

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

OE2 North, LLC
8" NGL & 20" Residue Gas Pipelines – Williams Cnty.
Siting Application

Case No. PU-20-247

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

August ____, 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.

John Schuh, Special Assistant Attorney General, as Counsel for the North Dakota Public Service Commission, 600 E. Boulevard Avenue, Dept. 408, Bismarck, North Dakota 58505.

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

Preliminary Statement

On June 3, 2020, OE2 North, LLC (OE2), filed with the North Dakota Public Service Commission (Commission) a consolidated application for a certificate of corridor compatibility and route permit concerning the location of an approximately 1.28-mile long natural gas liquids (NGL) pipeline and an approximately 4.67-mile long residue gas pipeline, located in Williams County, North Dakota (Project).

Also on June 3, 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.

On June 9, 2020, the Commission provided notification of the application to the townships with retained zoning authority, cities, and counties in which any part of the proposed pipeline corridor is located.

On June 25, 2020 and August 3, 2020, OE2 filed supplemental documents with the Commission (together with the original application, the "Application").

On July 2, 2020, the Commission deemed OE2's Application complete and issued a Notice of Filing and Public Hearing (Notice) scheduling a remote hearing for August 6, 2020, at 8:00 a.m. Central Time.

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 August 6, 2020, the hearing was held as scheduled via live, remote communication, allowing any interested parties to present testimony via telephone.

The opportunity for written public comment remained open until August 13, 2020.

Having allowed all interested persons an opportunity to be heard, and having heard, reviewed and considered all testimony and evidence presented, the Commission makes its:

Findings of Fact

1. OE2 North, LLC 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 February 20, 2020 in Case No. PU-20-083.

Size, Type, and Preferred Location of Facility

2. The Project is comprised of one 8-inch steel NGL transmission line and one 20-inch steel residue gas transmission line located in Williams County, North Dakota.

The Project will transport NGLs and residue gas from OE2's Bill Sanderson Gas Plant in Williams County to third-party interconnection points for further transportation to markets in the Rocky Mountain, Midwest and Gulf regions. A project overview map and the proposed pipeline routes are identified in Figure 1 of the Application, Hearing Exhibit 1.

3. The NGL pipe will be 8-inch diameter steel pipe with a wall thickness of 0.250-inches and a maximum operating pressure of 1,650 pounds per square inch gauge (psig). The residue gas pipe will be 20-inch steel pipe with a wall thickness of 0.375-inches and a maximum operating pressure of 1,650 psig. The maximum operating temperature of the NGL and residue gas pipelines will be 120 degrees Fahrenheit.

4. The NGL pipeline will have a flow rate capacity of up to 80,000 barrels per day and the residue gas pipeline will have a flow rate capacity of up to 250 million cubic feet per day.

5. Aboveground facilities for the Project will be limited to valving, measurement and associated instrumentation at the terminus of the NGL and residue gas pipelines.

6. The estimated cost of the Project is \$6 million.

7. The estimated in-service date is December of 2020.

Study of Preferred Location

8. OE2 conducted a Class I cultural resource literature review and a desktop analysis for wetlands, waterbodies, and other sensitive environmental resources across a one-mile-wide area centered on the pipeline routes (Study Area).

9. OE2 conducted several surveys across an approximately 200-foot-wide area centered on the Project route (Survey Area). OE2 conducted surveys for wetlands, waterbodies, threatened and endangered species, critical habitats, noxious weeds, and trees/saplings/shrubs.

10. OE2 conducted a Class III cultural resources inventory across the Survey Area. The Class III report was submitted to the North Dakota State Historic Preservation Office (SHPO). In a response dated August 4, 2020, SHPO found the report acceptable and that there has been a good faith effort to avoid impacts to significant sites.

11. OE2 initiated correspondence seeking comments from following federal, state and local agencies regarding the Project:

- a. Federal: (1) Federal Aviation Commission; (2) U.S. Army Corps of Engineers; (3) U.S. Fish and Wildlife Service;
- b. State: (1) North Dakota Attorney General; (2) North Dakota Department of Agriculture; (3) North Dakota Department of Career and Technical Education; (4) North Dakota Department of Commerce; (5) North Dakota

Department of Environmental Quality; (6) North Dakota Department of Health; (7) North Dakota Department of Human Services; (8) North Dakota Department of Transportation; (9) North Dakota Department of Trust Lands; (10) North Dakota Energy Development Impact Office; (11) North Dakota Game and Fish Department; (12) North Dakota Geological Survey; (13) North Dakota Indian Affairs Commission; (14) North Dakota Industrial Commission; (15) North Dakota Labor Department; (16) North Dakota Parks and Recreation Department; (17) North Dakota Pipeline Authority; (18) North Dakota Soil Conservation Committee; (19) North Dakota State Water Commission; (20) Job Service of North Dakota; (21) SHPO; and (22) Office of the Governor;

- c. Local: (1) Williams County Commission.

Siting Criteria

12. The Commission has established criteria pursuant to North Dakota Century Code Section 49-22.1-03 to guide the site, corridor, and route suitability evaluation and designation process. 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.

13. OE2 evaluated the Project for the Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria of the Commission.

14. 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.

15. OE2's studies and surveys did not record any known Exclusion Areas within the Survey Area.

16. 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.

17. OE2's studies and surveys identified possible wetlands and previously recorded historical sites which are not specifically designated as Exclusion or Avoidance Areas. OE2 testified that the Project route will not impact the wetlands and historical sites identified.

18. In accordance with the Commission's Selection Criteria set forth in North Dakota Administrative Code section 69-06-08-02(3), 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. OE2 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.

19. Wetlands are a Selection Criteria. OE2 testified that impacts to wetlands will be avoided by using the horizontal drilling technique.

