

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application for a)	
certificate of public convenience and necessity)	Case No. U-14421
to construct and operate the DeWitt Tie-Line.)	
_____)	

At the February 14, 2007 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. J. Peter Lark, Chairman
Hon. Laura Chappelle, Commissioner
Hon. Monica Martinez, Commissioner

OPINION AND ORDER

This order approves construction of the DeWitt Tie-Line (the project), a natural gas interconnection pipeline just less than two miles long. The project will provide an alternate tie between two large gas pipelines, the higher-pressure Line 1100 and the lower pressure Line 10 serving the Lansing area. The project is intended to maintain capacity and delivery pressure in Line 10.

On February 4, 2005, Consumers Energy Company (Consumers) applied for approval to build and operate the project under the provisions of 1929 PA 9, as amended, MCL 483.101 *et seq.* The proposed route called for about 10,000 feet of 20-inch natural gas pipe and 100 feet of both 4-inch and 8-inch pipe. The application addressed the proposed route and three alternative routes, known as the East, West, and Turner Road alternative routes, as well as two alternatives to the

project. The first of these was to make capacity improvements to Line 10; the second was to do nothing.

Attached to the application are engineering specifications covering the construction, testing, and operation of the pipeline to demonstrate compliance with the Michigan Gas Safety Standards; a map showing the location of the pipeline;¹ and an environmental assessment. The maximum allowable operating pressure of the pipeline is 660 pounds per square inch gauge, and the cost of the pipeline is approximately \$3,600,000.

Procedural History

During prehearing proceedings, Administrative Law Judge Mark D. Eyster (ALJ) approved the joint request to intervene made by four individuals opposed to the proposed route, Clifford Shooltz, Beth Ann Miller, Richard Garmyn, and Gary Tarrant (the intervenors). The ALJ also heard comments from an attorney representing the ET MacKenzie Company (MacKenzie) and from two other interested persons, Elissa Greenburg and Howard Schultz.

The ALJ held an evidentiary hearing on October 17, 2005, when pre-filed testimony was bound into the record from Charles F. Belkamp, Jr., Dale C. Puckett, Rick E. Comstock, Richard J. Davis, Scott H. Klipstine, Michael A. Oakes (all on behalf of Consumers), Donald J. Mazuchowski (Commission Staff), and all four intervenors.

The parties filed briefs and replies. Consumers argued that the project was necessary and should follow the proposed route. The Commission Staff (Staff) agreed the project was needed,

¹The proposed route extends southerly from a point of tie-in with Applicant's existing 24" Line 1100 (certificated in case No.D-2948-58.1) in Section 16, T5N, R2W, DeWitt Township, Clinton County, approximately 2.0 miles to Applicant's Line 10 transmission line (certificated in case No. D-3516-50.1) in Section 28, T5N, R2W, DeWitt Township, Clinton County.

but the Staff preferred the East or West alternative routes.² Proposal for Decision (PFD), p. 10. The intervenors argued that additional supply capacity was needed, but urged the Commission to reject Consumers' application as insufficiently detailed; alternatively, they argued first for the Turner Road alternative route and then for any route other than Consumers' proposed route. PFD, pp. 12-15. The ALJ issued the PFD on April 5, 2006, first stating that "with the exception of the West Alternative, I feel that the remaining alternatives represent six of one, half-dozen of another," and that each one "has it[s] pluses and minuses and not [sic] one is particularly more appealing than the others" before concluding as follows:

It should be clear that this Judge harbors serious concerns regarding the probative value and overall sufficiency of the evidence presented to support a finding that the tie-line is needed to meet future demand and/or increase reliability. As noted, the evidence primarily takes the form of unsupported conclusory statements and hearsay documents. Not only is the evidence wanting, but I consider Consumers' reliability argument incomplete and quite possibly flawed. Due to the state of the evidentiary record, I feel the Commission may justifiably order the application denied or, more appropriately, order a reopening of the proceeding to permit further development of the record.

However, given the positions of the parties, the Commission would, also, be well justified in concluding that the application is sufficient, the project will be environmentally acceptable, the tie-line is necessary and practicable, and, when in operation, will be safe and serve the convenience and necessities of the public. Should the Commission so find, approval of the Turner Road Alternative is recommended. [PFD, pp. 27, 28-29.]

Exceptions and Replies

Consumers and the Staff filed exceptions to the PFD, and the intervenors, Consumers, and the Staff filed replies. Each party argues for a different proposed route and against the routes preferred by the other parties. Consumers argues for its original proposed route; the intervenors

²The Staff later withdrew its support of the West route because of problems with soil subsidence over a portion of that route.

strongly support the ALJ's recommended Turner Road alternative; and the Staff, which withdrew its support for the West alternative, now strongly supports the East alternative.

