

**STATE OF NORTH DAKOTA**

**PUBLIC SERVICE COMMISSION**

**Plains Pipeline, LP  
Buford Expansion/McKenzie - Williams Counties  
Siting Application**

**Case No. PU-05-185**

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

November \_\_\_\_, 2005

**Appearances**

Commissioners Susan E. Wefald and Kevin Kramer.

Lawrence Bender, Attorney at Law, Pearce & Durick 314 East Thayer Avenue, Bismarck, North Dakota 58501, on behalf of the Applicant, Plains Pipeline, LP.

William W. Binek, Chief Counsel, Public Service Commission, 600 East Boulevard, Bismarck, North Dakota 58505, on behalf of the Public Service Commission.

Allen Hoberg, Administrative Law Judge and Director, Office of Administrative Hearings, 1701 N. 9 Street, Bismarck, ND 58501-1882, as Procedural Hearing Officer.

**Preliminary Statement**

On March 28, 2005, Plains Pipeline, LP (APlains@) filed a Letter of Intent with the Commission indicating that it planned to file applications for both a certificate of corridor compatibility and a route permit for the proposed transmission facilities.

On July 26, 2005, Plains filed a consolidated application for a waiver of procedures and times schedules, a certificate of corridor compatibility and a route permit authorizing construction of approximately 4.62 miles of 10-inch pipeline in McKenzie and Williams Counties, North Dakota, adjacent to its existing pipeline at the southwestern most portion of the Trenton Pipeline System in McKenzie County, North Dakota.

Plains requests that that Commission (1) waive the provisions of Chapter 49-22 of the North Dakota Century Code and Chapter 69-06 of the North Dakota Administrative Code which requires

separate filings of corridor and route applications, separate hearings on such applications, and certain time schedules on such applications; (2) not hold a public hearing on the waiver request, but publish a notice of opportunity for hearing; and (3) designate the corridor and route as requested.

On October 5, 2005, the Commission deemed the application complete and issued a Notice of Filing and Notice of Hearing, scheduling a public hearing for November 3, 2005 at 1 p.m. CST at the Williston City Hall, City Commission Meeting Room, 22 East Broadway, Williston, North Dakota. The notice identified the following issues to be considered:

1. Will the location, construction and operation of the proposed pipeline facilities produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Are the proposed pipeline facilities compatible with the environmental preservation and the efficient use of resources?
3. Will the proposed pipeline facilities locations 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.
4. Are the proposed pipeline facilities of such length, design, location, or purpose that they will produce minimal adverse effects so that procedures and time schedules may be waived?
5. Is it appropriate for the Commission to waive any procedures and time schedules as requested in the application?

A public hearing on Plains= Application was held as scheduled. On November 8, 2005, Plains filed supplemental information including (1) a schedule of permits and/or approvals which were necessary for this project and the status of these matters; and (2) a statement from a landowner whose property will be crossed by the pipeline indicating that the best time to install the pipeline would be in the autumn or winter.

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. Plains is a limited partnership organized and existing under the laws of the state of Texas with principal offices located at 333 Clay Street, Suite 1600, Houston, Texas 77002.
2. Plains is the owner and current operator of the Trenton Pipeline System which

consists of approximately 90 miles of pipeline and other facilities located in Richland County, Montana, and McKenzie and Williams Counties, North Dakota. Approximately 25 miles of the Trenton Pipeline System is located in North Dakota. The Trenton Pipeline System receives crude oil from numerous oil and gas well sites for transport to Enbridge Pipelines (North Dakota) LLC for transportation to various locations in the United States.

3. In its application, Plains proposed to construct and install approximately 4.62 miles of 10-inch diameter pipe. At the hearing, Plains requested that its application be amended, thereby modifying its proposed pipeline project from 4.62 miles to approximately 2.75 miles. As modified, the proposed new segment of pipe will connect to a segment of existing 10-inch diameter pipe at a point approximately 11 miles southwest of the city of Williston, North Dakota, in Section 30, Township 152 North, Range 104 West, McKenzie County, North Dakota, at the Montana/North Dakota border. The proposed new segment will terminate approximately 2.75 miles to the northeast in the Southwest Quarter (SW/4) of Section 16, Township 152 North, Range 104 West, Williams County, North Dakota, just south of the Fort Buford Historic Site. The pipe will be buried underground within or adjacent to existing Plains= right-of-way easements in McKenzie and Williams Counties, North Dakota.

4. The proposed expansion is referred to by Plains as the ABuford Expansion Project@ (“Project”) and is part of another expansion project currently under construction for the Trenton Pipeline System near Trenton Station (approximately 5 miles southwest of Williston), referred to by Plains as the ATrenton Expansion Project@. (ND PSC Case No. PU-05-184.) These two expansion projects compliment more extensive expansion projects which are ongoing in the state of Montana necessitated by increased oil and gas exploration activities in an area of Montana, near the city of Sidney commonly referred to as the ARichland County Bakken Field.@

5. The Project, as modified by Plains at hearing, will replace a 2.75 mile segment of existing 6-inch diameter pipe currently being used to transport crude oil from oil and gas wells located in Richland County, Montana, and McKenzie and Williams Counties, North Dakota, to Trenton Station. Existing pipe will be abandoned in place, unless the same is ordered to be removed by the North Dakota State Water Commission or the U.S. Department of Interior, Bureau of Reclamation.

