

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

**Plains Pipeline, L.P.**  
**Highway 1804 Re-Route North Pipeline Project**  
**Siting Application**

**Case No. PU-15-614**

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

**December 16, 2015**

**Appearances**

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

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

Zachary E. Pelham, Special Assistant Attorney General, 314 East Thayer Avenue, Bismarck, North Dakota 58502, on behalf of the North Dakota Public Service Commission.

Patrick J. Ward, Administrative Law Judge, Office of Administrative Hearings, 2911 North 4th Street, Suite 303, Bismarck, North Dakota 58503, as Procedural Hearing Officer.

**Preliminary Statement**

On July 31, 2015, Plains Pipeline, L.P. (Plains) filed applications for a certificate of corridor compatibility and a route permit concerning approximately 8.5 miles of 10-inch diameter pipeline and associated facilities for the transmission of crude oil (Project). The Project will be located in Williams County, North Dakota.

Also on July 31, 2015, Plains 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, and 49-22-13, and North Dakota Administrative Code chapter 69-06-06 and section 69-06-01-02, requiring separate filings, separate notices, and separate hearings on the certificate of corridor compatibility and route permit applications.

On August 11, 2015, Plains filed a supplement to its applications for a certificate of corridor compatibility and a route permit.

On September 15, 2015, Plains filed an amendment to its applications for a certificate of corridor compatibility and a route permit.

On September 16, 2015, the Commission found the applications for a certificate of corridor compatibility and a route permit complete, and issued a Notice of Filings and Public Hearing (Notice) scheduling a hearing for October 29, 2015, at 9:00 a.m. Central Time at the Ernie French Center, NDSU Williston Research Campus, 14120 Highway 2, Williston, North Dakota 58801.

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 certificate of corridor compatibility and 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?

On October 29, 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:

### **Findings of Fact**

1. Plains is a Texas limited partnership authorized to do business in the State of North Dakota, as evidenced by the corporate papers filed with the Commission on April 23, 2015, in Case No. PU-11-568.

## Size, Type, and Preferred Location of Facility

2. The Project will consist of approximately 8.5 miles of 10-inch diameter pipeline and associated facilities to be located in Williams County, North Dakota, and will replace the northern portion of the existing Fort Buford to Highway 1804 6-inch pipeline. The Project will originate at a tie-in point on the existing 6-inch pipeline near Marley, North Dakota, and will terminate at the Side Hill Junction Block Valve, located approximately two miles northeast of Trenton, North Dakota.
3. The maximum capacity of the Project will be 40,000 barrels per day.
4. 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 C.F.R. Part 195.
5. The total anticipated cost of the Project is approximately \$7 million.

## Study of Preferred Location

6. Plains evaluated a one-mile-wide study area centered on the route (Study Area) for wildlife, wetlands and waterbodies, and trees and shrubs.
7. Plains conducted a field survey on a 200-foot-wide area centered on the route (Survey Area) for noxious weeds, trees and shrubs, wetlands and waterbodies, and wildlife, including protected species and critical habitats.
8. Plains conducted a Class I cultural resource literature search on the Study Area and a Class III cultural resource inventory on the Survey Area.
9. The following agencies were contacted by Plains: the United States Fish and Wildlife Service, the North Dakota Game and Fish Department (NDGFD), the North Dakota Parks and Recreation Department (NDPRD), the North Dakota Department of Trust Lands (NDDTL), and the North Dakota State Historic Preservation Office (NDSHPO).
10. In a response received on May 26, 2015, the NDDTL indicated that no school trust land will be affected by the Project.
11. In a response received on June 18, 2015, 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.
12. In a response received on June 18, 2015, the NDGFD made the following recommendations: that work within native prairie areas and wooded draws be avoided to the extent possible, that disturbed areas be reclaimed to pre-project conditions, that no

alterations should be made to existing drainage patterns, that above-ground appurtenances not be placed in wetlands areas, that unavoidable destruction or degradation of wetland acres be mitigated in kind, that an aerial survey be conducted for raptor nests prior to construction, and that a 0.5-mile buffer be implemented around any eagle nest site known to be occupied within the last 5 years. The NDGFD response further indicated that the Project should not have any significant adverse effect on wildlife or wildlife habitat, including species of conservation priority, provided these recommendations are implemented where appropriate.