Consumers first takes exception to the way in which the PFD characterizes its expert testimony where it states that Consumers "brazenly touts the usefulness of its demand predictions and the tie-line itself, by claiming that '[a]t the 1.6% per year growth rate, the DeWitt Tie-Line will be adequate for 100 years.'" PFD, pp. 8-9. Consumers notes the witness's extensive experience and qualifications and also that the witness did not attempt to make a demand prediction but, instead, only explained how the 1.6% per year figure was derived from past experience.

Consumers' second exception is in the nature of a clarification. Consumers addresses a statement by the ALJ concerning the proposed route: "In response to concerns about the Proposed Route crossing a subdivision, Consumers notes that the proposed right-of-way is on or adjoins only four lots with existing houses and that it has acquired all of the necessary right-of-ways." PFD, p. 9 (citing Consumers' brief and testimony). Consumers takes exception to qualify that Consumers does not claim to have acquired all the right-of-ways needed for the entire proposed route; rather, Consumers argues that the testimony related only to the proximity of the proposed route to some existing homes at the northern end of that route.

Consumers also takes exception to the ALJ's description of what he called "the scant evidentiary record to support Consumers' claim that the tie-line is necessary to meet future demand and/or to increase reliability." PFD, p. 15. Consumers notes that the parties to the case agreed that either the tie-line or the upgrade to Line 10 was needed. Consumers also notes that, whereas its analysis was based on 11 years, the ALJ's comment suggesting that peak demand was no longer increasing was based on fewer years of data: "Exhibit A-5 seems to establish that, while demand

may have grown at 1.6% over the past eleven years, since the 1999/2000 winter, the total design peak hour load has remained steady with, apparently, no growth.” PFD, p. 16. Consumers emphasizes that the current pipeline is very near capacity and that the project will provide both adequate capacity and also a desirable margin of supply capacity. Consumers further objects to the PFD’s description of its testimony on the necessity for the project as “unsupported conclusory statements” and “hearsay;” Consumers responds that its witness for necessity, Mr. Puckett, testified that he prepared or supervised preparation of his testimony and exhibits.

Consumers suggests that the ALJ’s real objection to the project is an argument that it would reduce the overall system reliability by connecting two formerly separate sources of supply:

On its surface, Consumers’ claim that the tie-line increases reliability seems sound. However, a mild scratching of the surface reveals an incomplete and quite possibly flawed argument. Currently, the Lansing Area of Concern is primarily supplied by the DeWitt Road and Airport Road gates. Each of these gates is supported by a separate and distinct pipeline. However, should Consumers construct the proposed tie-line, both of Lansing’s city gates will be supported by only one pipeline. As Consumers notes, *pipelines* and city gates experience outages. With the proposed tie-line in place, should Line 1100 fail, the Lansing Area of Concern could be left without natural gas supply.³ Today, both Line 10 and Line 1100 would have to fail to have the same result. Consumers’ reliability argument is incomplete because it fails to compare the risk of system failure presented by each of the three possible transmission configurations; the system as is, the system with the tie-line, and the system with an upgraded Line 10. Additionally, Consumers has failed to present any cost/benefit analysis to determine which of the configurations best addresses Consumers’ perceived reliability problem.

Consumers’ assertion, that the tie-line is necessary to address reliability problems, may, in fact, be true. However, if one looks beyond Consumers’ purely conclusory statements asserting so, and looks to the more substantive evidence, it is not possible to reach the same conclusion. For these reasons, I find Consumers reliability argument to be specious.

³ It is noted that Line 1100 appears to be supplied natural gas from both ends and, while the proofs did not so established [sic], it may, therefore, effectively act much as if it where [sic] two separate lines. [PFD, p. 17 (emphasis in original).]

Consumers counters that it is the ALJ's argument that is incomplete, not Consumers' evidence. In support, Consumers notes that express testimony established that Line 1100 could be supplied from either end.

Consumers next takes exception to the ALJ's statement that it had "failed to present any cost/benefit analysis to determine which of the configurations best addresses Consumers' perceived reliability problem." PFD, p. 17. Consumers notes that it provided cost estimates for each of the construction alternatives and noted the limitations of those estimates and which ones would probably require additional spending to accomplish.

Next, Consumers takes exception to the reasoning behind the ALJ's recommended Turner Road alternative route. Consumers notes that it seeks a 75-foot right-of-way for the project, whereas the public road right-of-way at Turner Road is only 66 feet wide. Consumers concedes that the intervenors would prefer the Turner Road route, but argues that this route would come within 50 feet of eight homes, 100 feet of 17 homes, and that it would have 25 separate adjoining parcels and six road crossings, all of which would create even more opposition to the Turner Road route than the route proposed by Consumers faces. Moreover, Consumers argues that it prefers private gas pipeline right-of-way as a safety feature, because this lets the company control interference from other utilities. Consumers concedes that, as the ALJ noted, it has argued for using road right-of-ways for pipelines in other circumstances; however, Consumers insists that those cases involved lower-pressure distribution lines and that they do not diminish its strong preference for private right-of-ways for high-pressure transmission pipelines.

