

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

June ____, 2016

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, 314 E. Thayer Avenue, Bismarck, North Dakota 58502, on behalf of the Public Service Commission.

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

Wade C. Mann, Administrative Law Judge, Office of Administrative Hearings, 2911 North 4th Street, Suite 303, Bismarck, North Dakota 58503, as Procedural Hearing Officer.

Preliminary Statement

On May 18, 2016, Sacagawea Pipeline Company, LLC (Sacagawea) filed an application to amend Certificate of Corridor Compatibility No. 177 and Route Permit No. 189 (Application), issued by Order of the Commission on January 5, 2016 in Case No. 15-114, concerning approximately 70 miles of 16-inch diameter crude oil pipeline and associated facilities, known as the “Sacagawea Pipeline Project”, to be located in McKenzie and Mountrail Counties, North Dakota.

On May 18, 2016, Sacagawea filed an application for waivers 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 section 69-06-01-02, requiring separate filings, separate notices, hearings, and certain time schedules on such applications.

The Application seeks Commission approval to modify a portion of the previously designated corridor and route at one location in Mountrail County (Reroute). The Application indicates that the Reroute is necessary in order to accommodate landowner preference. The

transmission facility authorized by the Commission on January 5, 2016 in Case No. PU-15-114, along with the proposed Reroute, are collectively referred to hereafter as the “Project”.

On May 24, 2016, the Commission deemed the Application complete and issued a Notice of Filings and Opportunity for Hearing (Notice), inviting interested parties to comment or request a hearing by June 23, 2016. The Notice stated the Commission can determine the matter without a hearing.

The Notice identified the following issues to be considered with respect to the application for a 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 such 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 identified the following issues to be considered with respect to the applications for an amended certificate of corridor compatibility and amended route permit:

1. Will the location, construction, 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?

No comments or requests for hearing were received.

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. Sacagawea is a Delaware limited liability company authorized to do business in the State of North Dakota, as evidenced by corporate papers filed with the Commission on June 8, 2015, in Case No. PU-15-115.
2. Sacagawea is a joint business venture between Paradigm Pipeline, LLC and Grey Wolf Midstream, LLC (Grey Wolf).

Size, Type, and Preferred Location of Facility

3. The Project consists of approximately 70 miles of 16-inch steel pipeline and associated facilities, to be located in McKenzie and Mountrail Counties, North Dakota.
4. The Project will originate at Paradigm Midstream Service's Keene terminal, located near Keene in McKenzie County, and will terminate at the Phillips 66 Partners' Palermo Rail Terminal, located near Palermo in Mountrail County.
5. The Project crosses both fee and tribal lands located within the boundary of the Fort Berthold Indian Reservation (Reservation).
6. The Three Affiliated Tribes of the Fort Berthold Indian Reservation (TAT), through its partial ownership of Grey Wolf, has a financial interest in the Project. TAT has consented to an easement for that portion of the Project which crosses tribal land within the Reservation. TAT did not testify at the formal hearing in this case, nor have they claimed any comparable tribal process or jurisdiction for siting or similar approval of the Project.
7. Above-ground facilities will include nine mainline block valves, two mainline check valves, and in-line inspection tool launcher and receiver sites. At the recommendation of the Commission, Sacagawea agreed to install an additional block valve on the pipeline at a location east of Lake Sakakawea between mile posts 18 and 24, as described in Late Filed Exhibit 16, "Affidavit of Troy Andrews".
8. The maximum capacity of the Project will be 200,000 barrels per day. The normal capacity of the Project will be 140,000 barrels per day.
9. Locations impacted by the proposed Reroute in Mountrail County include: Sections 20, 29, 31, and 32 in Township 153 North, Range 91 West and Sections 2 and 3, Township 152 North, Range 92 West.
10. The design, construction, and operation of the pipeline will be in accordance with the United States Department of Transportation (USDOT) regulations governing the transportation of crude oil, including USDOT regulations as set forth in 49 Code of Federal Regulations Part 195.
11. The total anticipated cost of the Project is approximately \$125 million.

