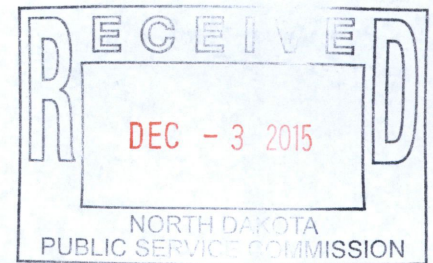


STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



Sacagawea Pipeline Company, LLC
16-inch Crude Oil Pipeline – McKenzie & Mountrail
Siting Application

Case No. PU-15-114

[PROPOSED] FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

December ____, 2015

Appearances

Commissioners Julie Fedorchak, Randy Christmann, and Brian P. Kalk.

Lawrence Bender and Danielle Krause, Attorneys at Law, Fredrikson & Byron, P.A., 1133 College Drive, Suite 1000, Bismarck, North Dakota 58501, on behalf of Sacagawea Pipeline Company, LLC.

Zachary E. Pelham, Special Assistant Attorney General, Legal Counsel for Public Service Commission, 314 E. Thayer Avenue, Bismarck, North Dakota 58502.

Kevin Pranis, 81 East Little Canada Road, St. Paul, Minnesota 55117, appearing on behalf of Intervenor, Laborers' District Council of Minnesota and North Dakota.

Wade Mann, Administrative Law Judge, Office of Administrative Hearings, 2911 N. 14th St., Ste. 303, Bismarck, North Dakota 58503.

Preliminary Statement

On March 16, 2015, Sacagawea Pipeline Company, LLC ("Sacagawea"), filed with the North Dakota Public Service Commission ("Commission") a consolidated application for a Certificate of Corridor Compatibility and Route Permit ("Application") for an approximately 70-mile, 16-inch crude oil pipeline and associated facilities in McKenzie and Mountrail Counties, North Dakota (the "Project"). The Project will transport crude oil from the Paradigm Midstream Services Keene Crude Oil Terminal near Keene, North Dakota, located in McKenzie County, and will terminate at the Phillips 66 Partners Palermo Rail Terminal Facility, located west of Palermo in Mountrail County.

In connection with the Application, on March 17, 2015, Sacagawea filed an application for waiver of procedures and time schedules established under North Dakota Century Code sections 49-22-07.2, 49-22-08, 49-22-08.1, 49-22-13, and North Dakota Administrative Code chapter 69-06-06 and section 69-06-01-02, requiring separate filings and applications for a certificate of corridor compatibility and a route permit, separate notice of such applications, separate hearings on such applications, and certain time schedules.

On May 18, 2015, the Laborers' District Council of Minnesota and North Dakota, an affiliate of the Laborers' International Union of North America, filed a Petition for Intervention. Sacagawea did not oppose the Petition for Intervention and Commission Advocacy Staff did not take a position on the petition. Administrative Law Judge Mann granted the Petition for Intervention on July 23, 2015, allowing the Laborers' District Council of Minnesota and North Dakota to appear as an intervenor in this matter.

On June 17, 2015, the Commission deemed Sacagawea's Application complete and issued a Notice of Filings and Notice of Hearing scheduling a hearing for August 21, 2015, at 9:00 a.m. CST at the Mountrail County South Complex Building, 8103 61st Street NW, Stanley, North Dakota 58784.

On June 29, 2015, Sacagawea filed with the Commission an Amendment of Application for Route Permit. In connection with the Amendment of Application for Route Permit, Sacagawea filed a motion to amend the Consolidated Application on July 21, 2015.

On July 23, 2015, the Commission issued a Notice of Amended Filings and Public Hearing.

The Notice of Amended Filings and Public Hearing identified the following issues to be considered with respect to the application for waiver of procedures and time schedules:

1. Are the proposed facilities of such length, design, location, or purpose that they will produce minimal adverse effects and that adherence to applicable procedures and time schedules may be waived?
2. Is it appropriate for the Commission to waive any procedures and time schedules as requested in the application?