13. In responses received on July 20, 2015, and on September 9, 2015, the NDSHPO concurred with a "no significant sites affected" determination, provided that the Project remains as described in information provided by Plains to the NDSHPO, and that recommendations for avoiding and minimizing impacts, including monitoring by a professional archaeologist, are followed.

#### Siting Criteria

14. 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.

15. Plains evaluated the Project with respect to the Exclusion, Avoidance, Selection, and Policy criteria of the Commission.

16. A transmission facility route must not be sited within an Exclusion Area. Exclusion areas may be located within a corridor, but at no given point may such an area or areas encompass more than fifty percent of the corridor unless there is no reasonable alternative.

17. Three cultural resources are present within the Survey Area, of which one resource has been determined to not be eligible for listing in the National Register of Historic Places (NRHP). Two resources remain unevaluated for listing in the NRHP and will be avoided by more than fifty feet.

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

19. 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.

20. A transmission facility route 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.

21. 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.

22. The City of Williston Wellhead Protection Community (CWWPC) is located within the Survey Area. Plains testified that consultations were held with the City of Williston, with no concerns expressed. Plains further testified that the Project, through proper installation, operation, and maintenance, will not adversely impact the wellhead protection area. The Project will result in much of the pipeline system being removed from the CWWPC between its tie-in point on the existing 6-inch pipeline near Marley, North Dakota, and its terminus at the Side Hill Junction Block Valve, northeast of Trenton, North Dakota. To achieve the Project's intent while minimizing the environmental impact of this route, the Commission finds there is no reasonable alternative to the proposed corridor crossing this Avoidance Area.

23. The Project will be located within five hundred feet of seven occupied rural residences. Plains has obtained waivers from all owners of the seven rural residences.

24. No other Avoidance Areas are present within the Survey Area.

25. In accordance with the Commission's Selection Criteria, a transmission facility route shall be designated 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 will be managed and maintained at an acceptable minimum.

26. Plains has analyzed the impacts of the Project in relation to all of the relevant Selection Criteria and has determined that no significant adverse impact will result from the location, construction, and operation of the Project.

#### Measures to Minimize Impact

27. The Project will update and upgrade a portion of the existing Plains pipeline system, and will also increase the distance between the pipeline system and both Lake Trenton and the City of Trenton.

28. Plains 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.

29. Plains testified that a supervisory control and data acquisition (SCADA) system will be installed as part of the Project. The SCADA system will monitor pressure, flow, and temperature continuously at a control center located in Midland, Texas. The control center will have the ability to remotely shut down the Project.

30. Plains testified that it participates in the North Dakota One-Call Excavation System.

31. Plains testified that the design, construction, and operation of the Project will be in accordance with the United States Department of Transportation regulations governing the transportation of crude oil, including those set forth in 49 C.F.R. Part 195.

32. Plains testified that no roads are anticipated to be constructed as part of the Project.

33. Plains testified that an environmental inspector will be present on site during Project construction.

From the foregoing Findings of Fact the Commission makes the following conclusions of law:

#### **Conclusions of Law**

1. The Commission has jurisdiction over Plains and the subject matter of these applications 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 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. The Project is of such design and location that it will produce minimal adverse effects and, therefore, it is appropriate for the Commission to waive those certain

procedures and time schedules as requested in the waiver application under North Dakota Century Code section 49-22-07.2.

