

112 FERC ¶ 61,042
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Northern Natural Gas Company

Docket No. CP05-73-000

ORDER ISSUING CERTIFICATE

(Issued July 6, 2005)

1. On February 18, 2005, Northern Natural Gas Company (Northern) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, for a certificate of public convenience and necessity authorizing it to construct and operate two pig launchers, with appurtances, in Carver County, Minnesota. The two pig launchers would be attached to the Waconia branchlines near the takeoff from the Willmar branchline.¹

2. We find that approval of Northern's request for authorization to construct and operate facilities is in the public interest because it will ensure that Northern's Waconia branchlines are in compliance with the Pipeline Safety Improvement Act of 2002² and the U.S. Department of Transportation (DOT) safety regulations³ and will enhance the reliability and safety of customers' access to gas supplies. Accordingly, we will authorize Northern's proposal to construct and operate pig launching facilities as described and conditioned in this order

Background and Proposal

3. Northern states that DOT safety regulations require that all transmission pipelines be inspected to identify segments of the pipeline that would pose the greatest threat to human health and safety and property should the pipeline fail. The DOT regulations describe such pipeline segment locations as high consequence areas (HCA). If a pipeline

¹ The Waconia branchline takeoffs are located in section 10, Township 115 North, Range 25 West in Carver County, Minnesota.

² Codified at 49 U.S.C. 60109 (2003).

³ *Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines)*, Department of Transportation, 68 Fed. Reg. 69788 (2003).

identifies an HCA on its system, the DOT safety regulations require the pipeline to perform risk and integrity assessments to identify, classify, and mitigate or remediate threats to the mechanical integrity of the pipeline. Northern states that, in its integrity assessment, it has identified several segments of its pipeline that are HCAs, including its Waconia branchlines. Therefore, Northern submits, it must perform risk and integrity assessments on the branchlines as required by DOT.

4. The Waconia branchlines consist of two parallel lines, the 8-inch diameter B-line (MNB75201) and the 6-inch diameter C-line (MNB75202) extending approximately 5 miles from the Wilmar branchline to the Waconia Town Border Station. Northern intends to assess the Waconia branchlines with an in-line inspection method that utilizes a tool, known as a pig, that traverses the interior of the pipeline and gathers information on features such as dents, wall loss, and other mechanical defects. Northern states that this method of assessment is most commonly used because it provides a comprehensive look at the integrity of a pipeline while maintaining service to the customers during the inspection.

5. Therefore, Northern proposes to install two pig launchers at the Waconia branchlines' takeoff point from the Willmar branchline in Carver County, Minnesota at an estimated cost of \$386,159.

6. Northern states that it will install associated valves and pipeline pursuant to section 2.55(a)(2)(ii) of the Commission's regulations. However, Northern maintains, it cannot install the pig launchers pursuant to section 2.55, as it ordinarily would, because that section does not authorize pipelines to use the right of eminent domain to acquire necessary easements to install such facilities and Northern has been unable to acquire an easement agreement with the affected landowners, Dennis and Sharon Buehler (the Buehlers), whose property Northern has identified as the most appropriate location for the pig launchers. Northern states that since it must install the pig launchers to comply with the DOT safety regulations and has been unable to obtain an easement through negotiation, it has filed the section 7(c) application to obtain the eminent domain authority necessary to acquire the easement.

Notice and Opposition

7. Notice of Northern's application was published in the *Federal Register* on March 3, 2005, 70 Fed. Reg. 10,387. A statement in opposition was filed by the Buehlers, the owners of the land on which Northern proposes to install the pig launchers. Their concerns are discussed below.

Discussion

8. Northern proposes to modify facilities used for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission. Therefore, Northern's proposal is subject to the requirements of NGA section 7(c) and (e).

9. On September 15, 1999, the Commission issued a Policy Statement to provide guidance as to how we will evaluate proposals for certificating new construction.⁴ The Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

10. Under the Commission's policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. If the applicant is an existing pipeline, the next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers.

11. For both new companies and existing pipelines, the Commission also considers potential impacts of the proposed project on other pipelines in the market and those existing pipelines' captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission then proceed to complete the environmental analysis where other interests are considered.

⁴*Certification of New Interstate Gas Pipeline Facilities (Certificate Policy Statement)*, 88 FERC & 61,227 (1999), *order clarifying statement of policy*, 90 FERC & 61,128 (2000), *order further clarifying statement of policy*, 92 FERC & 61,094 (2000).

12. Northern's proposal is necessary since construction and operation of the proposed pig launchers will enable Northern to comply with DOT safety regulations. The proposed location of the two pig launchers will allow Northern to assess the entire length of the Waconia branchlines. This is consistent with DOT safety regulations to ensure the safety of Northern's facilities. The Policy Statement provides that the cost of new and/or replacement facilities designed to maintain and improve existing service and operations and enhance reliability and flexibility for the benefit of all customers is not considered a subsidy.⁵ Since the proposed project will benefit existing customers by assuring the pipelines' integrity, subsidization by those customers will not be an issue. Therefore, we find that Northern may roll in the costs of the proposed facilities when it files its next rate case. The project will not adversely affect Northern's existing customers or other pipelines and their customers. As discussed below, the owners of the land on which Northern proposes to install the pig launchers will be impacted. However, on balance we believe that the benefit of the project - allowing Northern to comply with the DOT safety regulations - is significant and outweighs the landowner impact, as mitigated by the environmental conditions in this order.