The Notice of Amended Filings and Public Hearing identified the following issues to be considered with respect to the Amended Application:

1. Will the location and operation of the proposed facilities produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?
3. Will the proposed facility 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?

On August 21, 2015, the hearing was held as scheduled.

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. Under North Dakota Century Code Section 49-22-07, a utility may not begin construction of a transmission facility in the state without first having obtained a route permit. The facility must be constructed, operated, and maintained in conformity with the permit and any conditions, or modifications of the permit.
2. Sacagawea is a Delaware limited liability company. Sacagawea is a joint venture between Paradigm Energy Partners, LLC, Grey Wolf Midstream, LLC, and Phillips 66. Sacagawea has been authorized to do business in the State of North Dakota since June 2, 2015, as evidenced by the corporate papers filed with the Commission on June 8, 2015, in Case No. PU-15-115.

Need for the Facility

3. Sacagawea concluded there is a need for the Project because the recent and significant increase in oil extraction has outpaced efficient transportation methods. The construction of additional transmission pipelines would have a positive effect on efficient transportation of crude oil and would relieve some of the impacts resulting from trucking the crude oil.
4. Specifically, the Project is needed to address transportation of growing volumes of crude oil from the Bakken Formation to refining centers on the East Coast, Mid-Continent, and West Coast.

Size, Type, and Preferred Location of Facility

5. The Project will consist of approximately 70 miles of pipeline located in McKenzie and Mountrail Counties. The Project will originate at the Keene Crude Oil Terminal, located approximately 2.5 miles south of Keene, North Dakota, in McKenzie County and run to the Palermo Rail Terminal Facility, located west of Palermo, North Dakota, in Mountrail County.
6. The Project crosses lands located on the Fort Berthold Indian Reservation. The Three Affiliated Tribes of the Fort Berthold Indian Reservation, through its partial ownership of Grey Wolf Midstream, LLC, has an interest in and approves of the Project. Appropriate authorization to cross said lands will be received prior to construction from the Bureau of Indian Affairs, the Tribe, or from individual landowners, as applicable.
7. The proposed pipe will have a 16-inch outside diameter and wall thickness of 0.312-inches for line pipe, 0.375-inches for bore pipe, and 0.500-inches for lake bore pipe.
8. The maximum operating pressure of the pipeline will be 1,440 pounds per square inch. The maximum design flow rate of the Project will be 200,000 barrels of oil per day.
9. Above-ground facilities will consist of 9 mainline block valves and 2 mainline check valves. In response to a request by the Commission, Sacagawea will add an additional block valve, so long as Sacagawea can obtain an agreement with a landowner to install the block valve on their property. *See* Late-Filed Exhibit 16.

10. The total cost of the Project is estimated to be \$125 million.

Study of Preferred Location

11. Sacagawea conducted a Class I cultural resource literature search on a one-mile-wide study area centered on the proposed pipeline route from the Keene Crude Oil Terminal to the Palermo Rail Terminal Facility.

12. A Class III intensive pedestrian survey was conducted of a 200-foot-wide survey corridor centered on the proposed pipeline route.

13. Field surveys were conducted of a 200-foot-wide survey corridor to inventory any potential resource issues such as wetlands, water bodies, protected species, critical habitats, and/or cultural resources. Additionally, environmental data collected included information on soils, land use, wetlands and waterbody crossings, noxious weeds, trees, saplings, and shrubs, and protected species and habitats.

14. The following agencies were contacted by Sacagawea regarding the Project, pursuant to North Dakota Administrative Code § 69-06-01-05, to which comments were received: the United States Fish and Wildlife Service (“USFWS”), the North Dakota Game and Fish Department (“NDGFD”), the North Dakota Parks and Recreation Department (“NDPRD”), the North Dakota Department of Trust Lands, the North Dakota State Historical Preservation Office (“SHPO”), the United States Air Force Cable Affairs Division (“USAF”), and the North Dakota Department of Health (“NDDoH”).

