

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Cenex Pipeline, LLC  
10" Refined Fuels Pipeline – Williams, Mountrail, Ward  
Siting Application**

**PU-17-097**

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

**August \_\_, 2017**

**Appearances**

Commissioners Julie Fedorchak and Brian Kroshus.

Brian Bjella and Casey Furey, Attorneys at Law, Crowley Fleck PLLP, 100 West Broadway, Suite 250, Bismarck, North Dakota 58501, on behalf of the applicant, Cenex Pipeline, LLC.

Zachary E. Pelham, Special Assistant Attorney General, 314 East Thayer Avenue, Bismarck, North Dakota 58502, on behalf of the Public Service Commission.

Derrick Braaten and David Keagle, Attorneys at Law, Baumstark Braaten Law Partners, 109 North Fourth Street, Suite 100, Bismarck, North Dakota 58501, on behalf of Intervenor Dennis Johnsrud and Mavis Johnsrud, Dale Livdahl, Glenn and Susan Jorgenson, Robert and Elaine Ruprich, Leon Vandeberg, and Shirley Schumacher.

Kevin Pranis, 81 East Little Canada Road, St. Paul, Minnesota 55117 on behalf of Intervenor Laborers' District Council of Minnesota and North Dakota.

Timothy J. Dawson. Administrative Law Judge, Office of Administrative Hearings, 2911 North 4th Street, Suite 303, Bismarck, North Dakota 58503.

**Preliminary Statement**

On March 2, 2017, Cenex Pipeline, LLC (Cenex) filed applications for a certificate of corridor compatibility and a route permit concerning approximately 149.7 miles of 10-inch diameter refined petroleum products pipeline and associated facilities in Williams, Mountrail, and Ward Counties, North Dakota (Project).

Also on March 2, 2017, Cenex filed an application for waivers of procedures and time schedules established under North Dakota Century Code Sections 49-22.1-04, 49-22.1-05, 49-22.1-06, 49-22.1-07, 49-22.1-10, and North Dakota Administrative Code Section 69-06-01-02, requiring separate filings, separate notices, and separate hearings on such applications.

On May 5, 2017, the Commission deemed complete the applications for a certificate of corridor compatibility and a route permit, conditioned upon receiving from the applicant at least

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thirty days prior to the public hearing, 1) Geographic Information System layers for its survey area boundaries and all exclusion, avoidance, and other criteria/elements shown on the Applicant's Appendix A figures; 2) a Class III cultural resources survey report and status of North Dakota State Historic Preservation Office concurrence; 3) a wetlands delineation report; 4) Cenex's Construction Environmental Program; 5) Cenex's Unanticipated Discovery Plan; 6) spill history for Cenex facilities; 7) Cenex's Emergency Procedures Plan; 8) Cenex's Spill Response Plan; 9) Cenex's Erosion Control Plan; and 10) Cenex's Storm Water Pollution Prevention Plan (collectively Reports). The requested Reports were timely filed.

Also on May 5, 2015, the Commission issued a Notice of Filings and Notice of Hearings (Notice) scheduling hearings for July 24, 2017, at 10:00 a.m. Central Time, at the Sleep Inn, 2400 10th Street SW, Minot, North Dakota 58701 and July 25, 2017, at 9:00 a.m. Central Time, at Tioga City Hall, 16 1st Street NE Tioga, North Dakota 58852.

The Notice identified the following issues to be considered with respect to the application for a 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 applications for certificate of corridor compatibility and route permit:

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 July 7, 2017 and on July 20, 2017 Petitions to Intervene were filed by Intervenors.

On July 19, 2017 and on July 24, 2017, the Administrative Law Judge granted the Petitions to Intervene.

The hearings were 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. Cenex is a foreign limited liability company authorized to do business in the State of North Dakota, as evidenced by corporate papers filed with the Commission on March 22, 2017, in Case No. PU-16-044.

#### **Size, Type and Preferred Location of the Facilities**

2. The Project will consist of 149.7 miles of 10-inch diameter steel pipeline located in Williams, Mountrail, and Ward Counties, North Dakota. The Project will replace and re-route a portion of an existing 8-inch Cenex Pipeline installed in 1960 that transports refined fuels from Laurel, Montana to Minot, North Dakota, while adding throughput capacity to the system.