Environmental Analysis

13. On April 15, 2005, the Commission issued a Notice of Intent to prepare an Environmental Assessment (EA) for Northern's proposed Waconia Pig Launcher Project and Request for Comments on Environmental Issues (NOI). The Commission's staff received one response to the NOI from the Buehlers.

14. The Commission's staff prepared an EA for Northern's proposal. The EA considered water resources, fisheries, and wetlands; vegetation and wildlife; socioeconomics; geology and soils; land use, recreation, and aesthetics; public safety; threatened and endangered species; cultural resources; air quality; noise; and alternatives. Based on the discussion in the EA, the Commission concludes that if constructed and operated in accordance with Northern's application and supplements filed December 30, 2004, January 7, 13, and 31, 2005, February 23, 2005, and April 15, 2005, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

15. The proposed project is located in the Buehler's actively cultivated field. The two Waconia branchlines cross the Buehler's property and there is an existing associated aboveground valve at the proposed site. About 1.43 acres of agricultural land measuring 250 feet by 250 feet would be disturbed during construction. Northern's existing

⁵See Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,746 (1999); *see also Northwest Pipeline Corp.*, 104 FERC ¶ 61,176 at P 23 (2003).

easement for the valve site would need to be increased by about 0.08 acre (100 feet by 35 feet) to accommodate the proposed pig launchers. A permanent driveway would be constructed across the roadside ditch for accessing the project site. Northern indicated that construction activities would be performed in accordance with the Commission staff's *Upland Erosion Control, Revegetation, and Maintenance Plan* which would avoid or minimize impact on soils.

16. We have considered four alternate sites for the proposed pig launchers and the no-action alternative. Under the no-action alternative, Northern would not construct and operate the pig launchers. The no-action alternative would not allow Northern to perform the risk and integrity assessments required by DOT safety regulations and would result in non-compliance with the regulations. Therefore, we believe that the no-action alternative is not reasonable

17. None of the alternate sites is preferable to the proposed site. The alternate sites would require new aboveground facilities where none currently exist while there is an existing aboveground facility at the proposed site. Only the proposed site and Alternate Site 1 would permit Northern to perform risk and integrity assessments for the entire length of the branchlines. However, Alternate Site 1 would require the construction of two lateral extensions from the site to the Waconia/Willmar interconnect that would cross County Road 153. Also, since easement negotiations have not been successful for any of the alternate sites, it appears that Northern could not locate the pig launchers on any of the sites without the use of eminent domain. Therefore, we believe that the proposed site would best satisfy the project objectives while minimizing environmental impact. Further, no significant impacts on environmental resources were identified for the proposed site.

18. In consideration of landowner concerns, Northern has minimized the proposed facilities by moving a pig receiver for the Willmar line which was to be located at this site to its Howard Lakes takeoff point and has reduced the size of the proposed site from its original design. Northern also expressed its willingness to replace the proposed fence around the pig launchers with protective pipe posts to make the launcher site less noticeable and to paint the aboveground facilities in a neutral color. In light of these statements, we recommend that Northern install protective pipe posts around the pig launchers and paint the aboveground facilities in a neutral color to minimize the visual impact of the proposed project.

19. Finally, in the Buehlers statement in opposition to the proposed project, they requested that Northern substitute portable pig launchers for fixed equipment, stating that a permanent structure would take away valuable crop land. However, we are not aware that portable pig launchers have been used on interstate pipeline systems.

20. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.⁶

21. Northern shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Northern. Northern shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

At a hearing held on June 30, 2005, there was received and made a part of the record in this proceeding all filed evidence, including the application and exhibits thereto, and after consideration thereof.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Northern to construct and operate two pig launchers and appurtenant equipment in Carver County, Minnesota, as more particularly described in this order and in the application.

(B) Northern shall complete the authorized construction within one year of this order.

(C) Northern must comply with the Natural Gas Act and all relevant provisions of the Commission's regulations, in particular paragraphs (a), (c)(1), (c)(2), (c)(3), (e) and (f) of section 157.20 of Part 157 and the environmental conditions in the appendix to this order.

⁶See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC & 61,091 (1990) and 59 FERC & 61,094 (1992).

(D) Northern shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Northern. Northern shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

Appendix

Environmental Conditions for Northern's Waconia Pig Launcher Project in Carver County, Minnesota.

1. Northern shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by this order. Northern must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has the delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of this order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Northern shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. Northern shall install protective pipe posts around the pig launchers and paint the aboveground facilities in a neutral color.