From the Findings of Fact and Conclusions of Law, the Commission makes the following order:

**Order**

The Commission orders:

1. Plains' application for a waiver of procedures and time schedules is granted.
2. Certificate of Corridor Compatibility No. 175 is issued to Plains, designating a corridor for the construction, operation, and maintenance of approximately 8.5 miles of 10-inch diameter pipeline and associated facilities for the transmission of crude oil in Williams County, North Dakota. For purposes of the Certificate, the designated corridor is a 200 foot-wide area centered on the route.
3. Route Permit No. 187 is issued to Plains, designating a route for the construction, operation, and maintenance of approximately 8.5 miles of 10-inch diameter pipeline and associated facilities for the transmission of crude oil in Williams County, North Dakota. For purposes of the Permit, the designated route is the proposed route depicted in Hearing Exhibit No. 2.
4. The October 22, 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 Plains' applications in this proceeding and the Certification, the Certification provisions control.
6. Plains 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.
7. Plains is required to file with the Commission a copy of its PHMSA-approved oil spill Response Plan, dated November 24, 2014, prior to initiating construction of the Project.

**PUBLIC SERVICE COMMISSION**

  
\_\_\_\_\_  
**Randy Christmann**  
Commissioner

  
\_\_\_\_\_  
**Julie Fedorchak**  
Chairman

  
\_\_\_\_\_  
**Brian P. Kalk**  
Commissioner

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

**Certificate of Corridor Compatibility Number 175**

*This is to certify that the Commission has designated a transmission facility corridor for Plains Pipeline, L.P. for the construction, operation, and maintenance of approximately 8.5 miles of 10-inch diameter crude oil pipeline and associated facilities in Williams County, North Dakota.*

*This certificate is issued in accordance with the Order of the Commission dated December 16, 2015 in Case No. PU-15-614 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, December 16, 2015.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
**Executive Secretary**

  
**Commissioner**

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

**Route Permit Number 187**

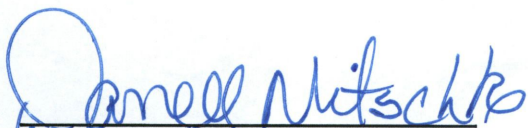
*This is to certify that the Commission has designated a transmission facility route for Plains Pipeline, L.P. for the construction, operation, and maintenance of approximately 8.5 miles of 10-inch diameter crude oil pipeline and associated facilities in Williams County, North Dakota.*

*This permit is issued in accordance with the Order of this Commission dated December 16, 2015, in Case No. PU-15-614 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, December 16, 2015.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
**Executive Secretary**

  
**Commissioner**

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

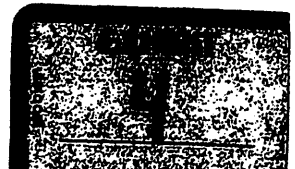
Plains Pipeline, L.P.  
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Case No. PU-15-614

CERTIFICATION RELATING TO ORDER PROVISIONS  
TRANSMISSION FACILITY SITING

I am Troy E. Valenzuela, a representative of Plains Pipeline, L.P. ("Company") with authority to bind Company to requirements to be set forth by the Commission in its Order and I certify the following:

1. Company understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission will be subject to the conditions and criteria set forth in Chapter 49-22 of the North Dakota Century Code and Chapter 69-06-08 of the North Dakota Administrative Code, and that Company shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. Company agrees to comply with the rules and regulations of all other agencies having jurisdiction over any phase of the transmission facility including all city, township, and county zoning regulations.
3. Company understands and agrees that it shall obtain all other necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission prior to construction activity associated with the transmission facility that requires said license or permit.
4. Company understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission is subject to suspension or revocation and may, in an appropriate and proper case, be suspended or revoked for failure to comply with the Commission's order, the conditions and criteria of the certificate or subsequent modification, or failure to comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies.
5. Company agrees to maintain records that will demonstrate that it has complied with the requirements of the Commission's order issuing a Certificate of Corridor Compatibility or Route Permit, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.
6. Company understands and agrees that the authorizations granted by any Certificate of Corridor Compatibility or Route Permit issued by the Commission for



the transmission facility are subject to modification by order of the Commission if deemed necessary to protect further the public or the environment.

