

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

**Sacagawea Pipeline Company, LLC**  
**12-inch Crude Oil Pipeline – Mountrail County**  
**Siting Application**

**Case No. PU-15-670**

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

**February \_\_\_\_\_, 2016**

**Appearances**

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

Danielle Krause, Attorney 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.

Janet Demarais Seaworth, Administrative Law Judge, Office of Administrative Hearings, PO Box 7127, Bismarck, North Dakota 58507.

**Preliminary Statement**

On September 14, 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 8-mile, 12-inch crude oil pipeline and associated facilities in Mountrail County, North Dakota (the “Project”). The Project will transport crude oil between the Palermo Rail Facility owned by Phillips 66 Partners Terminals, LLC and the Enbridge Crude Oil Terminal located in Stanley, North Dakota.

Also on September 14, 2015, in connection with the Application, 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 October 14, 2015, the Commission deemed Sacagawea’s Application complete and issued a Notice of Filings and Public Hearing (“Notice”) scheduling a hearing for January 12, 2016, at 10:00 a.m. CST at the Mountrail County South Complex Building, 8103 61<sup>st</sup> Street NW, Stanley, North Dakota 58784.

The Notice 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 identified the following issues to be considered with respect to the 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 January 12, 2016 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. Sacagawea is a Delaware limited liability company authorized to do business in the State of North Dakota, as evidenced by the corporate papers filed with the Commission on June 8, 2015, in Case No. PU-15-115.
2. Sacagawea is a joint venture between Paradigm Pipeline, LLC and Grey Wolf Midstream, LLC.

#### 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 consists of approximately 8 miles of 12-inch steel pipeline and associated facilities to be located in Mountrail County, North Dakota.
6. The Project will originate at the Palermo Rail Facility owned by Phillips 66 Partners Terminals, LLC and terminate at the Enbridge Crude Oil Terminal located in Stanley, North Dakota. The Project will be constructed for bi-directional flow.
7. The proposed pipe will have a 12-inch outside diameter and wall thickness of 0.312-inches for line pipe and 0.375-inches for 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 100,000 barrels of oil per day.
9. Above-ground facilities will consist of one block valve, check valves, pig launchers and receivers, pipeline markers, and rectifiers.
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 \$18 million.

### Study of Preferred Location

12. Sacagawea evaluated a one-mile-wide study area centered on the route (“Study Area”) for exclusion and avoidance areas, including federal and state parks, protected and sensitive plants and animals, wildlife, and civil and social structures such as recreational areas, rural homes, and farmsteads. A field study was conducted using a 500-foot-wide corridor for botany.
13. Field surveys were conducted on a 300-foot-wide area centered on the route (“Survey Area”) 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, and protected species and habitats.
14. Sacagawea conducted a Class I cultural resource 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 regarding the Project, pursuant to North Dakota Administrative Code § 69-06-01-05, to which comments were received: the United States Army Corps of Engineers (“USACE”); the North Dakota Parks and Recreation Department (“NDPRD”); the North Dakota Game and Fish Department (“NDGFD”); the Lostwood Wetland Management District; the United States Air Force – Cable Affairs Division

(“USAF”); the North Dakota State Water Commission; the North Dakota Department of Health (“NDDOH”); and the North Dakota State Historic Preservation Office (“SHPO”).

16. The Lostwood Wetland Management District provided responses recommending avoidance procedures to be utilized for the Project.

17. In a response dated August 18, 2015, the USAF noted the Project will have one cable crossing. The USAF also provided regulations for pipelines crossing the USAF easement, with no concerns being raised for the current Project crossing.

18. In a response dated August 26, 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; and that spills be restricted from reaching surface waters, that a spill response plan be developed, and that the pipeline be properly monitored for leaks.

19. In a response dated June 22, 2015, the NDGFD indicated that various wetlands are located within the proposed project corridor, and recommended that steps should be taken to protect any wetlands that cannot be avoided, that no alterations should be made to existing drainage patterns, that above-ground appurtenances should not be placed in wetland areas, and that unavoidable destruction or degradation of wetland acres should be mitigated in kind. The NDGFD indicated that the Project should not have any significant adverse effects on wildlife or wildlife habitat, including species of concern, provided the recommendations of the NDGFD are implemented where appropriate and disturbed areas are reclaimed to pre-project conditions.

20. In responses dated June 18, 2015 and September 1, 2015, 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.

21. In a response dated August 21, 2015, the SHPO concurred with a “no significant sites affected” recommendation for the Project, provided the Project remains as described and mapped in the Class III cultural resource report dated August 2015.

22. In responses dated May 29, 2015 and August 26, 2015, the North Dakota State Water Commission noted that there are no floodplains identified and/or mapped in the Project area and no sole-source aquifers designated in North Dakota. The State Water Commission stated that it is the duty of Sacagawea to contact all local, state, and federal agencies for required approvals, permits, and easements, and that all waste materials associated with the Project must be disposed of properly. The State Water Commission also noted that there may be observation/monitor water wells or gaging stations in the area, with impacts by the Project to these structures to be reported. It was also recommended that the Western Area Water Supply Authority be contacted regarding infrastructure in the area.

## 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. 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 of a reasonable width to protect the integrity of an Exclusion Area must be included in the siting of the transmission facility.

26. Areas critical to the life stages of threatened or endangered animal or plant species are considered to be Exclusion Areas. The Project route crosses a designated critical habitat area for the piping plover, a threatened avian species. Sacagawea testified that the Project will be bored underneath the habitat area to avoid disturbance of this Exclusion Area.

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

28. 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.

29. 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.

30. The Palermo State Game Management Area, an Avoidance Area, is present within the Study Area, but is not crossed by the route.

31. Historical resources which are not specifically designated as exclusion or avoidance areas are present within the Survey Area and Study Area. Specifically, archeological sites were identified within the Survey Area and Study Area, but Sacagawea has committed to protecting the integrity of the sites as recommended by Beaver Creek Archeology and approved by the SHPO.

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

33. Wetland surveys and a jurisdictional determination were completed for the proposed route. Wetlands are present within the Survey 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.

34. 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.

35. 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

36. Sacagawea provided evidence 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 in Bartlesville, Oklahoma.

37. Sacagawea testified that back-up systems for both power and communications loss will be installed as part of the Project.

38. Sacagawea testified that the company has contracted with Clean Harbors Environmental Services, a private contractor, to provide emergency spill response, and is in the process of obtaining contracts with other private contractors.

39. Sacagawea testified that trained emergency response personnel will be stationed at the Palermo terminal.

40. Sacagawea testified that it participates in the One Call notification system and anticipates having utility locators on-site during Project construction.

41. 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.

42. The Project's permanent right-of-way ("ROW") will typically be 50 feet wide, while its temporary construction ROW will be 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 possible as part of the Project.

43. The design, construction, and operation of the Project will be in accordance with the United State Department of Transportation regulations governing the transportation of crude oil, including U.S. Department of Transportation regulations as set forth in 49 C.F.R. Part 195.

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 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 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 approximately 8 miles of 12-inch diameter crude oil pipeline and associated facilities in Mountrail County, North Dakota. The Corridor will consist of a 300-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 approximately 8 miles of 12-inch diameter crude oil pipeline and associated facilities in Mountrail County, North Dakota. The designated route for this purpose is depicted in Hearing Exhibit 2.
4. The January 4, 2016, 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.

**State of North Dakota  
Public Service Commission**

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**Randy Christmann  
Commissioner**

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**Julie Fedorchak  
Chairman**

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**Brian Kalk  
Commissioner**