Consumers then takes exception to the ALJ's recommended route alternative. Consumers notes that, although he recommended a different route, he also conceded that the route proposed by Consumers was the second shortest and would probably be the least expensive route.

Consumers' penultimate exception is a claim that the "No Effect" statement from the Michigan Department of Natural Resources had been obtained, as the ALJ noted was required. PFD, p 27. Consumers attached a copy to their exceptions, but that submission is outside the record. Moreover, the condition imposed by the ALJ—that all necessary approvals and permits be obtained—applies equally to all routes. Thus, this exception is not addressed further.

Consumers' final exception also seeks to draw the Commission's attention to a document outside the record, in this instance to support a challenge to the ALJ's conclusion that there are no immediate plans to develop property near the East alternative route. PFD, p. 26. Because of the Commission's resolution of this case, this exception is also not addressed further.

The Staff joins Consumers in vigorously challenging the ALJ's statements suggesting that the evidence was barely sufficient to support a finding of necessity for the project, either on reliability or capacity grounds. PFD, pp. 15-19.

The Staff also takes exception to the ALJ's recommended alternative route (Turner Road), arguing that the East alternative route that the Staff preferred provides a best solution when considering all factors, including safety, environmental effects, distance, and the ease and cost of construction. The Staff argues that both Consumers' proposed route and the East alternative are superior to the Turner Road route. The Staff argues strongly against requiring the project to be constructed in the Turner Road right-of-way, noting the possibility of interference with other utilities.

The intervenors' responses to the exceptions are as follows. First, the intervenors argue that, contrary to the exceptions filed by Consumers and the Staff, the record was inadequate to support a finding of necessity for the project. Second, the intervenors argue that Consumers has attempted to suggest that it has acquired more right-of-ways along the proposed route than is actually the

case. Consumers, intervenors argue, must not be allowed to “bolster an argument for a yet[unapproved pipeline and a non-authorized route] by contending that they have already acquired some property rights along the corridor it hopes will be ultimately authorized.” Intervenors’ replies, p. 4 (emphasis in original).

The intervenors also object to both of the extra-record documents that Consumers included with its exceptions, and the intervenors insist that these be ignored.

The intervenors then respond to Consumers’ argument that one of the reasons to reject the Turner Road route recommended by the ALJ is that the roadway is only the standard 66 feet wide, whereas Consumers seeks a 75-foot right-of-way for the project. The intervenors cite testimony of a witness for Consumers that the 75-foot requirement is only a preference and not a requirement. The intervenors then reiterate the advantages of the Turner Road alternative and urge that the Commission adopt the ALJ’s recommended route.

The Staff joins the intervenors in objecting to any consideration of the extra-record documents that Consumers submitted with its exceptions. The Staff also rebuts Consumers arguments against the East alternative route by noting that, even if a sand-mining operation were to be conducted along that route, the project and the sand mine could coexist.

Consumers first responds to the Staff’s exceptions by noting that the PFD never expressly states that no additional right-of-way would have to be acquired if the project was built along the Turner Road alternative. Consumers then agrees with the Staff that the West alternative should be rejected because of the problems with subsiding soils that the ALJ noted when rejecting it. Consumers then argues that, while it is true that there are no homes within 100 feet of the East alternative route, this does not “take into account plans for numerous homes to be constructed along this very route on lots that would place those new homes in very close proximity to a

pipeline constructed along that route.” Consumers’ replies to exceptions, p 2. Consumers then argues against the East alternative at length, reciting rebuttal testimony that it gave stating that constructing the project along the East alternative route would require an additional 2,400 feet of pipeline and would cost around \$860,000 more, in addition to some \$375,000 in damages to the sand-mining operation if the project went along that route. Consumers concludes by arguing that the Commission should take notice of the special use permit for the sand mining, which DeWitt Township issued after the record closed in this case.³

Discussion

After careful consideration of the complete record, the Commission is persuaded that the ALJ’s recommendation regarding the route of the pipeline should not be adopted.⁴ Rather, the Commission is persuaded that Consumers’ proposed route should be the route approved for the new pipeline.

Among the reasons given for his selection of the Turner Road route was the fact that it was “the shortest of the various proposals.” PFD, p. 25. This is literally true, but misleading and of virtually no consequence because an examination of Exhibit A-12, p. 4, a comparison of the four alternative routes, reveals that the difference in the length of the Turner Road route (10,000 feet) and the route preferred by Consumers (10,100 feet) is a mere 100 feet.

