



# Public Service Commission State of North Dakota

## COMMISSIONERS

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October 26, 2021

Lawrence Bender  
Fredrikson & Byron, P.A.  
1133 College Drive, Ste. 1000  
Bismarck, ND 58501-1215

**Re: Tree and Shrub Mitigation  
Case Nos.: PU-15-114, PU-15-670 and PU-15-744**

On June 16, 2021, Commission staff issued a Notice of Noncompliance to Sacagawea Pipeline Company, LLC regarding tree and shrub replacements required by the Commission's May 24, 2016, Findings of Fact, Conclusions of Law and Order in Case No. PU-15-744.

Commission staff has been in communication with Jason Stelzer, Director-Permitting, Land, and Right of Way for Paradigm Midstream, and has learned that, for purposes of tree and shrub mitigation, Sacagawea combined the tree and shrub mitigation requirements from Case No. PU-15-114, Case No. PU-15-670 and Case No. PU-15-744 into one tree and shrub mitigation plan. During construction of the projects in Case No. PU-15-114 and Case No. PU-15-744, 1,114 trees/shrubs were removed. During construction of the project in Case No. PU-15-670, no trees/shrubs were removed.

The Company has been working McKenzie County regarding tree/shrub replacement plantings on landowner property during the years 2018 through 2020. In addition, the Company placed trees/shrubs in the NRCS tree bank for McKenzie and Mountrail Counties to be planted at the discretion of each NRCS office.

Sacagawea Pipeline may wish to consider complying instead with the March 13, 2019, simplified version of the Tree and Shrub Mitigation Specifications. I have enclosed with this letter a copy of the March 13 version and a copy of the version the company is currently under in Case No. PU-15-114 and Case No. PU-15-744. Under the March 13, 2019 Specifications, Sacagawea would need to file a final report in compliance with paragraph 5, which requires that the Company file a summary documenting how the tree and shrub replacements achieved the purpose to create sustainable plantings, appropriate for the local soil and growing conditions that will provide long-term benefit to

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landowners, farmers and ranchers, the community, wildlife and the environment. The summary must also report the number of surviving replacement trees and shrubs.

Should Sacagawea Pipeline choose the March 13 version of the Tree and Shrub Mitigation Specifications, **please notify the Commission in writing** so that the Commission can amend the January 5, 2016, Findings of Fact, Conclusions of Law and Order in Case No. PU-15-114 and the May 24, 2016, Findings of Fact, Conclusions of Law and Order in Case No. PU-15-744 to incorporate the March 13 version of the Commission's Tree and Shrub Mitigation Specifications.

Please feel free to contact me with any questions.

Best regards,

A handwritten signature in cursive script that reads "Patrick Fahn".

Patrick Fahn  
Director, Public Utilities Division

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Company  
Description  
Siting Application**

**Case No. PU-??-???**

**Tree and Shrub Mitigation Specifications**

**Inventory**

Prior to cutting or clearing trees or shrubs for construction:

- All trees one-inch or greater in diameter at breast height must be inventoried to record the location, number, and species.
- All shrubs and all coniferous trees of any diameter must be inventoried to record the location, number, and species.

**Clearing**

The maximum width of tree and shrub removal is 50 feet, unless otherwise approved by the Commission.

**Replacement**

1. Landowners must be given the option to have trees and shrubs that are removed from their property replaced on their property. The landowner may waive this option in writing. If the landowner waives this option, the company shall plant replacement trees and shrubs in an alternate location in the same region, if practical.
2. Trees and shrubs must be replaced on a minimum two-to-one basis. The company shall develop a Tree and Shrub Mitigation Plan (Plan) in consultation with landowners who are seeking replacement trees and shrubs and in accordance with USDA-NRCS-North Dakota Field Office Technical Guide: Windbreak and Woodland Tree Care and Management. The guidelines outlined in the Technical Guide shall be followed until filing of the Plan summary outlined in number 5 below.
3. The purpose of the company's Tree and Shrub Mitigation Plan is to create sustainable plantings, appropriate for the local soil and growing conditions that will provide long-term benefit to landowners, farmers and ranchers, the community, wildlife and the environment.
4. The Plan, including the proposed number, variety, type, location, and approximate date for plantings, shall be filed with and approved by the Commission.
5. Two years after completion of the plan, the company must file a summary documenting how the plan achieved the purpose outlined in number 3 above. The summary must also report the number of surviving replacement trees and shrubs.
6. The Commission will consider, on a limited basis as conditions warrant, mitigation plans that provide long-term wildlife habitat and conservation benefits but do not involve the replanting of trees and shrubs.

**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**

**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).

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Sacagawea Pipeline Company, LLC  
16-Inch Crude Oil Pipeline – McKenzie County  
Siting Application**

**Case No. PU-15-744**

**Tree and Shrub Mitigation Specifications**

**Inventory**

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