15. In responses dated November 6, 2014 and March 6, 2015, the Department of Trust Lands, Mineral Management Division, agreed with the approximate location of the Project and the proximity of mineral interests to the Project.

16. In a response dated December 18, 2014, the Department of Trust Lands indicated that no North Dakota School Trust land is involved in the Project.

17. In responses dated November 12, 2014 and January 15, 2015, the NDGFD indicated that the Project should not have any significant adverse effects on wildlife or wildlife habitat, including species of conservation priority, provided the recommendations of the NDGFD are implemented where appropriate.

18. In a response dated November 14, 2014, the NDPRD indicated that the Project will not affect state park lands managed by the NDPRD or Land and Water Conservation Fund recreation projects coordinated by the NDPRD.

19. In a response dated July 7, 2015, the NDDoH indicated that the proposed construction for the Project will be minor and can be controlled by proper construction methods.

20. In a response dated August 10, 2015, the USFWS concurred with the findings in the Biological Assessment submitted to the USFWS by Sacagawea with respect to effects to certain endangered and threatened species.

21. Sacagawea initiated consultation with the USAF seeking comments regarding any potential concerns for the Project. In a response dated September 1, 2015, the USAF noted the Project falls outside the one thousand two hundred (1,200) foot restrictive easement of the USAF. Additional e-mail correspondence between Sacagawea and the USAF occurred in November of 2015 regarding the Project, wherein the USAF set forth various requirements to be implemented for the Project.

22. The SHPO has concurred with the determination that no historic properties or significant sites will be affected by the Project, so long as the Project remains of the nature and in the location described in the Class III Cultural Resource Inventory Report and that measures be taken as outlined by the SHPO.

Siting Criteria

23. The Commission has established criteria pursuant to North Dakota Century Code Section 49-22-05.1 to guide the Commission in evaluating the suitability of granting 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.

24. Sacagawea evaluated the Project for the Exclusion, Avoidance, Selection, and Policy Criteria of the Commission.

25. Exclusion Areas must be excluded in the consideration of a route for a transmission facility. Exclusion Areas may be located within a corridor, but at no given point may such an Exclusion Area encompass more than fifty (50) percent of a corridor width unless there is no reasonable alternative. A buffer zone of a reasonable width to protect the integrity of an Exclusion Area must be included in the siting of the transmission facility.

26. Cultural resources are present within the survey corridor, but the route will avoid or mitigate impacts to the cultural resources in accordance with the SHPO's recommendations. In order to mitigate impacts in some areas, Sacagawea modified the route to maintain a fifty (50) foot buffer, which the SHPO has agreed will fully mitigate any potential impacts. A fifty (50) foot buffer will be utilized when possible. If such buffer is not possible, fencing and monitoring will be utilized. In addition, Sacagawea will bore underneath any sites recommended be avoided by boring, thereby avoiding any potential impacts. As noted, the SHPO has concurred with the determination that no historic properties or significant sites will be affected by the Project, so long as the Project remains of the nature and in the location described in the Class III Cultural Resource Inventory Report and that measures be taken as outlined by the SHPO.

27. Based on the siting criteria analysis undertaken by Sacagawea, areas within thirty (30) feet on either side of a direct line between an intercontinental ballistic missile ("ICBM") launch or launch control facilities are present within the survey corridor and appear to be crossed by the

route in three areas, but the route will avoid or mitigate impacts to this Exclusion Area by utilization of an acceptable buffer zone by Sacagawea. As noted, Sacagawea consulted with the USAF seeking comments regarding any concerns for the Project. The two Exclusion Areas specific to the interests of the USAF are areas within one thousand two hundred (1,200) feet of the geographic center of an ICBM launch or launch control facility and areas within thirty (30) feet on either side of a direct line between ICBM launch or launch control facilities to avoid microwave interference. In a response dated September 1, 2015, the USAF noted the Project falls outside the one thousand two hundred (1,200) foot restrictive easement relating to the Exclusion Areas, with no other comments or concerns noted or action requested.