**Construction:**

7. Company agrees to hold a preconstruction conference prior to commencement of any construction, which must include a Company representative, its construction supervisor, and a representative of Commission Staff, to ensure that Company fully understands the conditions set forth in the Commission's order.
8. Company understands and agrees that all cultural resource mitigation plans must be submitted to the North Dakota State Historic Preservation Office and approved prior to the start of any fieldwork and construction activity in the affected area.
9. Company agrees to inform the Commission and the Commission's third-party construction inspector of its intent to start construction on the transmission facility prior to the commencement of construction. Once construction has started, Company shall keep the Commission and the Commission's third-party construction inspector updated on construction activities on a monthly basis.
10. (For a pipeline) Company understands and agrees that the pipeline will be buried to a minimum depth from the ground surface to the top of the pipe of 48 inches in range land, 48 inches for cultivated land, 48 inches at the bottom of the ditch for road crossings, and 72 inches across undeveloped section lines.
11. Company understands and agrees that all topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas where cuts will be made, must be stripped and segregated from the subsoil. Any area on which excavated subsoil will be placed must also be stripped of topsoil. After backfilling is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must be replaced over areas from which it was stripped only after the subsoil is replaced.
12. Company understands and agrees that all buried facility crossings of graded roads must be bored unless the responsible governing agency specifically permits Company to open cut the road.
13. Company understands and agrees that staging areas or equipment shall not be located on land owned by a person other than Company unless otherwise negotiated with landowners.
14. Company understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a

professional examination can be made and a report of such examination is filed with the Commission and the State Historical Society.

15. Company understands and agrees that construction must be suspended when weather conditions are such that construction activities will cause irreparable damage to roads or land, unless adequate protection measures are taken by Company.

**Restoration and Maintenance:**

16. Company understands and agrees that it shall, as soon as practicable upon the completion of the construction of the transmission facility, restore the area affected by the activities to as near as is practicable to the condition as it existed prior to the beginning of construction.
17. Company understands and agrees that all pre-existing township and county roads and lanes used during construction must be repaired or restored to a condition that is equal to or better than the condition prior to the construction of the transmission facility and that will accommodate their previous use, and that areas used as temporary roads or working areas during construction must be restored to their original condition.
18. Company understands and agrees that reclamation, fertilization, and reseeding is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
19. Company will fulfil its obligation for reclamation and maintenance of the approved transmission facility right-of-way, transmission facility, and associated facilities continuing throughout the life of the transmission facility.
20. Company will repair all fences and gates removed or damaged during all phases of construction and operation of the transmission facility.
21. Company will repair or replace all drainage tile broken or damaged as a result of construction and operation of the transmission facility.
22. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
23. Company understands and agrees that it shall remove all waste that is a product of construction and operation, restoration, and maintenance of the site, and properly dispose of it on a regular basis.

24. Company understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the transmission facility.

**Communication with Landowners and PSC:**

25. Company understands and agrees that, prior to beginning construction of the transmission facility at a location, it shall send a letter to each landowner with whom an easement was executed for that location specifying the name and phone number of the company representative who is responsible for receiving and resolving landowner issues for the life of the easement.
26. Company understands and agrees that it will file with the commission the name and phone number of the current company representative who is responsible for receiving and resolving landowner issues for the transmission facility. The company will update this information whenever there is a change to the current company representative for the life of all easements for the transmission facility.
27. Upon request, Company agrees to provide the Commission with engineering design drawings of the transmission facility prior to construction.
28. Company understands and agrees that it shall advise the Commission as soon as reasonably possible of any extraordinary events which take place at the site of the transmission facility, including injuries to any person,.
29. Company agrees to report to the Commission, as soon as reasonably possible, the presence in the permit area of any critical habitat or threatened or endangered species of which Company becomes aware and which were not previously reported to the Commission.
30. Company understands and agrees that it shall inform the Commission in writing of any plans to modify the transmission facility or of any plans to modify the site plan for the transmission facility.
31. Company agrees to provide the Commission with both an electronic and a paper copy of the corridor approved by the Commission and the facility design specifications for the construction of the transmission facility showing the location of the transmission facility as built, and will provide this information within 3 months of the completion of the construction. Company also agrees to provide an electronic version of the corridor approved by the Commission and the facility design specifications for the construction of the transmission facility showing the location of the transmission facility as built that can be imported into ESRI GIS mapping software within 3 months of the completion of the construction. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in

the appropriate vertical datum for the coordinate system used. All submissions must specify the datum in which the data was developed.