6. The original estimated cost of the Project was approximately One Million Five Hundred Thousand and no/100 Dollars (\$1,500,000.00). The estimated cost of the modified Project is Seven Hundred Fifty Thousand Dollars (\$750,000.00).

7. Plains plans to commence construction immediately upon the issuance by the Commission of a Corridor Certificate and Route Permit for the Project. Plains estimates that construction of the Project will take approximately 60 days and has plans to have the new segment of pipeline in service on or before January 15, 2005. Once in service, the Project will facilitate the existing Trenton Pipeline System so as to allow an increase in capacity of the pipeline of approximately 23,000 BOPD. Current capacity of the Trenton Pipeline System is approximately

19,000 BOPD. Construction of the proposed Project (and other expansion projects) will result in additional increased capacity of the pipeline of approximately 23,000 BOPD, for a total flow rate of approximately 42,000 BOPD.

8. Chapter 69-06-08 of the North Dakota Administrative Code sets forth certain criteria to guide the Commission in evaluating the suitability of granting an application for a certificate of corridor compatibility and route permit. The criteria as set forth in Section 69-06-08-02 of North Dakota Administrative Code is classified as Exclusion Areas, Avoidance Areas, Selection Criteria and Policy Criteria. A transmission facility route shall not be sited within an Exclusion Area. A transmission facility route shall not be sited within an Avoidance Area unless the applicant shows 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 routes. In accordance with the Commission=s Selection Criteria, a transmission route shall be approved if it is demonstrated that no significant adverse impacts will result from the location, construction and maintenance of the transmission facility. In accordance with the Commission=s Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the transmission facility.

9. The modified location and route designated by Plains for the Project does not include any geographical areas listed as an Exclusion Area under Section 69-06-08-02(1) of the North Dakota Administrative Code.

10. As part of this Project and the Trenton Expansion Project (Case No. PU-05-184), Plains completed an extensive cultural resources review in coordination with the North Dakota State Historical Society.

11. The location and route designated by Plains for its proposed Project does not include any geographical areas listed as an Avoidance Area; except the route does cross irrigated land. However, because Plains intends to utilize directional technology to cross the irrigation ditches, there will be no significant impact to these avoidance areas.

12. The state departments and agencies which have permit or regulatory approval authority relating to the construction and operation of the proposed facility include the Commission, the North Dakota State Historical Society State Historic Preservation Office, the North Dakota Department of Transportation, North Dakota Department of Health, North Dakota Game & Fish Department, and North Dakota State Water Commission.

13. The federal departments and agencies which have permit or regulatory approval authority relating to the construction and operation of the proposed facility include the U.S. Fish & Wildlife Service, U.S. Army Corps of Engineers, and U.S. Department of Interior, Bureau of Reclamation.

14. At hearing, Plains witnesses testified that all the governmental agency permits and approvals that must be obtained for the Project have been obtained.

15. All construction, testing, and operation of the pipeline will conform to the U.S. Department of Transportation's minimum pipeline safety requirements as outlined in Title 49 of the Code of Federal Regulations.

16. Any adverse affects produced by the construction and operation of the proposed pipeline will be minimized by utilizing portions of the existing pipeline right way. The pipeline will cross the Missouri River and some irrigated lands. Because Plains intends to utilize directional drilling technology to cross the Missouri River and irrigation ditches, the Project is not anticipated to impact these lands.

17. The proposed corridor between the point of origin (Section 30, Township 152 North, Range 104 West) and the point of termination (Section 16, Township 152 North, Range 104 West) was evaluated for the exclusion, avoidance, and selection criteria. Based on the analysis of the corridor, it was determined that the route selected by Plains was the best location for the proposed Project.

18. Plains submitted substantial evidence to demonstrate that the proposed Project would not have any significant impact on the Selection Criteria set forth in Section 69-06-08-01(3) of the North Dakota Century Code.

19. Plains submitted substantial evidence to demonstrate its commitment to maximize the benefits of the proposed Project as far as is possible to meet the Policy Criteria set forth in Section 69-06-08-01(4) of the North Dakota Century Code.

20. The route for the Project is located within a highly rural area. There is no information to indicate that any new residential construction is contemplated within the corridor or route.

21. Except for the Missouri River, the route for the Project crosses areas that are primarily agricultural land.

22. The Project is not anticipated to result in any negative impacts to public services such as local services, electric service, roads, traffic, water supply or telephone and other communication services.

23. No impact to the recreational resources in the area of the proposed corridor and route are anticipated by the proposed Project.

24. Land use is not expected to change as a result of construction of the proposed Project. Another pipeline is already present within portions of the corridor. The area above or adjacent to the Project will still be used for agricultural practices following construction of the pipeline.