28. Because of concerns raised by the Commission, Sacagawea initiated further consultation in November of 2015 with the USAF regarding areas within thirty (30) feet on either side of a direct line between ICBM launch or launch control facilities to avoid microwave interference. The USAF requested confirmation that no above ground sensors will exist for the Project, and any below ground sensors will not impact frequencies above ground. Sacagawea confirmed that there will be no sensors or other facilities associated with the Project that will affect radio frequencies. Additionally, Sacagawea requested confirmation from the USAF that Sacagawea's plan to install the Project through horizontal directional drilling at a minimum of three (3) feet below the communication cables at crossings with areas within thirty (30) feet on either side of a direct line between ICBM launch or launch control facilities to avoid microwave interference is a sufficient buffer zone to avoid or mitigate impacts to the areas. In response to Sacagawea's planned buffer zone, the USAF confirmed the utilization of HDD procedures, with three (3) feet of separation between the hardened intersite cable system and the Project, is acceptable.

29. Accordingly, no Exclusion Areas will be impacted by the Project.

30. An Avoidance Area is a geographic area that may not be considered in the routing of a transmission facility unless the application shows that, under the circumstances, there is no reasonable alternative. In determining whether an Avoidance Area should be designated for a transmission 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.

31. A transmission facility must not be sited within an Avoidance Area unless the applicant demonstrates that under the circumstances there are no reasonable alternatives. Economic considerations alone are not sufficient to establish no reasonable alternative.

32. Pursuant to North Dakota Century Code Section 49-22-05.1, areas within five hundred (500) feet of an inhabited rural residence must be designated Avoidance Areas. The five hundred foot Avoidance Area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing. In addition, North Dakota Administrative Code Section 69-06-08-02(2) designates areas within five hundred feet of a residence, school, or place of business as Avoidance Areas. The Project will be located within five hundred feet of twenty-two (22) occupied structures. A total of seven (7) waivers are required for the twenty-two (22) occupied structures. All waivers have been obtained for the Project.

33. The Little Missouri National Grasslands is located within the survey corridor. However, the Little Missouri National Grasslands fence boundary is approximately ninety (90) feet from the route and impacts to the grassland are not anticipated.

34. Accordingly, no Avoidance Areas will be impacted by the Project.

35. Wetland delineations were completed along the proposed route. Wetlands are present within the study area and will be crossed by the route. Sacagawea will take steps to protect wetlands and waterbodies, and no permanent impacts to wetlands or waterbodies are anticipated.

36. Lake Sakakawea is within the study area and will be crossed by the route. The Project will cross Lake Sakakawea within a USACE-designated utility corridor chosen in conjunction with the Garrison Report implemented by the USACE. Sacagawea will obtain a permit from the USACE prior to construction of the portion of the Project crossing Lake Sakakawea.

37. The Project may result in modification of habitat and temporary displacement of wildlife, due to clearing and construction. The Project will have no significant impact on fish and wildlife resources and no impacts are anticipated to endangered, threatened or sensitive plant or animal species.

38. Areas containing trees and shrubs are present within the study area, and have been avoided by the route to the extent practicable. An inventory of trees and shrubs with the potential to be affected by the Project has been completed. Trees and shrubs will be replaced in accordance with the Commission's Tree and Shrub Mitigation Specifications.

39. In accordance with the Commission's Selection Criteria, a transmission facility route shall be approved if it is demonstrated that any significant adverse effects that will result from the location, construction, and maintenance of the transmission facility will be at an acceptable minimum or managed and maintained at an acceptable minimum. Sacagawea has analyzed the impacts of the Project in relation to all of the relevant Selection Criteria. The Project will have no significant adverse effects on the Commission's Selection Criteria.

40. In accordance with the Commission's Policy Criteria, preference may be given to an application demonstrating certain benefits of the transmission facility. Sacagawea has analyzed the relevant policy criteria and has committed to: designing, constructing, and operating the pipeline in accordance with all applicable federal, state, and local laws and regulations; energy conservation through the facility's location, process, and design; training and utilizing available labor in the state; constructing the Project to take advantage of economies of scale; achieving capacity in the most minimally intrusive and most efficient way possible; and coordinating with state and local officials. Sacagawea submitted evidence to demonstrate its commitment to maximize the benefits of the proposed transmission facility to the extent possible so as to meet the Policy Criteria.

