hearing previously noticed would be held remotely due to the state emergency (together with the Original Notice, the “Notice”).

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 construction, operation, and maintenance of the facility at the proposed location produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Is the proposed facility compatible with the environmental preservation and the efficient use of resources?
3. Will construction, operation, and maintenance of the facility at the proposed 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 April 24, 2020, the hearing was held remotely as scheduled. Pursuant to the Notice, public testimony was received by telephone during the hearing and the record in this matter remained open until May 1, 2020 for written public comment in accordance with hearing procedures implemented as a result of the 2020 COVID-19 pandemic.

On May 1, 2020, OE2 filed Late Filed Exhibit 2: Grouse Mountain Gas Processing Plant Field Summary Dated May 1, 2020.

On April 27, 2020, the Commission received a submission indicating it was from an “Anonymous concerned citizen.” The submission indicated “The siting application should be for a 400 million standard cubic foot per day gas processing plant. . .” speculating that the applicant allegedly had plans for expanding the proposed 250 million cubic foot per day plant to a 450 million cubic foot per day plant at a later date. OE2 presented sworn testimony at the hearing that at the present time there are no plans to increase the size of the Plant beyond the proposed 250 million cubic feet per day. Nonetheless, any plans to increase the size of the Plant beyond the 250 million cubic feet per day would require Commission approval.

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:

Findings of Fact

Applicant Information

1. OE2 North LLC is a Delaware limited liability company authorized to do business in the State of North Dakota since October 23, 2019, and is currently in good standing, as evidenced by the corporate papers filed with the Commission on February 20, 2020.

Size, Type, and Preferred Location of Facility

2. The proposed Plant will consist of a gas processing plant located on a 39-acre parcel of land (Project Site) in Williams County, North Dakota, approximately 15 miles west of Williston, North Dakota.

3. OE2 testified that it owns the Project Site, but Denise Marcellais presented testimony expressing concern over OE2's ownership of that property. Because matters of title and ownership are beyond the Commission's jurisdiction, the Commission does not make any finding of fact regarding ownership of the Project Site.

4. The Plant will have a nameplate capacity of 250 million standard cubic feet per day (MMSCFD) and will process raw wellhead gas produced in Williams County, North Dakota and surrounding areas. The wellhead gas will be delivered to the Plant by a gas gathering system owned and operated by OE2.

5. The Plant infrastructure will include underground piping, above ground piping, and above ground gas processing equipment and systems.

6. The natural gas and natural gas liquids (NGLs) produced at the Plant will be delivered via pipeline to third-party interstate transmission lines that service the Rocky Mountain, Midwest and Gulf regions.

7. The estimated cost of the Plant is \$150 million.

Notice of Hearing

8. Denise Marcellais presented further testimony expressing concern that the filing of the Application and the Commission's hearing on the proposed Plant were not properly noticed.

9. The Notice was published in the Williston Herald on March 25, 2020 and April 15, 2020, and in the Tioga Tribune on March 25, 2020 in accordance with N.D.C.C. §§ 49-22.1-06(2) and 49-22.1-10(4).

Study of Preferred Location

10. OE2 conducted an environmental analysis for the approximate 39-acre Project Site and an approximately 0.5-mile buffer area around the perimeter of the Project Site (collectively, the “Study Area”). The Study Area was evaluated for exclusion and avoidance areas, including federal and state parks, protected and sensitive plants and animals, wildlife, and civil and social structures such as recreational areas, rural homes, and farmsteads.

11. OE2 performed field surveys on the Project Site 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, and protected species and habitats.

12. OE2 conducted a Class I cultural resource literature search on the Study Area and a Class III cultural resource field inventory on the Project Site. The results of the Class I and Class III cultural resource inventories were submitted to the North Dakota State Historic Preservation Office (SHPO).