Study of Preferred Location

12. Sacagawea evaluated a one-mile-wide study area centered on the route (Study Area) for natural resources, including wildlife, protected species and critical habitats, wetlands and waterbodies, and trees and shrubs.
13. Field surveys were conducted on a 200-foot-wide area centered on the route (Survey Area) to inventory wildlife, protected species and critical habitats, wetlands and water bodies, trees and shrubs, and noxious weeds.

14. Sacagawea conducted a Class I cultural resources literature search on the Study Area and a Class III cultural resources field inventory on the Survey Area.

15. The following agencies were contacted by Sacagawea: the United States Fish and Wildlife Service (USFWS); the United States Air Force (USAF); the BIA; the United States Army Corps of Engineers (USACE); the North Dakota Game and Fish Department (NDGFD); the North Dakota Parks and Recreation Department (NDPRD); the North Dakota Department of Health (NDDOH); the North Dakota Department of Trust Lands (NDDTL); the North Dakota Office of the State Engineer; and the North Dakota State Historic Preservation Office (NDSHPO).

16. In responses dated November 12, 2014, and January 15, 2015, the NDGFD indicated that special use permits may be required and recommended that disturbance of native prairie and wooded draws be avoided to the extent possible, disturbed areas be reclaimed to pre-project conditions, the Lake Sakakawea crossing be bored, precautions be taken to prevent the introduction or movement of aquatic nuisance species within the state, steps should be taken to protect any wetlands that cannot be avoided, no alterations should be made to existing drainage patterns, above-ground appurtenances should not be placed in wetland areas, and unavoidable destruction or degradation of wetlands should be mitigated in kind. The NDGFD indicated that golden eagle nests exist in close proximity to the Project and recommended that a half-mile construction buffer be implemented around eagle nest sites known to be occupied within the past five years. The NDGFD concluded that the Project will not have a significant adverse impact on wildlife or wildlife habitat, including species of conservation priority, provided NDGFD recommendations are implemented where appropriate. In a response dated August 7, 2015, the NDGFD further recommended that valves be placed on both sides of Lake Sakakawea, that a maintenance schedule concerning pipe integrity be developed, and that the NDGFD be contacted prior to any launch or placement of items associated with the Project into waters of the state.

17. In a response dated November 14, 2014, the NDPRD indicated that the Project will not affect state park lands managed by or Land and Water Conservation Fund recreation projects coordinated by the NDPRD, that no data exists concerning documented animal species of concern or significant ecological communities within the Study Area, and any impacted areas be revegetated with species native to the Project area.

18. In a response dated November 26, 2014, the USFWS indicated that a Section 7 Consultation between federal agencies concerning the Endangered Species Act is anticipated. In a response dated August 10, 2015, the USFWS indicated that impacts to protected species will be “either insignificant or discountable” or will have “no effect”.

19. In a response dated December 18, 2014, the NDDTL indicated that no school trust lands exist within the Study Area.

20. In a response dated February 4, 2015, the NDSHPO concurred with a “no significant sites affected” recommendation for the Project, provided recommendations concerning avoidance of cultural resources are followed. In a response dated February 17, 2015, the NDSHPO concurred with a “no significant sites” recommendation for the Project, provided the Project remains as described and mapped in the Class I and III cultural resource report dated February 12, 2015.

21. In a response dated July 7, 2015, the NDDOH recommended that measures be taken to minimize fugitive dust emissions and that associated complaints be responded to in an efficient and effective manner; that care should be taken during construction activities near waters of the state to minimize impacts to water bodies from disturbance, reclamation, and oil, gas, or fuel spills associated with construction equipment, that a stormwater discharge permit may be necessary, that construction should not take place during early morning or late evening hours and that noise levels be minimized by use of mufflers on construction equipment, that spills be restricted from reaching surface waters, that a spill response plan be developed, and that the pipeline be properly monitored for leaks.

22. In a response dated November 30, 2015, the USAF indicated that the Project will not interfere with Air Force communications systems within their intercontinental ballistic missile (ICBM) launch complex area and will be located at least 1,200 feet from ICBM launch facilities. The USAF recommended that at locations where the route will intersect buried USAF facilities, the Project must be installed by means of horizontal directional drilling under USAF cables in order to maintain a minimum separation distance of three feet.

