

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Plains Pipeline, L.P.**  
**Buford Expansion/McKenzie - Williams Cty**  
**Siting Application**

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

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

**November 22, 2005**

**Appearances**

Commissioners Susan E. Wefald, and Kevin Cramer.

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 North 9th Street, Bismarck, ND 58501-1882, as Procedural Hearing Officer.

**Preliminary Statement**

On March 28, 2005, Plains Pipeline, LP (Plains) 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 to construct certain crude oil pipeline facilities. On April 6, 2005 the Commission acknowledged Plains' Letter of Intent. On May 24, 2005 the Commission assessed a filing fee of \$7,500 due upon filing of the application.

On July 26, 2005 Plains filed a consolidated application for certificate of corridor compatibility, application for route permit, and request for waiver of procedures and time schedules. Plains proposed to construct 4.62 miles of 10-inch pipeline in McKenzie and Williams Counties, North Dakota, adjacent to its existing pipeline southeast of the city of Buford, North Dakota and connected to its existing Trenton Pipeline System.

Plains requests that the 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 require 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 its 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 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?
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?

The hearing on Plains' application was held as scheduled.

On September 7, 2005 Plains filed a copy of a September 2, 2005 letter from the State Historical Society of North Dakota concurring that no historical properties are affected by the Project as proposed, provided the Project avoids impacts to sites by using the proposed directional drilling method.

On September 14, 2005 Plains filed supplemental information including 1) an August 2005 addendum to its Class III cultural resource inventory, 2) a copy of an August 26, 2005 letter stating that the North Dakota Game and Fish Department does not believe the Project as proposed will have any significant adverse effects on wildlife or wildlife habitat, and 3) a copy of a September 1, 2005 acknowledgement by the U.S. Fish and Wildlife Service that the Project as described will have no significant impact on fish or wildlife resources and that no endangered or threatened species are known to occupy the Project area.

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 liability 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 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. Plains proposed to construct and install approximately 4.62 miles of 10-inch diameter pipe. At the hearing, Plains requested an amendment to its application that modifies the project from 4.62 miles to approximately 2.75 miles. As proposed in the original application and the amended application, the project would connect to a segment of existing 10-inch diameter pipe at a point approximately 11 miles southwest of the city of Williston in Section 30, Township 152 North, Range 104 West, McKenzie County, at the Montana/North Dakota border. Under the amended application, the project would terminate approximately 2.75 miles to the northeast in the Southwest Quarter of Section 16, Township 152 North, Range 104 West, Williams County, just south of the Fort Buford Historic Site. The pipe will be buried within or adjacent to Plains' existing right-of-way easements in McKenzie and Williams Counties.
4. The proposed expansion is referred to by Plains as the "Buford Expansion Project" (Project). The original estimated cost of the Project was 1.5 million. The estimated cost of the modified Project is \$750,000.
5. The Project complements other expansion projects on the Trenton Pipeline System necessitated by increased oil and gas exploration activities in an area of Montana, near the city of Sidney commonly referred to as the Richland County Bakken Field. Current capacity of the Trenton Pipeline System is approximately 19,000 BOPD. The Project will facilitate an increase in system capacity of approximately 23,000 BOPD.

6. The Project as modified will replace a 2.75 mile segment of existing 6-inch diameter pipe and a segment of dual 4-inch diameter pipe. Existing pipes will be abandoned in-place, unless the replaced pipe is ordered to be removed by the North Dakota State Water Commission or the U.S. Department of Interior, Bureau of Reclamation.

7. Plains plans to begin construction soon after the issuance by the Commission of a corridor certificate and route permit. Plains estimates Project construction will be 60 days.

8. North Dakota Administrative Code Chapter 69-06-08, 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 North Dakota Administrative Code Section 69-06-08-02, are 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 Section 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 area listed as an exclusion area under North Dakota Administrative Code Section 69-06-08-02(1).

10. The location and route proposed by Plains for the Project does not include any geographical area listed as an avoidance area under North Dakota Administrative Code Section 69-06-08-02(2); except that the route does cross irrigated land. Plains will utilize directional drilling technology to cross under the irrigation ditches.

11. Plains consulted with the North Dakota Game and Fish Department, the U.S. Fish and Wildlife Service, and other regulatory agencies. None of these agencies have indicated an objection to the Project.

12. At the hearing, Plains testified that it had conducted a Class I cultural resource study for a corridor approximately 2 miles wide, one mile each side of the proposed modified route. Plains' Class I survey consisted of a study of cultural resource documents and data available at the North Dakota State Historical Society. Plains also conducted a Class III cultural resource inventory on a corridor width of 200 feet, except that a 300 foot wide corridor was surveyed for 0.25 miles on each side of the Missouri

River. Plains' Class III survey consisted of a more intensive survey performed by driving the route and walking suspicious spots. The cultural resource study revealed the presence of several historic properties. The State Historic Preservation Officer concluded that no historic properties would be affected provided the Project avoids impacts to the sites by using directional drilling technique.

13. 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.