32. Company shall notify the Commission as soon as reasonably possible if any damage, as defined by North Dakota Century Code Chapter 49-23, occurs to underground facilities during construction conducted under the certificate or permit issued in this proceeding. In the event of any damage to underground facilities, Company shall suspend construction in the vicinity of the damage until compliance with One-Call Excavation Notice System requirements under North Dakota Century Code Chapter 49-23 has been determined.

**Route Adjustments Before or During Construction:**

33. Company agrees to utilize the following procedures if Company seeks a route adjustment before or during construction of the pipeline, pursuant under N.D.C.C. §49-22-16.3.
34. Company will specifically identify which subsection of NDCC 49-22-16.3 it is requesting the adjustment under. Company will file the name and contact information for a key contact person for the purposes of notice and communication during the adjustment application.
35. **ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED:** Before conducting any construction activities for any adjustment to the designated route within the designated corridor under NDCC 49-22-16.3(1), the Company will file:
- a. Certification and supporting documentation affirming that construction activities will be within the designated corridor, will not affect any known exclusion or avoidance areas within the designated corridor;
  - b. Certification and supporting documentation, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, route and the route adjustment;
  - c. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.
36. **ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, AVOIDANCE AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22-16.3(2), within the designated corridor that may affect an avoidance area, and before conducting any construction activities for any adjustment to the designated route within the designated corridor, the Company will file:
- a. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying:

- i. the designated corridor, route and the route adjustment;
- ii. all exclusion and avoidance areas within the portion of the designated corridor containing the route adjustment
- b. Certification and supporting documentation affirming:
  - i. That construction activities will be within the designated corridor
  - ii. That construction activities will not affect any known exclusion area
- c. All field studies performed on the portion of the designated corridor containing the route adjustment;
- d. Specific information about any mitigation measures Company will take within the adjustment area;
- e. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment;
- f. Certification that unless the Commission previously authorized the impact to the same avoidance area, that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist;
- g. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

Company acknowledges and agrees that:

1. Written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity unless the Commission fails to act within ten working days of receipt of filing a complete adjustment application, in which case the adjustment is deemed approved.
2. The initiation of the ten working days begins upon receipt of a complete filing, to include Company's certifications, supporting documentation and maps. However, Commission may extend the ten working day provision if Company, in the person of the key contact referenced above, is informed of the reason additional time is necessary for extension and has no objection to an extension.

**37. ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22-16.3(3), outside the designated corridor and not affecting any exclusion and avoidance area, before conducting any construction activities for any adjustment to the designated route outside the designated corridor, the Company will file:

- a. Certification and supporting documentation affirming that construction activities will not affect any known exclusion or avoidance areas,
- b. Certification and supporting documents stating the length of the proposed route outside of the corridor and a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, corridor adjustment, designated route and the route adjustment;

- c. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment; and
- d. Detailed field studies indicating exclusion and avoidance areas for the proposed adjustment area; and
- e. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route

38. **ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, AVOIDANCE AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22-16.3(4), outside the designated corridor that may affect an avoidance area, and before conducting any construction activities for any adjustment to the designated route outside the designated corridor, the Company will file:

- a. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying:
    - i. the designated corridor, corridor adjustment, route and the route adjustment;
    - ii. all exclusion and avoidance areas within the adjustment area
  - b. Certification that construction activities will not affect any known exclusion area;
  - c. Certification that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist within the designated corridor and route;
  - d. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment;
  - e. Provide specific information about any mitigation measures Company will take within the adjustment area;
  - f. Detailed field studies indicating exclusion and avoidance areas for the proposed adjustment area; and
  - g. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.
- Company acknowledges and agrees that:
1. Written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity unless the Commission fails to act within ten working days of receipt of filing a complete adjustment application, in which case the adjustment is deemed approved.
  2. The initiation of the ten working days begins upon receipt of a complete filing, to include Company's certifications, supporting documentation and maps. However, Commission may extend the ten working day provision if Company, in the person of the key contact referenced above, is informed of

the reason additional time is necessary for extension and has no objection to an extension.