23. In a response dated April 18, 2016, the NDSHPO concurred with a “No Significant Sites Affected” recommendation for the Reroute, provided the Project remains as described and mapped in the Addendum II to the Class I and III cultural resource report.

Siting Criteria

24. 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.

25. Sacagawea evaluated the Project for the Exclusion, Avoidance, Selection, and Policy criteria of the Commission.

26. An Exclusion Area may not encompass more than fifty percent of a corridor width unless there is no reasonable alternative. An Exclusion Area must be excluded in the consideration of a route for a transmission facility. A buffer zone to protect the integrity of the area must be included.

27. Four cultural resource sites were identified during the Class III field survey, all of which remain unevaluated for listing in the National Register of Historic Places. None of the sites will be crossed by the route. Sacagawea has committed to protecting the integrity of these cultural resources by either avoiding them by at least 50 feet or by placing temporary fencing around the sites and providing an environmental monitor during ground-disturbing activities near the site. Sacagawea testified that the Tribal Historic Preservation Office was consulted concerning cultural resources for that portion of the Project which crosses tribal lands.

28. Areas within thirty feet on either side of a direct line between ICBM launch or launch control facilities to avoid microwave interference are considered to be Exclusion Areas. The Project crosses ICBM Exclusion Areas at three locations. Sacagawea has presented evidence

that the Project will not affect USAF communications, and has received confirmation from the USAF that the planned pipeline bore depth will provide a buffer zone sufficient to protect the integrity of this Exclusion Area.

29. Areas critical to the life stages of threatened or endangered animal or plant species are considered to be Exclusion Areas. Lake Sakakawea has been designated by the USFWS as critical habitat for both the interior least tern, an endangered avian species, and the piping plover, a threatened avian species. Sacagawea testified that the Project will be bored underneath Lake Sakakawea and its adjacent uplands for one-half mile on either side of the lake in order to protect the integrity of this Exclusion Area.

30. No other Exclusion Areas are present within the Survey Area.

31. An Avoidance Area is a geographical area that may not be considered in the routing of a transmission facility unless the applicant 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.

32. A transmission facility may 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.

33. Areas within five hundred feet of a residence, school, or place of business are Avoidance Areas. Pursuant to North Dakota Century Code section 49-22-05.1, 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.

34. Sacagawea testified that there are eleven inhabited rural residences within 500 feet of the proposed route, which involves a total of seven property owners. Sacagawea has obtained waivers from all seven property owners and has filed copies of the waivers in this proceeding.

35. The Little Missouri National Grasslands (Grasslands), an Avoidance Area, are present within the Survey Area, but are not crossed by the route.

36. Areas of geologic instability are considered to Avoidance Areas. Seven areas of geologic instability are present within the Survey Area, of which two areas will be crossed by the route. Sacagawea testified that these two areas, which are composed of a mixture of strata and deposits that have slid to the base of Saddle Butte, will be crossed utilizing practices to minimize impacts as identified in Hearing Exhibit 1, Appendix K, and will be monitored until site stabilization is achieved. The pipeline route is constrained in its available path as it traverses the base of Saddle Butte by numerous existing well pads and also by North Dakota Surface Trust land west of Saddle Butte. Due to these geographical route constraints, the Commission finds there is no reasonable alternative to the proposed route crossing these Avoidance Areas. Four shallow areas of geologic instability present on banks of Lake Sakakawea will be avoided by boring, as discussed in Attachment 1, "Geotechnical Investigations", of Appendix I.

37. No other Avoidance Areas are present within the Survey Area.
38. In accordance with the Commission's Selection Criteria, a transmission facility route shall be designated only if it is demonstrated that any significant adverse effects resulting from the location, construction, and maintenance of the transmission facility will be at an acceptable minimum or managed and maintained at an acceptable minimum.
39. 156 wetlands and 26 water bodies were identified within the Survey Area, of which 17 wetlands and 10 water bodies are potentially subject to USACE jurisdiction under the Nationwide Permit 12 process.