14. The federal departments or 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.

15. Plains witnesses testified that all the governmental agency permits and approvals that must be obtained for the Project have been obtained.

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

17. No rare or unique resources have been identified in the route. It is not anticipated that the proposed pipeline will impact rare and unique resources.

18. Plains submitted evidence to demonstrate that the Project will have no significant impact on the Selection Criteria set forth in North Dakota Administrative Code Section 69-06-08-01(3).

19. Construction and operation of the proposed pipeline will utilize portions of the existing pipeline right-of-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.

20. Except for the Missouri River, the route for the proposed Project crosses areas that are primarily agricultural land. Land use is not expected to change as a result of construction of the 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.

21. No impact to geologic and groundwater resources is anticipated as a result of the Project.

22. Temporary impacts to vegetation will occur in the right-of-way area during construction of the pipeline.
23. Raptors, waterfowl and other bird species will not be affected by the construction and placement of the proposed pipeline.
24. Plains submitted 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 North Dakota Administrative Code Section 69-06-08-01(4).
25. 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.
26. 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.
27. 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.
28. The proposed Project route was evaluated for the exclusion, avoidance, selection and policy criteria. Based on this analysis, the Commission believes the proposed route is the best location for the Project.
29. North Dakota Century Code Section 49-22-07.2 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 the applicant, Plains, and over the subject matter of this application under North Dakota Century Code Chapter 49-22.
2. Plains is a utility as defined in North Dakota Century Code Section 49-22-03(13).
3. The pipeline proposed by Plains is a transmission facility as defined in North Dakota Century Code Section 49-22-03(12).
4. The location, construction, and operation of the proposed pipeline will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.

5. The proposed corridor and route are compatible with the environmental preservation and the efficient use of resources.
6. 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.
7. The proposed Project is of such design and location that it will produce minimal adverse effects, as defined under North Dakota Century Code Section 49-22-07.2.

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

### **Order**

The Commission orders:

1. Plains Pipeline, L.P.'s application for a waiver of procedures and time schedules is granted.
2. Certificate of Compatibility for a Transmission Facility Corridor No. 91 is issued to Plains Pipeline, L.P., designating a Corridor for its proposed transmission facility route.
3. Route Permit for Construction of a Transmission Facility No. 101 is issued to Plains Pipeline, L.P. granting authority to construct the pipeline. Plains must obtain approval from the Commission or Commission Staff prior to any changes in the pipeline route.
4. The Certificate of Compatibility for a Transmission Corridor No. 91 and Route Permit for Construction of a Transmission Facility No. 101 shall be effective for the life of the Project but are subject to modification by order of the Commission if deemed necessary to further protect the public or the environment.
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. 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.

7. Once construction has started, Plains shall keep the Commission updated of construction activities on a weekly basis.
8. Plains shall construct and operate the pipeline in the manner described in the application and at the hearing, and in accordance with all applicable safety requirements.
9. The pipeline shall be buried to a minimum depth from the ground surface to the top of the pipe of 48 inches in rangeland, 48 inches for cultivated land, 48 inches at the bottom of the ditch for road crossings, and 72 inches across undeveloped section lines.
10. All crossings of graded roads shall be bored unless the responsible governing agency specifically permits Plains to open cut the road.
11. The width of the clear cuts through any wooded areas and shelterbelts shall be kept at a maximum of 50 feet where possible.
12. 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.
13. 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.
14. If any cultural resource, paleontological resource, archeological resource, historical resource, or gravesite is discovered during construction of the facility, earth disturbing activities in the immediate vicinity of the discovery must be halted. The resource must 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 (SHPO). A report of such examination will be filed with the SHPO and the Commission. Clearance to proceed must be given by the SHPO and the Commission.
15. During construction, topsoil will be stripped and stockpiled separately of subsoil. Any area on which excavated subsoil will be placed will also be stripped of topsoil. After backfilling is completed, any excess subsoil will be placed over the excavation area, blending the grade into existing topography. Topsoil will then be replaced over areas from which it was stripped.
16. Reclamation along the right-of-way shall be continuous and coordinated with construction.
17. All pre-existing roads and lanes used during construction shall be restored to a condition that will accommodate their previous use, and areas used as temporary roads during construction shall be restored to their original condition.

18. Reclamation, fertilization and reseeding is to be done by Plains according to the Natural Resource Conservation Service unless otherwise specified by the landowner and approved by the Commission.

19. 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. All effected trees and shrubs will be quantified before construction activity. Plains will record, and file with the Commission, the numbers and types of replacement trees and shrubs planted, the specific planting area(s) and the date of the plantings. Plains shall inspect tree replacements once a year for three years, on the anniversary of the plantings, and send a report on or shortly before October 1 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%.

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

21. 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, and will provide this information within 3 months of the completion of the construction.

22. Plains' obligation for reclamation and maintenance of the right-of-way shall continue throughout the life of the pipeline.

### PUBLIC SERVICE COMMISSION

  
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**Susan E. Wefald**  
Commissioner

  
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**Tony Clark**  
President

  
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**Kevin Cramer**  
Commissioner