13. OE2 initiated correspondence seeking comments from the following federal, state and local agencies regarding the Plant: Federal Aviation Commission; U.S. Army Corps of Engineers; U.S. Fish and Wildlife Service; North Dakota Attorney General; North Dakota Department of Agriculture; North Dakota Department of Career and Technical Education; North Dakota Department of Commerce; North Dakota Department of Health; North Dakota Department of Human Services; North Dakota Department of Transportation; North Dakota Department of Trust Lands; North Dakota Energy Development Impact Office; North Dakota Game and Fish Department; North Dakota Indian Affairs Commission; North Dakota Industrial Commission; North Dakota Labor Department; Job Service of North Dakota; North Dakota Parks and Recreation Department; North Dakota Pipeline Authority; North Dakota State Water Commission; North Dakota Geological Survey; SHPO; Office of the Governor; Williams County Planning and Zoning Board; Williams County Board of Commissioners.

Siting Criteria

14. The Commission has established criteria pursuant to North Dakota Century Code Section 49-22.1-03 to guide the Commission 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.

15. OE2 evaluated the Study Area regarding the Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

16. With the exception of prime and unique farmland as stated in North Dakota Administrative Code Section 69-06-08-01(1)(d), an Exclusion Area is a geographic area that must be excluded in the consideration of a site for an energy conversion facility.

17. OE2's surveys did not record any Exclusion Areas within the Study Area.
18. An Avoidance Area is a geographic area that may not be approved as a site for an energy conversion facility unless the applicant demonstrates that under the circumstances there is no reasonable alternative. 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.
19. OE2's field surveys did not record any Avoidance Areas within the Project Site. Intermittent tributaries and a wetland were noted to the north of the Project Site within the Study Area, but those areas will not be impacted by construction of the Plant. Adverse impacts to wetlands are not anticipated and OE2 will follow all recommendations to minimize the impact on any confirmed wetlands within the Survey Area.
20. The Commission's Selection Criteria are set forth in North Dakota Administrative Code Section 69-06-08-01(5). A site shall be approved only if it is determined that any significant adverse effects resulting 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. OE2 analyzed the effects that may result from the location, construction, and operation of the Plant to determine that no significant adverse effects will result.
21. While Denise Marcellais expressed concern that operation of the Plant could adversely impact a planned, but yet to be constructed, water depot located north of the Plant site, OE2 testified extensively about how it will protect surface and ground water sources through its storm water management plan; its spill prevention, containment, and countermeasures plan; and by following applicable industry standards and local, state, and federal regulations. The Commission agrees with OE2's testimony and finds that there are no significant adverse effects to Ms. Marcellais' proposed water depot business or other surrounding properties or businesses from the location, construction, or operation of the Plant.
22. Denise Marcellais also presented testimony expressing concern that the pipelines proposed to be constructed in connection with the Plant will adversely affect the proposed water depot business.
23. The Application before the Commission in this case is for the siting of the proposed Plant and does not address the related pipelines which, as OE2 testified, will require separate certificates of corridor compatibility and route permits issued by the Commission. Accordingly, any potential impacts such pipelines may have on a future water depot are not ripe for the Commission's consideration in this case.
24. The Commission's Policy Criteria are set forth in North Dakota Administrative Code Section 69-06-08-01(6). The Commission may give preference to an application demonstrating certain benefits of the energy conversion facility. OE2 has committed to maximizing benefits that result from implementing the policies and practices applicable to the proposed energy conversion facility.