39. When applicable, Company may submit the field studies from the original application for the corridor and route provided they cover the adjustment area.

Dated this 22nd day of October, 2015.

**PLAINS PIPELINE, L.P.**

By: Plains GP LLC, its General Partner

By: \_\_\_\_\_

Troy E. Valenzuela

Vice President – Environmental, Health and Safety

AKH

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Plains Pipeline, L.P.  
Highway 1804 Re-Route North Pipeline Project  
Siting Application

Case No. PU-15-614

**Tree and Shrub Mitigation Specifications**

**Inventory**

1. Trees and shrubs anticipated to be cleared, including those that are considered invasive species or noxious weeds (*e.g.*, *Caragana arborescens*, *Elaeagnus angustifolia*, *Rhamnus cathartica*, *Tamarix chinensis*, *T. parviflora*, *T. ramosissima*, *Ulmus pumila*), must be inventoried before cutting. The inventory must record the location, number, and species of trees and shrubs.
2. In windbreaks, shelterbelts and other planted areas, trees or shrubs anticipated to be cleared, regardless of size, must be inventoried for replacement.
3. In native growth areas, trees anticipated to be cleared that are 1 inch diameter at breast height (dbh) or greater must be inventoried for replacement.
4. In native growth areas, shrubs anticipated to be cleared in the permanent right-of-way must be inventoried for replacement.
5. In native growth areas outside the permanent right-of-way, shrubs must be cut flush with the surface of the ground, taking care to leave the naturally occurring seed bank and root stock intact. If soil disturbance is necessary, the native topsoil must be preserved and replaced after construction. Shrubs must be allowed to regenerate naturally where native topsoil is preserved and replaced. Where native topsoil is not preserved and replaced, shrubs anticipated to be cleared must be inventoried for replacement.
6. In native growth areas, trees and shrubs may be inventoried by actual count or by a sampling method that will properly represent the woody vegetation

population. A sampling plan developed by the company, filed with the North Dakota Public Service Commission (Commission) and approved prior to the start of construction must define the sampling method to be used for trees, for tall shrubs and for low shrubs. The data from the sample plots must be extrapolated to the total acreage of the wooded area to be cleared to determine the species and quantity of trees and shrubs to be replaced.

#### **Clearing for Construction**

7. Trees and shrubs must be selectively cleared, leaving mature trees and shrubs intact where practical.
8. The maximum width of clear cuts through windbreaks, shelterbelts and all other wooded areas is 50 feet, unless otherwise approved by the Commission.
9. If the area of trees or shrubs actually cleared differs from the area inventoried, the difference in number of trees and shrubs to be replaced must be noted on the inventory.

#### **Replacement**

10. Prior to tree and shrub replacement, documentation identifying the number and variety of trees and shrubs removed, as well as the mitigation plan for the proposed number, variety, type, location and date of replacement plantings, must be filed with the Commission for approval.
11. Two 2-year-old saplings must be planted for every one tree removed. Two shrubs (stem cuttings) must be planted for every one shrub removed.
12. Except in the case of invasive or noxious species, trees and shrubs must be replaced by the same species or similar species, suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service. Invasive or noxious species must be replaced by similar non-invasive or non-

noxious species suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.

13. Tree and shrub replacement must not be conducted within a 20 to 30 foot wide path over the pipeline to facilitate visual inspections of the right-of-way in accordance with U.S. Department of Transportation safety regulations.
14. Landowners must be given the option of having replacement trees and shrubs planted on the landowner's property, either on or off the right-of-way. The landowner must also be given the opportunity to waive those options in writing in order to have replacement trees and shrubs planted off the landowner's property.
15. At the conclusion of the project, documentation identifying the actual number, variety, type, location and date of the replacement plantings must be filed with the Commission.
16. Tree and shrub replacements must be inspected annually, in September, for three years. The first annual inspection must be at least one year from the anniversary date of the original plantings. A report of each annual inspection must be submitted to the Commission by October 1 of each year, documenting the condition of plantings and any woodlands work completed as of September of each year. If after the third annual report the survival rate is less than 75%, the Commission may order additional planting(s).