20. The impact upon agricultural production and family farms and ranches is a Selection Criteria. Following completion of the pipeline, and to the extent reasonably practicable, OE2 will restore any right-of-way to its original, pre-construction elevation and contours, and landowners will be able to resume agricultural and ranching operations. If yield deficiencies are caused by pipeline construction, the cost of applying fertilizer to remedy soil nutrient levels will be paid to the landowner.

21. In accordance with the Commission's Policy Criteria set forth in North Dakota Administrative Code section 69-06-08-02(4), preference may be given to an applicant demonstrating certain benefits of the transmission facility. OE2 submitted evidence to demonstrate its commitment to maximize the benefits of the proposed transmission facilities to the extent possible so as to meet the Policy Criteria.

22. Efficiencies of construction may include starting pipeline construction with completion of similar pipeline projects in order to minimize mobilization/demobilization costs, timing pipe acquisition and delivery with other projects in the area, and constructing the pipelines using multiple

Additional Measures to Minimize Impact

23. OE2 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.

24. The Project will be designed, constructed, and operated in accordance with U.S. Department of Transportation regulations governing the transportation of hazardous liquids by pipeline, which are set forth in 49 Code of Federal Regulations (CFR) Part 192.

25. OE2 testified that it will follow a written manual of procedures for conducting normal operations and maintenance activities and for handling abnormal operations and emergencies in accordance with 49 CFR Part 192. In the event that the pipeline's pressure exceeds operating tolerance, OE2's Bill Sanderson Gas Plant is equipped with relief valves and pressure shutdowns. Once constructed, a lead detection and monitoring system will be employed for the Project.

26. OE2 will have a third-party construction inspector on site during construction who will oversee the Project's environmental mitigation measures, and they will have the authority to stop construction activities and order corrective mitigation.
27. OE2 will coordinate with local emergency response officials to discuss emergency response coordination and will conduct emergency deployment drills on an annual basis.
28. The entire Project is co-located with existing infrastructure and utility corridors.
29. OE2 has developed several project control documents that will be utilized in connection with the construction and operation of the Project including a Storm Water Pollution Prevention Plan, Spill Contingency Plan, HDD Contingency Plan, Weed Management Plan, Dust Control Plan, Emergency Action Plan, and Unanticipated Discovery Plan.
30. OE2 will conduct regular pipeline monitoring, periodic inspection, internal inspections, and foot patrol inspections as required by the Department of Transportation regulations.
31. Prior to the beginning of construction, OE2 will clean contractor vehicles and equipment of soil and debris capable of spreading noxious weeds. Furthermore, OE2 will ensure that seed mixes are certified weed free from approved certified sources as recommended by the county weed agency.
32. OE2 will participate in the North Dakota One-Call notification system.
33. OE2 will comply with all applicable safety laws and standards.
34. The permanent right-of-way for the co-located NGL and residue pipelines will be 125 feet wide and the permanent right-of-way for the remaining portion of the residue gas pipeline will be 50 feet wide.

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

Conclusions of Law

1. The Commission has jurisdiction over the applicant, OE2 North, LLC, and the subject matter of the Application under Chapter 49-22.1 of the North Dakota Century Code.
2. OE2 is a utility as defined in Section 49-22.1-01(12) of the North Dakota Century Code.
3. The Project is a gas or liquid transmission facility as defined in North Dakota Century Code Section 49-22.1-01(7).
4. The 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 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.
7. It is appropriate for the Commission to waive those certain procedures and time schedules as requested in the application for waiver of procedures and time schedules and pursuant to North Dakota Century Code Section 49-22.1-05 and North Dakota Administrative Code Chapter 69-06-06.

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

Order

1. OE2's application for a waiver of procedures and time schedules is granted.
2. Certificate of Corridor Compatibility No. ___ is issued to OE2 North, LLC designating a corridor for the construction, operation, and maintenance of approximately 1.28 miles of a new 8-inch diameter NGL pipeline in Williams County, North Dakota. For the purposes of this certificate, the corridor is 200-foot-wide for the length of the pipeline, centered on the pipeline route.
3. Route Permit No. ___ is issued to OE2 North, LLC designating a route for the construction, operation, and maintenance of approximately 1.28 miles of a new 8-inch diameter NGL pipeline in Williams County, North Dakota, as depicted on Figure 1 of the Application, Hearing Exhibit 1.
4. Certificate of Corridor Compatibility No. ___ is issued to OE2 North, LLC designating a corridor for the construction, operation, and maintenance of approximately 4.67 miles of a new 20-inch diameter residue gas pipeline in Williams County, North Dakota. For the purposes of this certificate, the corridor is 200-foot-wide for the length of the pipeline, centered on the pipeline route.
5. Route Permit No. ___ is issued to OE2 North, LLC designating a route for the construction, operation, and maintenance of approximately 4.67 miles of a new 20-inch diameter residue gas pipeline in Williams County, North Dakota, as depicted on Figure 1 of the Application, Hearing Exhibit 1.
6. The Certification Relating to Order Provisions – Transmission Facility Siting (Certification), with accompanying Tree and Shrub Mitigation Specifications, executed July 31, 2020 is incorporated by reference and attached to this Order.
7. To the extent there are any conflicts or inconsistencies between OE2's Application and the Certification, the Certification provisions control.

8. OE2 shall obtain all other necessary licenses and permits prior to commencing construction on such portion of the Project for which the license and/or permit is required and shall provide copies of such licenses and permits to the Commission prior to construction.

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

PUBLIC SERVICE COMMISSION

Julie Fedorchak
Commissioner

Brian Kroshus
Chairman

Randy Christmann
Commissioner