



Public Service Commission

State of North Dakota

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December 9, 2016

Derrick Braaten, Partner
Baumstark Braaten Law Partners
109 N 4th Street, Ste. 100
Bismarck, ND 58501

RE: PU-16-582 Sacagawea Pipeline Company, LLC

Dear Mr. Braaten:

Commission staff have reviewed complaints filed by the Laborers District Council of Minnesota and North Dakota on August 3, 2016 and August 18, 2016. The complaints concern potential violations of the Commission's Orders issuing a certificate of corridor compatibility and a route permit for the Sacagawea Pipeline in case number PU-15-114.

Enclosed is a memorandum by Patrick Fahn, dated December 1, 2016, which summarizes staff's compliance investigation. The memorandum indicates that Commission staff will not be filing a formal complaint against Sacagawea pursuant to the complaints, unless otherwise directed by the Commission.

As the memorandum also indicates, copies of the complaints filed with the Commission have been provided by Commission staff to the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration, the United States Department of Labor Occupational Safety and Health Administration, and the North Dakota Department of Health for their review and possible investigation.

Please contact me at 701-328-4188 if you have any questions concerning the Commission's compliance investigation process.

Sincerely,

Julie Prescott
Public Utilities Analyst
Public Utilities Division

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Letter enclosing Memorandum

c: Lawrence Bender, Fredrikson & Byron, P.A.

Public Service Commission Staff

Julie Prescott

MEMORANDUM

To: Commissioners Fedorchak, Christmann, and Kalk
From: Patrick Fahn
Date: December 1, 2016
Subject: PU-16-582 Sacagawea Pipeline Company, LLC – Compliance

Attached is staff's November 8, 2016 Memorandum reporting the findings of its investigation of the August 3, 2016 informal complaint of the Laborers District Council of Minnesota and North Dakota (Laborers).

Staff forwarded the Laborers' allegations regarding pipeline safety violations to the Pipeline and Hazardous Materials Administration (PHMSA), forwarded allegations regarding workplace safety to the Occupational Safety and Health Administration (OSHA), and forwarded allegations regarding storm water management to the North Dakota Department of Health. To date, no government agency has reported a violation of its requirements by Sacagawea.

Staff's review of the Laborers' allegations finds one probable violation by Sacagawea of the Commission's January 5, 2016 and July 1, 2016 Orders in Case No. PU-15-114. Staff finds that Sacagawea failed to follow its Construction Mitigation and Reclamation Plan, filed as part of the siting application, which states that equipment mats will be used during the crossing of a wetland by vehicles and equipment.

In response to the wetland allegation, Sacagawea states that Wenck's photo of the wetland crossing does not show a surface disturbance, but instead shows a sole, low travel lane. According to the siting application, this wetland would be bored, even though there is no U.S. Fish and Wildlife or other wetland easement for the wetland. There is no reason to believe the wetland wasn't bored under.

Wetlands are a Selection Criteria under our siting rules and therefore a corridor or route is to be designated only when it is demonstrated that any adverse effects on wetlands will be at an acceptable minimum. While it may be true that a reclaimed/repaired wetland will rarely equal the condition of the original wetland and that wetlands in cold regions tend to recover most slowly, the Commission's siting rules anticipate impacts to wetlands. In addition, Sacagawea's Construction Mitigation and Reclamation Plan, provided as part of the siting application, provides practices for restoration and reclamation of impacted wetlands.

Staff is not inclined to file a formal complaint. Unless I hear otherwise from a Commissioner, staff will respond by letter to the Laborers and Sacagawea that the issue regarding the wetland should be resolved as corridor reclamation is completed.

A memo summarizing the staff investigation is attached.

MEMORANDUM

To: Patrick Fahn, Director, Public Utilities Division
From: Julie Prescott, Public Utility Analyst
Date: November 8, 2016
RE: PU-16-582 Sacagawea Pipeline Company, LLC – Compliance

BACKGROUND

On August 3, 2016, the Laborers District Council of Minnesota and North Dakota (Laborers) filed an informal complaint with the Commission concerning construction activities by Sacagawea Pipeline Company, LLC (Sacagawea or Company) associated with the Sacagawea Pipeline project (Project), a 70-mile, 16-inch crude oil transmission pipeline located in McKenzie and Mountrail Counties, North Dakota. Additional filings by the Laborers were made on August 18, 2016 and November 4, 2016. Response filings by the Company were made on August 5, 2016 and September 22, 2016.

