

September 22, 2016

Mr. Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

**RE: Sacagawea Pipeline Company, LLC
(PU-16-582) - Response Regarding
Compliance for Case No. PU-15-114**

Dear Mr. Nitschke:

In addition to the previous response submitted by Sacagawea Pipeline Company, LLC (“SPC”) for the Sacagawea Pipeline Project (“Project”), SPC herein submits additional information with respect to the potential violations noted in the August 3, 2016, letter submitted by Derrick Braaten and accompanying affidavits of Kenny Crase and Evan Whiteford (PSC Case No. PU-16-582, Docket No. 2); the August 18, 2016, letter submitting the affidavit of Jesse Graham (PSC Case No. PU-16-582, Docket No. 4); and the Construction Inspection Report authored by Samantha Swanberg, Wenck Associates, Inc. dated September 8, 2016 (PSC Case No. PU-16-582, Docket No. 6). Each of the documents will be addressed below.

Kenny Crase Affidavit

In addition to the previously addressed issues falling within the jurisdiction of the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (“PHMSA”) raised in the Affidavit of Kenny Crase, Crase notes various additional potential violation areas. First, Mr. Crase describes an issue regarding weather conditions for construction. *See* Affidavit of Kenny Crase (hereinafter referred to as “Crase Aff.”) 4, PSC Case No. PU-16-582, Docket No. 2. Specifically, he alleges that individuals were seen inside their equipment during rain and lightning weather conditions.

SPC understands the risks posed by rain and lightning during construction activities. Employees working outdoors, in open spaces, and near conductive materials have a significant exposure to lightning strikes. When safe building structures are not accessible, Occupational Health and Safety (“OHS”) best practices suggest workers stay inside hard-topped metal vehicles with rolled up windows. *See Lightning Safety When Working Outdoors*, OSHA/NOAA Fact Sheet 2 (2016), <https://www.osha.gov/Publications/OSHA3863.pdf>.

In accordance with these best practices, SPC correctly instructs employees to stop working, remain inside their equipment and vehicles, and wait for the weather conditions to improve. SPC minimizes the serious risks posed by workers standing outside in water, near 11,000 feet of steel pipeline (an effective conductor of electrical current), through these practices.

Second, Crase makes allegations regarding “steep, unsafe bore pits” during construction. *See Crase Aff. 5*. While Crase may have perceived the bore pits as “steep,” the bore pits were OSHA compliant. OSHA has been actively onsite during construction of the Sacagawea Pipeline auditing safety conditions and procedures, and as noted, the bore pits were in compliance with OSHA standards.

Third, Crase alleges that “a lot of times” inspectors were not present onsite to inspect the work. *See Crase Aff. 5*. However, throughout his affidavit, Crase states there were “two different inspection companies” and “multiple coating inspectors” who instructed workers to cure defects. *See Crase Aff. 2-4*. While the pipeline coating is not at issue here, Crase’s detailed accounts of inspectors making corrections to the coating work on several occasions contradict his allegations that inspectors were hardly present. To the contrary, inspectors were continually onsite assessing various aspects of construction.

SPC does not believe any of the issues raised in the Crase affidavit rise to the level of violations of the Public Service Commission (“PSC”) permit or regulations.

Evan Whiteford Affidavit

The August 3, 2016, letter also includes an affidavit authored by Evan Whiteford who notes potential violation areas for which SPC has reviewed. *See Affidavit of Evan Whiteford* (hereinafter referred to as “Whiteford Aff.”), PSC Case No. PU-16-582, Docket No. 2. The Whiteford Affidavit includes several photographs offered to prove the existence or non-existence of certain conditions. Whiteford provides neither the date nor time the photographs were purportedly taken. Consequently, responses to the allegations are speculative regarding the phase of the activities depicted. Notwithstanding the lack of information, SPC provides the following information.

First, Whiteford notes that pipe was left on the ground, which in his opinion should not be done. *See Whiteford Aff. 2*. However, the sections of pipe depicted on pages 2 through 4 of the

affidavit were likely pipeline “pups,” i.e. short lengths of pipe, or partial joints that had been cut as part of the construction process. The photos indicate that stringing, welding, trenching, lowering and backfilling were completed. *See* Whiteford Aff. 2-4. However, the photos were likely taken prior to topsoil replacement/final restoration. Consequently, the pipes depicted are likely surplus waiting to be retrieved prior to final topsoil preparation. The seeder (machine for mechanically sowing seed) on page 2 confirms this speculated phase of the project. Furthermore, even if any of the depicted pipes were not surplus and instead used after the photos were taken, their coatings would have been inspected and any defects remedied prior to subsequent use.