Measures to Minimize Impact

40. Sacagawea testified that a supervisory control and data acquisition system (SCADA) will be installed as part of the Project, and operations will be continuously monitored by a control center located in Bartlesville, Oklahoma.
41. Sacagawea testified that back-up systems for both power and communications loss will be installed as part of the Project.
42. Sacagawea testified that the company has contracted with Clean Harbors Environmental Services, a private contractor, to provide emergency spill response.
43. Sacagawea testified that trained emergency response personnel will be stationed at the Palermo terminal, and that trailers containing emergency spill response equipment will be stationed at both the Keene and Palermo terminals.
44. Sacagawea testified that it participates in the One Call notification system and anticipates having utility locators on-site during Project construction.
45. Sacagawea testified that the bore length under Lake Sakakawea was minimized by selecting a location where the width of the lake is narrow, that geotechnical studies have been performed for the crossing, and that adjacent topography is considered suitable for construction work.
46. Sacagawea testified that boring under Lake Sakakawea will be performed by an experienced contractor that has performed boring projects of a similar scope internationally.
47. Sacagawea testified that a solution composed only of fresh water and bentonite will be used as a drilling fluid for boring activities associated with the Project.
48. Sacagawea testified that the pipeline will be buried at least 100 feet below the bed of Lake Sakakawea.
49. Sacagawea has agreed to a number of steps to mitigate the impact of the Project as indicated by the Certification Relating to Order Provisions — Transmission Facility Siting with accompanying Tree and Shrub Mitigation Specifications filed in this proceeding, which is incorporated by reference and attached to this Order.

50. Sacagawea agreed to refer to the NDSU Extension Service Publication No. R1728, “Successful Reclamation of Lands Disturbed by Oil and Gas Development and Infrastructure Construction,” as a guide for best reclamation practices in constructing the Project.

51. Sacagawea will have environmental inspectors with stop-work authority on each construction spread.

52. Sacagawea has committed to protecting the integrity of wetlands and waterbodies crossed by the route by using best management practices to minimize erosion and to prevent sediment discharge, which will include minimizing the footprint of environmental disturbance, installing sediment barriers, trench plugs, and temporary slope breakers as necessary, and properly restoring topsoil.

53. Sacagawea testified that construction will take place outside of the sensitive breeding season for terns and plovers.

54. Approximately 45% of the Project is co-located with existing utility corridors.

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 these applications under North Dakota Century Code chapter 49-22.

2. Sacagawea is a utility as defined in North Dakota Century Code section 49-22- 03(13).

3. The Project is a transmission facility as defined in North Dakota Century Code section 49-22-03(12).

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 the 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, as defined under North Dakota Century Code section 49-22-07.2.

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

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

Order

The Commission orders:

1. Sacagawea’s application for a waiver of procedures and time schedules is granted.
2. First Amended Certificate of Corridor Compatibility No. 177 is issued to Sacagawea, designating a corridor for the construction, operation, and maintenance of approximately 70 miles of 16-inch diameter crude oil pipeline and associated facilities in McKenzie and Mountrail Counties, North Dakota. The Corridor will consist of a generally 200-foot-wide area centered on the route and additional surveyed areas as depicted in Appendix B, “Project Maps”, of Hearing Exhibit 2, and revised by the route adjustment depicted in Exhibit A of Sacagawea’s May 18, 2016 filing.
3. First Amended Route Permit No. 189 is issued to Sacagawea, designating a route for the construction, operation, and maintenance of approximately 70 miles of 16-inch diameter crude oil pipeline and associated facilities in McKenzie and Mountrail Counties, North Dakota. The designated route for this purpose is depicted in Appendix B, “Project Maps”, of Hearing Exhibit 2, and revised by the route adjustment depicted in Exhibit A of Sacagawea’s May 18, 2016 filing.
4. The August 20, 2015, Certification Relating to Order Provisions – Transmission Facility Siting (Certification), with accompanying Tree and Shrub Mitigation Specifications, is incorporated by reference and attached to this Order.
5. To the extent that there are any conflicts or inconsistencies between Sacagawea’s applications in this proceeding and the Certification, the Certification provisions control.
6. Sacagawea is required to comply with all applicable laws, rules, and/or regulations in the event it desires to construct another or a different transmission facility than was specified in the application within the corridor granted in this proceeding.

PUBLIC SERVICE COMMISSION

Randy Christmann
Commissioner

Julie Fedorchak
Chairman

Brian P. Kalk
Commissioner