Measures to Minimize Impact

25. OE2 has made representations and covenants as indicated by the Certification Relating to Order Provisions – Energy Conversion Facility Siting, with accompanying Tree and Shrub Mitigation Specifications.
26. OE2’s Class III cultural resource survey did not identify any new or previously recorded cultural resources within the Project Site. The North Dakota State Historical Preservation Office concurred with OE2’s Class III survey recommendation of “No Historic Properties Affected.”
27. OE2 received a conditional use permit (CUP) and stormwater permit from Williams County for the Plant. Williams County also approved OE2’s request to re-zone the Project Site and the parcel of land containing the Project Site from Agricultural to a Heavy Industrial Zone District classification.
28. OE2 testified that it will comply with any requirements or recommendations made by any local, state, or federal agency.
29. The Plant will minimize environmental disturbance and utilize existing infrastructure including access roads, utilities, gathering systems, and delivery and take away pipelines.
30. OE2 testified that it will take all reasonable measures to mitigate noise impacts to adjacent landowners. Noise levels will be managed and maintained at or below applicable local requirements for the zone district.
31. OE2 has developed several project control documents that will be utilized in connection with the construction and operation of the Plant including a Storm Water Pollution Protection Plan, Weed Management Plan, Environmental Training Plan, Emergency Action Plan and Unanticipated Discovery Plan.
32. The plant will be attended 24 hours per day, 365 days per year, by a rotation of 12 full time operators trained to OSHA Process Safety Management standards regarding safety training and operational procedures.
33. OE2 utilizes a site-specific programmable logic controller to monitor and control key process and safety variables within the Plant which can be accessed and controlled by both on-site operators and remote support staff. The Plant will also incorporate automatic alarms and shutoffs triggered by abnormal events or circumstances.
34. OE2 will utilize the ND One Call system during construction.
35. OE2 testified it will work with adjacent landowners by communicating construction plans and mitigating, where possible, negative impacts of the Plant operating long term.

From the foregoing Findings of Fact, the Commission makes the following conclusions of law:

Conclusions of Law

The Commission has jurisdiction over the applicant, OE2 North LLC, and over the subject matter of the Application under North Dakota Century Code Chapter 49-22.1.

1. OE2 is a utility as defined in North Dakota Century Code Section 49-22.1-01(12).
2. The Plant is an energy conversion facility as defined in North Dakota Century Code Section 49-22.1-01(5).
3. The Commission does not have jurisdiction over matters of title or ownership to land or disputes arising therefrom.
4. The Commission provided the required notice of the filing of the Application and April 24, 2020 hearing in accordance with N.D.C.C. §§ 49-22.1-06(2) and 49-22.1-10(4).
5. Matters as to the location and impact pipelines may have on the environment and the welfare of the citizens of North Dakota are not ripe for consideration at this time.
6. The location, construction, operation, and maintenance of the Plant will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
7. The location, construction, and operation of the Plant is compatible with the environmental preservation and the efficient use of resources.
8. The Plant 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.

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

Order

The Commission orders:

1. OE2's application for a waiver of procedures and time schedules is granted.
2. Certificate of Site Compatibility No. ___ is issued to OE2 North LLC designating a site for the construction, operation, and maintenance of the Bill Sanderson Gas Processing Plant Project. For purposes of this Certificate, the designated site is 39 acres of the 143-acre parcel of land owned by OE2 located approximately 15 miles west of Williston, North Dakota, in Section 27, Township 154 North, Range 104 West, Williams County, North Dakota, and as identified on Figure 1 of the Application, Hearing Exhibit 1.

3. The Certification Relating to Order Provisions – Energy Conversion Facility Siting (Certification) with attached Tree and Shrub Mitigation Specifications executed April 16, 2020, is incorporated by reference and attached to this Order.

4. To the extent there are any conflicts or inconsistencies between the Application and the Certification, the Certification provisions control.

5. Prior to the commencing construction of any portion of the proposed project, OE2 shall obtain all other necessary licenses and permits for construction of such portion, and provide copies to the Commission prior to construction of the portion of the project.

6. OE2 is required to comply with all applicable laws, rules, and/or regulations in the event it desires to construct another or different energy conversion facility than was specified in the Application within the site designated in this proceeding.

PUBLIC SERVICE COMMISSION

Julie Fedorchak
Commissioner

Brian Kroshus
Chairman

Randy Christmann
Commissioner

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