Second, Whiteford notes that an excavator was “working near overhead power lines without a spotter.” *See* Whiteford Aff. 4. Again, this photo is undated and it is impossible to tell whether work is actually occurring at the time the photo was taken. There was one incident whereby an excavator was discovered working near a powerline without a spotter. The responsible excavator was terminated for unsafe work practices.

Third, Whiteford notes a shortage of signage and flagging on a road. *See* Whiteford Aff. 4. SPC has already addressed signage issues with both the contractors and Mountrail County Rail and Bridge.

Fourth, Whiteford describes collapsed safety fences near road crossings. *See* Whiteford Aff. 6-8. Safety fences are components used to prevent passage into dangerous areas and mitigate risk. Due to the windy weather conditions in North Dakota, the maintenance of safety fences is ongoing. At times, portions of safety fences are intentionally removed to facilitate work in a specified area. Other times, safety fences are intentionally removed during clean-up or to facilitate revegetation during early stages of restoration. Without specifics regarding the timing of these photos, it is impossible to identify the exact circumstances with respect to any safety fences.

Fifth, Whiteford alleges that heavy equipment was moved across an “unprotected wetland.” *See* Whiteford Aff. 8-9. As explained in the wetland delineation report prepared by SWCA, not all wetlands are classified as jurisdictional wetlands. Furthermore, even if the depicted area was indeed a jurisdictional wetland, a Nationwide Permit 12 permits construction through wetlands where the total disturbance is less than 0.10 acres.

Sixth, Whiteford alleges a failure to properly install or maintain silt fences or erosion control measures. *See* Whiteford Aff. 9-14. SPC, per the Storm Water Pollution Prevention Plan (“SWPPP”), requires the inspection of erosion control devices after precipitation events. However, inspectors and work crews are proscribed from driving on muddy right-of-ways (“ROW”) to further avoid erosion.

Viewing an area after a precipitation event presents an inaccurate portrayal of true conditions, but without knowing when the photos were taken, it is difficult to determine whether the devices

shown in the photos were damaged by a rain event. However, the images do suggest a recent, major, precipitation event, with no current or post rain construction activity. The absence of construction activity within the photos demonstrates that SPC complied with Provision #15 of the Certification Relating to Order Provisions for the Project, which mandates the suspension of work during unsuitable construction conditions. Upon receiving notice of this issue, SPC advised all construction personnel and directed them to address any issues.

Jesse Graham Affidavit

The affidavit of Jesse Graham only sets forth issues within the jurisdiction of PHMSA regarding coating of the pipeline. Because the perceived violations of federal regulations set forth in the Graham Affidavit are being reviewed by PHMSA, no additional response is submitted here, and SPC incorporates by reference the information submitted to the PSC on August 5, 2016. *See* PSC Case No. PU-16-582, Docket No. 3.

Construction Inspection Report

The Construction Inspection Report authored by Samantha Swanberg with Wenck Associates, Inc. lists observations along the ROW during site visits conducted on July 21, 2016 and September 1, 2016.¹ *See* Construction Inspection Report (hereinafter referred to as the “Report”), PSC Case No. PU-16-582, Docket No. 6. Representatives for SPC were not provided a copy of the Report at the time of filing with the PSC, but upon forwarding of the Report by SPC counsel, the issues raised in the Report were reviewed. In addition to internal discussions regarding the Report, SPC asked Keitu Engineers & Consultants (“Keitu”) to review the Report. Various aspects of the report are addressed below.

Photo 1 of the Report notes that a temporary gate was erected across a ROW. SPC’s agreement with landowners requires the installation of gates in any fence gaps to facilitate construction.

The comments associated with photos 2, 3 and 4 imply erosion control and drainage area deficiencies. *See* Report 1, 12-13. For example, Photo 2 states “the corridor had not been necked down in this area to reduce disturbance.” *See* Report 1. However, as outlined in the Project’s environmental mitigation plan, waterway disturbance areas are to be narrowed where practical, but are not applicable to every swale or other type of drainage areas. Furthermore, the depicted site is in excess of 25 feet of vegetative cover to open water. Even on high slope areas, 50 feet of vegetative

¹ It is important to note that the Report discusses observations and areas of interest, not necessarily deficiencies or violations.

cover between the disturbance and any surface water is considered an adequate BMP. Finally, the drainage in question is not a designated wetland.

BMP's can include existing vegetative cover. In this case there is more than 50 feet of vegetative cover between the disturbance and any surface water and the drainage in question is not a designated wetland.

