



**Three Affiliated Tribes**  
**MANDAN ★ HIDATSA ★ ARIKARA**

*Office of the Chairman*  
 Marcus D. Levings, "Eh-Bah-Dah-Gish"  
 (Bald Eagle)

## THREE AFFILIATED TRIBES

Mandan, Hidatsa & Arikara · Fort Berthold Reservation  
 404 Frontage Road · New Town, North Dakota 58763-9402  
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**In the Matter of the Application of Saddle Butte Pipeline LLC,  
 for a Certificate of Public Convenience and Necessity for its  
 Saddle Butte Natural Gas and Crude Oil Gathering System  
 located in McKenzie and Dunn Counties, North Dakota.**

**Case No. PU-08-923**

February 9, 2009

Mr. Darrell Nitschke  
 Executive Secretary  
 North Dakota Public Service Commission  
 600 E. Boulevard, Department 408  
 Bismarck, ND 58505  
*BY FEDERAL EXPRESS AND FACSIMILE 701-328-2410*

**RE: Three Affiliated Tribes Comments and Request for Formal Hearing on Saddle Butte Pipeline LLC's Application (PU-08-923) for Certificate of Public Convenience and Necessity a Natural Gas and Crude Oil Gathering System located in McKenzie and Dunn Counties, North Dakota.**

The Three Affiliated Tribes ("Tribes") formally submits the following comments in response to the Notice of Opportunity for Hearing on the Saddle Butte Pipeline LLC application for a Certificate of Public Convenience and Necessity. The Tribes' in conjunction with the brief comments provided here also request a formal hearing on this matter be held before the Public Service Commission.

The Tribal Business Council, as the governing body of the Fort Berthold Reservation have worked diligently to aid the oil industry and the collective interests of all mineral interest owners in an effort to promote the exploration of oil and gas within the Reservation. This has included engaging interested parties to develop gathering systems in all parts of the Reservation. However, as the governmental authority within the exterior boundaries of the Fort Berthold Reservation, it is also necessary to fully review and vet any and all proposed projects that intend to take transport and market the trust minerals of the Tribe and the Fort Berthold allottees.

The Tribal Business Council goes on record to state that it does not oppose any single company or pipeline project provided it provides the most economical and cost effective method of transporting oil and gas from the reservation while bringing the most value to the mineral interest owners. What is most important to the Tribes is that any company intending to construct and operate any such system within the

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 Comments and Request for Hearing on Application  
 for Certificate of Public Convenience & Necessity

Three Affiliated Tribes

Marcus D. Levings, Chairman

Fort Berthold Reservation provide sufficient information and receive the proper licenses and certificates from all necessary agencies, whether state, federal or tribal. Further, for those companies intending to operate within our exterior boundaries to not attempt, whether intentional or inadvertent to circumvent the Three Affiliated Tribes and its laws and regulations in its pursuit of any project.

#### **Fitness and Ability of Saddle Butte LLC to Provide Service.**

The Tribes, as the governing authority within the Fort Berthold Reservation have had little to no meaningful communications as to the intentions of Saddle Butte and its proposed pipeline project. Representatives of Saddle Butte have met with the Tribal Business Council and various staff to inform the Tribes of the project but have thus far provided little detail on relevant issues including but not limited to its financing, management and overall fitness and ability to provide such services.

According to its Application, Saddle Butte intends to construct a complex gathering and transportation system on the Fort Berthold Reservation. However, any proposed pipeline or gathering system that is to be sited on the Fort Berthold Reservation should be firmly vetted before all necessary agencies including tribal, state and federal. The Tribes' take the position that Saddle Butte's application is premature and is insufficient in detail and scope to warrant any action by the PSC at this time.

#### **Legal Effect of the PSC's issuance of a Certificate of Public Convenience and Necessity.**

The Saddle Butte application states the proposed pipeline project intends to gather and transport natural gas, crude oil and water into a single pipeline for transport to off-reservation sites. The majority of the constituents originate from allottee and tribal lands within the Fort Berthold Reservation. Based upon statements made by Saddle Butte, the proposed project intends to utilize state and Bureau of Indian Affairs ("BIA) highway right-of-ways ("ROWS") as the conduit into which the proposed pipeline is to be laid. While the Tribes acknowledge that the State of North Dakota has the authority to authorize such use within its existing ROWs, it finds no support that such authority also extends to the BIA ROWs.

Therefore, until the authority to utilize the federal ROWs is settled, it seems unlikely that the PSC can issue any Certificate of Public Convenience and Necessity over a pipeline project without fully vetting the complex multi-jurisdictional legal issues that such a designation must overcome. Any premature certification by the PSC will unduly harm all affected mineral interest owners by subjecting them to the ability and fitness of a thus far unproved and unvetted company.

#### **Inaccurate Information of Saddle Butte's Application**

The Tribes take issue with some of the statements provided in Saddle Butte's application that are inaccurate or attempt to mislead the PSC. The Tribes agree that there is a need for pipeline and gathering systems to improve the transportation issues that have thus far hindered the exploration and production of oil and gas on the Fort Berthold Reservation. The Tribes have determined that the Reservation is in need of gathering systems in all areas of the Reservation to improve the economics of oil and gas production.

However, at no time did the Tribes approach or engage in any meaningful discussions with Saddle Butte regarding the issues facing the Tribes and the Fort Berthold Reservation. In fact, it would appear the Saddle Butte may be attempting to completely circumvent the Tribes in making its preparations to construct and manage such a system within our boundaries.

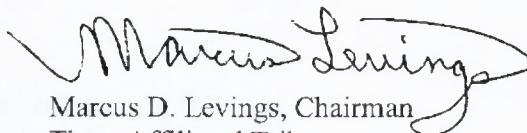
Finally, the Tribes take issue with the Saddle Butte's assertion that there are no other similar projects being planned within the Reservation. Tribal representatives' informed Saddle Butte directly in October 2008 that the Tribes had been approached by several other proposals to provide similar gathering and pipeline systems. In fact, the Tribes' have approved a competing project and have taken a financial interest in said project – Arrow Pipeline LLC, a project that Saddle Butte is and has been fully aware of for some time. It would appear that Saddle Butte is attempting to get the PSC's certification of public convenience and necessity in an attempt to eliminate any competition it may have on the Reservation to provide said services, despite a clear lack of information whether Saddle Butte has the necessary abilities and resources to undertake such a project.

**Conclusion**

The Three Affiliated Tribes has continually worked to eliminate the administrative and physical barriers that exist to deter the production of oil and gas on the Fort Berthold Reservation. The Tribal Business Council took the aggressive step to seek out and locate potential partners to reduce and eliminate the transportation problems that have plagued the mineral interest owners on the Reservation. The only goal in this pursuit is to find the most qualified and secure project that will provide the most economic benefit to the mineral interest owners and the various oil companies who now have a stake in the development of the Fort Berthold Reservation.

The Three Affiliated Tribes strongly request that the Public Service Commission hold a formal hearing on this application and to fully review and investigate any application that comes before the body. This is absolutely necessary to ensure that any pipeline project on the Fort Berthold Reservation is not only qualified under the rules of the Commission, but also takes complete and necessary acknowledgement of the multi-jurisdictional legal and regulatory scheme it intends to operate under.

Sincerely,



Marcus D. Levings, Chairman  
Three Affiliated Tribes

CC: Tribal Business Council  
Tribal Energy Department  
File

Three Affiliated Tribes  
Mandan, Hidatsa, and Arikara Nation

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PUBLIC SERVICE COMMISSION

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