25. No impact to geologic and groundwater resources are anticipated as a result of the proposed Project.

26. Temporary impacts to vegetation will occur in the right of way area during construction of the pipeline.

27. Raptors, waterfowl and other bird species will not be affected by the construction and placement of the proposed pipeline.

28. It is not anticipated that the proposed pipeline will impact rare and unique resources.

29. Section 49-22-07.2 of the North Dakota Century Code authorizes the Commission to waive procedures, time schedules, and public hearings otherwise required by the Siting Act, when the Commission finds that a proposed facility is of such length, design, location or purpose that it will produce minimal adverse affects.

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

### **Conclusions of Law**

1. The Commission has jurisdiction over this proceeding under Chapter 49-22 of the North Dakota Century Code.

2. The pipeline proposed by Plains is a transmission facility as defined in Section 49-22-03(11) of the North Dakota Century Code.

3. The proposed project is of such design, location and purpose that it will produce minimal adverse effects, as defined under Section 49-22-07.2 of the North Dakota Century Code.

4. The Application submitted by Plains meets the corridor and route evaluation criteria required by Chapter 49-22 of the North Dakota Century Code.

5. The location, construction, and operation of the proposed pipeline will produce only minimal adverse effects of the environment and upon the welfare of the citizens of North Dakota.

6. The proposed pipeline is compatible with the environmental preservation and the efficient use of resources.

7. The proposed pipeline corridor and route 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.

8. The proposed pipeline is of such length, design, location and purpose that it will produce minimal adverse effects so that adherence to procedures and time schedules is unnecessary.

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

### **Order**

The Commission orders:

1. Plains= application for a waiver of procedures and time schedules is granted.
2. Certificate of Compatibility for a Transmission Facility Corridor No. \_\_\_ is issued to Plains, designating a Corridor for its proposed transmission facility route as shown on Exhibit \_\_\_\_\_ presented by Plains at hearing.
3. Route Permit for Construction of a Transmission Facility No. \_\_\_ is issued to Plains granting authority to construct the pipeline at the location shown on Exhibit \_\_\_\_\_ presented by Plains at hearing.
4. Plains shall conduct a preconstruction conference prior to commencement of any construction, and must include a Plains representative, its construction supervisor, and a representative of Commission staff to ensure that Plains fully understands the conditions set forth in this order.
5. Plains shall comply with the rules and regulations of all other agencies having jurisdiction over any phase of the proposed transmission facility, and shall obtain all other necessary approvals and permits, and shall provide copies of all approvals and permits to the Commission prior to the construction of the pipeline.
6. Plains shall inform the Commission of its intent to start construction on the pipeline prior to the commencement of construction, and, once construction has started, Plains shall keep the Commission updated of construction activities on a monthly basis.
7. Plains shall construct and operate the pipeline in the manner described in its Application and at the hearing, and in accordance with all applicable safety requirements.
8. Plains shall promptly report to the Commission the presence in the permit area of any critical habitat of threatened or endangered species, or of bald or golden eagles that Plains becomes aware of and that were not previously reported to the Commission.

9. If any cultural resources or gravesites are discovered during construction of the facility, earth disturbing activities in the immediate vicinity of the discovery would be halted. The resources will be marked, preserved and protected from any further disturbance until a professional examination can be made in consultation with the North Dakota State Historical and Preservation Office (ASHPO@) and clearance to proceed is given by SHPO. A report of such examination will be filed with the SHPO and the Commission.

10. Construction must be suspended when weather conditions are such that construction activities will cause irreparable damage, unless adequate protection measures approved by the Commission are taken.

11. Reclamation along the right-of-way shall be continuous and coordinated with construction.

12. Reclamation, fertilization and reseedling is to be done by Plains according to the Natural Resource Conservation Service and U.S. Fish and Wildlife Service recommendations for CRP, native prairie and other non-cropped lands unless otherwise specified by the landowner and approved by the Commission.

13. Plains= obligation for reclamation and maintenance of the right-of-way shall continue throughout the life of the transmission line.

14. Trees or other woody vegetation must be replaced with saplings that are two or more years old at a rate of two for every one removed. Landowners shall be given the option of having replacement trees/shrubs planted off the right-of-way on the landowner=s property or waiving that requirement in writing and allowing Plains to plant the replacement trees/shrubs elsewhere. Plains shall inspect tree replacements once a year for three years and send a report on or shortly before December 31<sup>st</sup> of each year to the Commission documenting work completion and condition of woodlands planting. The Commission may order additional plantings if survival rates are less than 75%.

15. Plains shall repair or replace all fences and gates removed or damaged during all phases construction and operation of the proposed transmission facility.

16. Plains shall provide the Commission with a copy of the design specifications for construction of the pipeline showing the location of the pipeline as built.

17. The Certificate of Compatibility for a Transmission Corridor No. \_\_\_\_\_ and Route Permit for Construction of a Transmission Facility No. \_\_\_\_\_ shall be effective for the life of the project but is subject to modification by order of the Commission if deemed necessary to further protect the public or the environment.

**PUBLIC SERVICE COMMISSION**

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**Susan E. Wefald**  
Commissioner

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**Tony Clark**  
President

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**Kevin Kramer**  
Commissioner