Measures to Minimize Impact

41. Sacagawea provided evidence that a supervisory control and data acquisition system will be utilized as part of the Project, which will provide continuous monitoring of the Project at a control center in Bartlesville, Oklahoma. The control center will have the ability to remotely shut-down the Project. A detailed description of the Bartlesville Control Center practices and procedures was also provided. *See* Late-Filed Exhibit 13, Part 1.
42. Sacagawea has agreed to a number of steps to mitigate the impact of the Project, as indicated by the executed Certification Relating to Order Provisions – Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications, which is incorporated by reference and attached to this Order.
43. The Project’s permanent right-of-way (“ROW”) will typically be fifty (50) feet wide, while its temporary construction ROW will be one hundred (100) feet wide. Sacagawea will use existing public roads to access the construction ROW. Temporary roads may be constructed within the corridor, and one permanent road is anticipated as part of the Project.
44. The design, construction, and operation of the Project will be in accordance with the United State Department of Transportation (“DOT”) regulations governing the transportation of crude oil, including DOT regulations as set forth in 49 C.F.R. Part 195.
45. Sacagawea will participate in the North Dakota One-Call Excavation Notice System.
46. Sacagawea has prepared an Integrated Contingency Plan to be utilized for the Project. *See* Late-Filed Exhibit 13, Part 3.

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

Conclusions of Law

1. The Commission has jurisdiction over Sacagawea and the subject matter of the Application under Chapter 49-22 of the North Dakota Century Code.
2. Sacagawea is a utility as defined in Section 49-22-03(13) of the North Dakota Century Code.
3. The proposed Project is a transmission facility as defined in Section 49-22-03(12) of the North Dakota Century Code.
4. The location, construction, and operation of the Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
5. The location, construction, and operation of the Project are compatible with environmental preservation and the efficient use of resources.

6. The Project 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 Project is of such design and location that it will produce minimal adverse effects, in accordance with Section 49-22-07.2 of the North Dakota Century Code.

8. It is appropriate for the Commission to waive those certain procedures and time schedules as requested in the Application and pursuant to North Dakota Century Code Section 49-22-07.2 and North Dakota Administrative Code Chapter 69-06-06.

From the foregoing Findings of Fact and Conclusions of Law, the Commission now issues the following:

Order

1. Sacagawea's application for a waiver of procedures and time schedules is granted.
2. Certificate of Corridor Compatibility No. ___ is issued to Sacagawea Pipeline Company, LLC designating a corridor for the construction, operation, and maintenance of an approximately 70-mile, 16-inch crude oil pipeline and associated facilities in McKenzie and Mountrail Counties, North Dakota. For purposes of the Certificate, the Corridor will consist of a 200-foot-wide corridor centered on the pipeline route as surveyed.
3. Route Permit No. ____ is issued to Sacagawea Pipeline Company, LLC designating a route for the construction, operation, and maintenance of an approximately 70-mile, 16-inch crude oil pipeline and associated facilities in McKenzie and Mountrail Counties, North Dakota.
4. The Certificate of Corridor Compatibility and the Route Permit shall be subject to and include the special condition that Sacagawea must obtain a permit from the USACE prior to construction of the portion of the Project crossing Lake Sakakawea. However, construction of the other portions of the Project, not subject to the permit from the USACE, may be constructed prior to receiving the USACE permit.
5. That the Certification Relating to Order Provisions – Transmission Facility Siting be incorporated by reference and attached to this Order.
6. To the extent there are any conflicts or inconsistencies between Sacagawea's Applications and the Certification, the Certification provisions control.

**State of North Dakota
Public Service Commission**

**Randy Christmann
Commissioner**

**Julie Fedorchak
Chairman**

**Brian Kalk
Commissioner**