



**LABORERS DISTRICT COUNCIL
MINNESOTA AND NORTH DAKOTA**

Affiliated with Laborers International Union
of North America

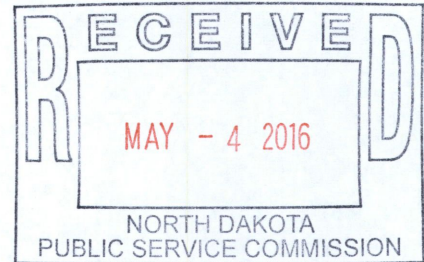
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TODD T. PUFAHL
President & Business Manager

**Brief and Proposed Findings of Fact on Sagawea Pipeline Company's Application for a
Certificate of Corridor Compatibility and Route Permit for the Johnson's Corner
Connector Project (ND PSC Docket No. PU-15-744/OAH File No. 20150619)**

May 2, 2016

Mr. Darrell Nitschke, Executive Secretary
North Dakota Public Service Commission
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-4080



Dear Mr. Nitschke:

Please accept the Laborers District Council of Minnesota and North Dakota's brief and proposed findings of fact with respect to Sacagawea Pipeline Company's Application for a Certificate of Corridor Compatibility and Route Permit for the Johnson's Corner Connector Project. If you have any questions, please feel free to contact Kevin Pranis, Marketing Manager, at 612.224.6464 or kpranis@liunagroc.com.

Sincerely,

Todd Pufahl
President & Business Manager

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Brief and Proposed Findings of Fact

Laborers District Council Minnesota and North Dakota
Todd Pufahl, President & Business Mgr.

NORTH DAKOTA PUBLIC SERVICE COMMISSION

In The Matter Of The Application Of
Sacagawea Pipeline Company For A
Certificate Of Corridor Compatibility And
Route Permit For A 16-Inch Pipeline In
McKenzie County

ND PSC Docket No. PU-15-744

OAS File No. 20150619

Brief and Proposed Findings of Fact

Laborers' District Council Of Minnesota
And North Dakota

The Laborers International Union of North America is committed to the responsible development of energy resources and associated infrastructure. Our construction members and employers don't just build our nation's energy infrastructure, we also rely upon that infrastructure at work and at home.

We have reviewed the plan put forward by Sacagawea Pipeline Company for the Johnson's Corner Connector pipeline, and we support the project in concept. If the proposed pipeline were built according to the specifications laid out by the applicant and the requirements of the Public Service Commission, we believe it would be of benefit both to the oil and gas industry and to the citizens of North Dakota.

On the other hand, as a union that represents the people who do the hands-on work of turning drawings and specifications into physical structures, we know too well that the best laid plans of mice and men can often go awry. We understand that what happens in the ditch can make *all* the difference when it comes to the quality, reliability, and impact of a given facility.

We understand that the Public Service Commission typically makes decisions based on the plans submitted and commitments made during case proceedings, and assumes that applicant will follow through on those plans and commitments. Under most circumstances, this is a reasonable course of action. But in a case where an applicant has a troubled contracting history, we believe that the law and any notion of sound public policy require closer scrutiny and measures designed to better safeguard the public.

LIUNA intervened in the Johnson's Corner Connector case hoping to get answers from the applicant that would allay our concerns about their troubled history of contractor selection. Unfortunately, the applicant's inability to supply satisfactory answers to basic questions about their contracting decisions and history left us deeply concerned about the potential consequences of permitting the company to build yet another pipeline.

The applicant's argument concerning the selection of contractors, as we understand it, is that the Commission is not allowed to consider the qualifications of the contractor that will build the project in its decision because the company has not yet selected a contractor. We would argue, however, that the record clearly shows that Paradigm Energy Partners, the joint venture partner responsible for managing the construction of the proposed pipeline, has a terrible track record when it comes to selecting contractors.

The record shows that Paradigm selected a contractor to build the Charlson gathering system that was obviously underqualified, ignoring the union's warnings, with disastrous results that included delays, bad welds, and workers who are owed hundreds of thousands of dollars that they may never collect. The record further indicates that the contractor selected to build the Sacagawea Pipeline, Boyd & Company, may be equally underqualified based on their lack of verified experience completing similar projects – a qualification that was central to the applicant's description of the contractor selection process.

In light of this track record, we believe it would be ludicrous for the applicant to argue that the Commission must grant them a permit even as they withhold the identity of their proposed contractor. We urge the Commission to require the applicant to demonstrate that they will retain a contractor that meets the standards that the applicant's witness agreed were essential: a proven track record of completing projects of similar size, a proven track record of successful right-of-way restoration, and access to skilled labor.

We are further concerned by the applicant's lack of clarity regarding the use of X-ray inspections for welds, and the lack of any justification for the use of a straight-wall trench. Mr. Stelzer's confusion regarding language in the company's application, which clearly does not provide for certain X-ray inspection of all welds adds to our concerns about the company's ability to select and manage contractors. We have also provided uncontested testimony that straight-wall trenches increase risks to pipeline integrity and worker safety, while the applicant made no defense of the company's plans to use straight-wall trenches.

We recommend that the Commission defer a decision on the Johnson's Corner Connector permit pending additional information regarding the applicant's proposed contractor and plans to provide improved oversight of construction work. The following proposed findings of fact are limited to the issues of particular concern to our organization.

Proposed Findings of Fact:

1. Paradigm Energy Partners is the joint venture partner responsible for the development, permitting, and construction of Sacagawea Pipeline Company pipeline projects, including the proposed Johnson's Corner Connector.
2. Paradigm Energy Partners' experience building pipelines in North Dakota consists of the one completed gathering system (Charlson) and one transmission pipeline (Sacagawea) on which construction has recently begun.
3. Realization of the anticipated benefits of the Johnson's Corner Connector depends upon the selection of a general contractor that is willing and able to successfully complete the project while abiding by relevant statutory, regulatory, and contractual requirements.
4. The applicant has indicated that Sacagawea Pipeline Company selects contractors based on their proposals and their experience completing projects of a similar size, and that factors such as access to skilled labor and quality of past right-of-way restoration. But the record does not support all of the applicant's claims regarding contractor selection.
5. Specifically, there is no evidence in the record that Boyd & Company, the contractor that was recently selected to build the Sacagawea Pipeline, meets the applicant's stated contractor selection criteria. To the contrary, the Laborers Union has presented uncontested evidence that Boyd & Company's known work in North Dakota consists of small-diameter gathering projects where the right-of-way was poorly restored.
6. Paradigm has a troubled record in North Dakota with respect to selection and management of contractors. WCE Oilfield Services, the contractor selected by Paradigm to build the Charlson gathering system, failed to complete the project and went out of business owing hundreds of thousands of dollars in back wages to former employees in addition to claims by other creditors.
7. Paradigm's failure to properly manage the project is evident not only in the selection of a contractor that Mr. Stelzer admits, in his opinion, was underqualified, but also in Paradigm's failure to identify bad welds and weld inspections until the pipe had already been buried.
8. The selection of an underqualified contractor to build the Johnson's Corner Connector could, as the WCE example demonstrates, have negative consequences for the surrounding and human environment, including negative consequences related to the inability or refusal of the contractor to meet obligations to workers and vendors, as well as negative consequences that could come from failure to properly build the pipeline along a route that includes wetlands and multiple water bodies.
9. The applicant has stated that new policies have been adopted with respect to requirement of 100% weld inspection and the use of lien waivers to ensure payment of subcontractors, but the record shows that neither of these policies would necessarily prevent a recurrence of the problems experienced with WCE.