Another factor cited by the ALJ was his belief that the “construction cost [of the Turner Road route] will be marginally higher than the cost of Consumers’ Proposed Route.” PFD, p. 25. Again,

³Consumers does not explain why it did not seek to have the record reopened. Because the document is not part of the record, the Commission has not considered it.

⁴The Commission agrees with the result of the ALJ’s recommendation regarding the issue of whether the pipeline will serve the public convenience and necessity, but not his reasoning. The Commission notes that the ALJ extensively questioned the quality of the evidence on this issue despite the fact that all of the parties conceded the necessity of the tie-line.

the Commission finds this recommendation flawed. Exhibit A-13 compares estimates of the cost of construction of the four pipelines. Exhibit A-13 reveals that Consumers' estimate for the cost of the Turner Road route (\$3,562,000) is \$38,000 less than Consumers' preferred route (\$3,600,000). However, Richard J. Davis, a senior engineer in Consumers' gas transmission and storage engineering department, pointed out during his cross-examination that the construction cost estimate for the Turner Road route shown on Exhibit A-13 did not include the cost of removing and restoring Turner Road to its pre-construction condition, which would cost an additional \$1,000,000 to \$1,500,000. 2 Tr 233. Thus, the additional cost of the Turner Road route, which would be between 28% and 48% higher, is not as marginal as implied by the PFD.

As stressed by both Consumers and the Staff, the Turner Road route, while certainly buildable, is fraught with other problems. First, it is undisputed that construction of the pipeline within the Turner Road right-of-way will take longer than Consumers' preferred route and will require the road to be closed to through traffic for upwards of four months. 2 Tr 187. Second, the Turner Road route will affect more parcels (25) than Consumers' preferred route (15). Third, the Turner Road route will come within 100 feet of more homes (17) than Consumers' preferred route (3). Fourth, the Turner Road route will come within 50 feet of more homes (8) than Consumers' preferred route (1). Exhibit A-12, p. 4.

Further, the Commission chooses not to ignore the advice of Consumers and the Commission Staff with regard to the importance of locating the pipeline within a private right-of-way controlled by Consumers, as opposed to a public right-of-way over which Consumers has considerable less control. Mr. Davis testified that a significant danger to a pipeline is its susceptibility to third-party strikes (damage by underground contractors who might be allowed to excavate within the public right-of-way), which are more likely to occur in a public right-of-way than in a private right-of-

way. 2 Tr 184. The arguments made by both the Staff and Consumers persuade the Commission that the Turner Road alternative is the least desirable of the three routes supported by one of the parties.

Finally, the Commission finds that Consumers' proposed route is the most thoroughly examined alternative, which means that it is unlikely that Consumers will be surprised by discoveries that affect the construction and use of the pipeline. If constructed and operated as proposed, a pipeline along Consumers' proposed route will not pose a significant safety risk.

As for the East alternative that the Staff supports, the key disadvantages are its additional length and its higher cost of \$1,200,000 or 33% above the cost of the company's preferred route. Nevertheless, the Commission commends the Staff for its efforts to assist the Commission to resolve this difficult case. The Commission specifically appreciates the efforts of the Staff's witness, Donald J. Mazuchowski, who investigated several alternatives and presented a valuable, unbiased, and well reasoned proposal for the Commission's consideration.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1929 PA 9, as amended, MCL 483.101 *et seq.*; 1919 PA 419, as amended, MCL 460.51 *et seq.*; 1939 PA 3, as amended, MCL 460.1 *et seq.*; 1969 PA 165, as amended, MCL 483.151 *et seq.*; 1969 PA 306, as amended, MCL 24.201 *et seq.*; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 *et seq.*
- b. The application should be approved for construction of the project along the route proposed in Consumers' application.

THEREFORE, IT IS ORDERED that:

A. Consumers Energy Company is authorized to construct and operate the DeWitt Tie-Line as proposed in its application filed on February 4, 2005 and subject to the requirements of 1929 PA 9, as amended, MCL 483.101 *et seq.*

B. The map, route, and type of construction of the DeWitt Tie-Line as proposed by Consumers Energy Company are approved.

C. Within 60 days after construction, Consumers Energy Company shall file a completion report including pressure-test data and a map of the DeWitt Tie-Line as constructed.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark

Chairman

(S E A L)

/s/ Laura Chappelle

Commissioner

/s/ Monica Martinez

Commissioner

By its action of February 14, 2007.

/s/ Mary Jo Kunkle

Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

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By its action of February 14, 2007.

Its Executive Secretary