The project was sited by the Commission in its orders dated January 5, 2016 and July 1, 2016, Case No. PU-15-114. A number of allegations have been made by the Laborers. An investigation was conducted with the assistance of the Commission's third party construction inspection contractor, Wenck Associates (Wenck).

Among the allegations, the Laborers asserted that a final inspection of the pipe coating was not conducted for a portion of pipeline installed by boring under Lake Sakakawea, bore pits were constructed in a steep and unsafe manner, pipeline inspectors were not always present at the work site, and erosion control measures were not taken to protect wetlands.

In an affidavit signed by Evan Whiteford and submitted by the Laborers, Mr. Whiteford asserted a number of additional allegations, including sections of pipe placed on the ground, an excavator working near overhead powerlines without a "spotter", a lack of signage and no flagger present on a road blocked by heavy equipment, safety fencing not being properly maintained, and a wetland crossed by heavy equipment without the use of a protective mat.

Staff received a response from the Company stating that they are cooperating with PHMSA in an investigation into the pipe coating allegation and that there were no deficiencies recorded during two recent on-site inspections by PHMSA.¹

Staff has forwarded copies of the complaints to PHMSA for the purposes of the PHMSA investigation. Staff has also forwarded copies of the complaints to OSHA and the North Dakota Department of Health for their respective reviews of the allegations concerning workplace safety and stormwater management. Staff advises no action at this time as to allegations of this nature, but will continue to monitor the results.

Wenck conducted a site visit on July 21, 2016. Wenck followed-up with an additional inspection accompanied by Mr. Whiteford on August 26, 2016. A report was filed as a result of the inspections which contains photographic documentation and a report of the spot checks conducted. As a result of the investigation, Staff believes that there is a probable violation.

Probable Violation

Under North Dakota Century Code section 49-22-21(3), any person who willfully [c]onstructs, operates, or maintains an energy conversion facility or a transmission

¹ Inspections were conducted April 26-27, 2016 and July 19-20, 2016.

facility other than in compliance with the certificate or permit and any terms, conditions, or modifications shall be subject to a civil penalty of not to exceed ten thousand dollars for each violation for each day the violation exists, not to exceed two-hundred thousand dollars per series of violations. Furthermore, failure to comply with the certificate or permit may result in a suspension or revocation of the certificate of site compatibility.

Probable Violation: Sacagawea violated the Commission Order by failing to use mats during the crossing of a wetland in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 35, Township 156 North, Range 91 West, Mountrail County (Wetland).

In the Certification Relating to Order Provisions – Transmission Facility Siting, provision 7, incorporated into the January 5, 2016 Order in Case No. PU-15-114, the Company agreed to construct and operate the transmission facility in the manner described in Company's application, in any late filed exhibits, and supplemental materials . . .

In Section 5.3 of the Company's Construction Mitigation and Reclamation Plan, in Hearing Exhibit 1, Appendix K, the Company stated that:

Vehicle Access and Equipment Crossing

The only access roads, other than the construction right-of-way, that the Contractor shall use in wetlands are those existing public roads and private roads acquired by Sacagawea from the landowner shown on the construction drawings.

To the extent practicable, the Contractor's construction equipment operating in saturated wetlands or wetlands with standing water shall be limited to that needed to clear the construction right-of-way, dig the trench, fabricate and install the pipeline, backfill the trench, and restore the construction right-of-way.

If equipment must operate within the wetland containing standing water or saturated soils, the Contractor shall use the following methods for equipment access unless otherwise approved by Sacagawea based on site-specific conditions:

- wide-track or balloon-tire construction equipment; and,
- conventional equipment operated from timber and slash (riprap) cleared from the right-of-way, timber mats, or prefabricated equipment mats.

In the Whiteford affidavit, Mr. Whiteford provides a photograph of a wetland that he alleges was crossed by heavy equipment. (Whiteford Affidavit, at 9). The image appears to depict marks left in the soil by tracked equipment, particularly evident in a gap between sections of timber mats along the route through a semipermanent wetland (WET 124, Exhibit 1, Appendix K). Wenck's subsequent investigation corroborates the claims of Mr. Whiteford. In the inspection report, Photo 23, GPS Point #488, Wenck indicates that no erosion control devices were observed and that it looks like the wetland was driven through.

Conclusion: From the information currently presented to Staff and the preliminary investigation conducted, Staff believes that the Company failed to take steps to adequately protect the integrity of the wetland located at the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 35, Township 156 North, Range 91 West, Mountrail County. Based upon this belief, Staff recommends that Advocacy Staff be appointed and a Formal Complaint be filed against Sacagawea.

JP