Photo 7 depicts a silt fence requiring repair and was taken during the July 21, 2016 inspection. *See Report 2, 15.* The depicted area received multiple storms, traditional for the July season. The noted fence was likely repaired prior to the next event. Furthermore, it is unlikely that the depicted area was in violation of storm water regulations due to visible vegetative cover which prevents sediment from entering surface waters.

The Report indicates photos 8 through 12 were taken at the east side of the Lake Sakakawea HDD bore location on July 21, 2016. *See Report 2.* The accompanying photos imply an inadequate safety marking of the excavation hazard. *See Report 15-17.* Note that it is atypical for open pipeline trenches to be marked in their entirety.

Regardless, SPC recognizes the hazards associated with open trenches. SPC limits construction site access to authorized personnel, workers who have completed the requisite project safety orientation, and workers escorted by project personnel. When there are specific hazards, such as unstable soils, large excavations, or nonobvious excavations from the designated rive lanes, these limited areas will be marked with barriers. Photos 10 through 12 are consistent with this practice.

Photo 13 of the Report depicts an open trench. *See Report 2, 18.* The trench was open to complete the tie-in of the bore section to the mainline. SPC's primary concern is safety and inspections for BMP and safety measures are routine. When potential violations and/or concerns are raised, SPC takes prompt remedial measures.

In addition, Photo 13, along with Photos 14 and 15 of the Report, depict an area near a rural water line break. *See Report 2, 18-19.* The photos show "pushed around" soil and pooled water. *See Report 18-19.* However, the images are expected due to the associated land events. Consistent with PSC requirements, construction activity halted to allow for the soil to dry and to avoid unnecessary damage.

Photo 16 of the Report alleges insufficient erosion control devices. *See Report 2, 19.* The photo shows a bored wetland with an adjacent bypass road to move traffic around the area. The bare dirt road is without a control fence; however, no visible sediment is flowing into the wetland and the road slopes back away from the water. Also note that sufficient vegetative cover between surface waters and the disturbance may be considered a BMP.

Photo 17 of the Report shows a drainage area allegedly lacking an erosion control device. *See Report 2, 20.* The area depicted is a restored ROW and as such, any BMPs were intentionally removed. While the foreground appears to have some soil mixed into the vegetation off of the ROW, the foreground also appears to be “upstream” of the ROW location. The photo’s background indicates that an adequate vegetative cover exists beyond the ROW, thus preventing sediment from reaching surface waters until vegetation in the ROW is re-established. Photo 17 is an example of a drainage path continuing to exist following the completion of pipeline construction. Any issues that potentially exist with respect to this photo are being addressed by construction and environmental personnel.

Photos 18 through 20 of the Report depict wood mats used to protect property next to a wetland. *See Report 3, 20-21.* Large amounts of rain from May through July led to a rapid expansion of the surface water which has been slow to drain in this area. The wood mats likely floated and were carried by wind or wave action to the other side of the pool. The depicted fenced pothole demonstrates the relatively large impact/pond boundary shift of the prior rain events. The photos also indicate that the pool is at the bottom of a rather large size drainage area which would be subject to wide seasonal fluctuations in size. The submerged vegetation boundary speaks to the rarity of the event. Further, the landowner requested that SPC delay reclaiming the area until it had dried.

The area detailed in photo 21 has already been addressed as a result of a SWPPP inspection conducted on September 6, 2016 by SPC Environmental Inspectors. *See Report 3, 22.* The maintenance was completed by a contractor on September 8, 2016 in accordance with the provisions of the existing stormwater management plan. Furthermore, the existing vegetation served to prevent sediment from being discharged into the nearest surface water.

Photo 22 of the Report depicts a “rough” topsoil surface restoration with BMPs intentionally removed. *See Report 3, 22.* The vegetative cover between the surface water and the disturbance serves as a BMP.

Photo 23 of the Report does not present a surface disturbance as alleged. *See Report 3, 23.* The area is a final ROW restoration with a sole, low travel lane to allow revegetation.

With respect to the topsoil segregation issue previously discussed between representatives of SPC and PSC staff, these concerns were sent on to the construction manager. All issues have been addressed. ROW is being reclaimed throughout the Project area.

At this time, SPC has provided full and complete responses to the noted concerns given available information. SPC will keep PSC staff apprised of any new factual findings.

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If any additional information is desired, please do not hesitate to contact Sacagawea Pipeline Company, LLC.

Sincerely,

A handwritten signature in blue ink, appearing to read "Criss Doss". The signature is stylized with a large initial "C" and a long horizontal stroke.

Criss Doss
COO, Paradigm Energy Partners, LLC on behalf
of Sacagawea Pipeline Company, LLC