3. The pipeline will enter the state southwest of Williston, North Dakota, and continue north and then east to the CHS terminal located approximately one mile west of Minot, North Dakota.

4. The maximum operating pressure for the pipeline will be 1,440 pounds per square inch throughout the Project.

5. Pipe wall thickness will be as follows: 0.307 inches, except at river and road crossing sites where the thickness will be 0.365 inches.

6. The Project will include 13 main line valves planned, plus one pipeline pig launcher located at the terminal in Glendive, Montana, and one pig receiver located at the terminal in Minot, North Dakota. Valves will be located on either side of the following rivers: the Little Muddy, White Earth, and Little Knife Rivers in North Dakota.

7. The pipeline will transport approximately 38,000 barrels of refined fuels per day, but will have a maximum capacity of 60,000 barrels per day.

8. Cenex testified that the Project's right-of-way will primarily consist of a 50 foot wide easement. During construction, up to an additional 25 feet in width of temporary work space will be necessary for a total of up to 75 feet of construction right-of-way.

9. Cenex testified that 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 hazardous liquids by pipeline as set forth in 49 Code of Federal Regulations Part 195.

10. Cenex testified the total cost of the Project is estimated to be \$115 million.

## Study of Preferred Location

11. Cenex evaluated a 200-foot-wide corridor centered on the route (Study Area) for cultural, biological, and wetland resources.
12. Cenex conducted field surveys within the Study Area for those portions of the Project where survey access was obtained for the purpose of inventorying cultural, biological and wetland resources.
13. Cenex conducted a Class I cultural literature search for a six-mile corridor centered on the route. Cenex conducted a Class III cultural resources field inventory within the Study Area.
14. The following agencies were contacted by Cenex: U.S. Army Corps of Engineers (USACE), U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) North Dakota Game and Fish Department (NDGF), U.S. Fish and Wildlife Service (USFWS), North Dakota State Water Commission, North Dakota Department of Commerce, North Dakota Department of Health (NDDoH), United States Bureau of Reclamation (BLM), United States Department of Agriculture, Federal Aviation Administration, Federal Railroad Administration, U.S. Department of Energy, Bureau of Indian Affairs, Bureau of Land Management, USDA Natural Resource Conservation Service, Minot Air Force Base, Western Area Power Administration (WAPA), North Dakota Department of Agriculture, North Dakota Department of Transportation, North Dakota Department of Trust Lands (DTL), North Dakota Geological Survey (NDGS), and the State Historical Society of North Dakota (NDSHPO). Input provided includes the following:
  - a. In an August 25, 2015 response, the USAF indicated the Project was within Minot Airforce Base easements. Cenex subsequently rerouted the Project to avoid these easement locations.
  - b. In an April 19, 2016 response, the WAPA requested that the Project not be located closer than 50 feet from its structures. Cenex will follow WAPA's request.
  - c. In an April 28, 2016 comment letter, the NDDoH indicated that environmental impacts from the proposed Project will be minor and can be controlled by proper construction methods.
  - d. In a May 2, 2016 comment letter, the USACE stated the Project may require a permit. Cenex shall acquire all necessary permits in the event the USACE determines adjoining wetlands within the Study Area are jurisdictional.
  - e. In May 3, 2016 and June 15, 2017 comment letters, the NDGS indicated that the project may include areas prone to landslides. Cenex conducted a Geotechnical Hazard Analysis for the Project and will conduct an additional analysis in areas not previously surveyed.

- f. In a May 11, 2016 response, the BLM indicated that an Acknowledgment of Easement will be needed. Cenex testified that due to a reroute, the line no longer crosses the area indicated by the BLM.
- g. In a May 20, 2016 comment letter, the NDGF recommended steps to protect wetlands that cannot be avoided, no alterations to existing drainage patterns, and no above ground appurtenances within wetland areas. In addition, the NDGF recommended that the White Earth and Little Muddy Rivers as well as the Shell and Beaver Creeks be crossed by directional drilling. The NDGF also recommended that impacts to native prairie and wooded draws associated with the Project be avoided to the extent practical. Cenex will follow the NDGF's recommendations.
- h. In a May 17, 2017 comment letter, the NDDoH indicated the Project overlies glacial drift aquifers and that measures should be taken to minimize the potential for impacts. Pipeline specifications and safety measures utilized by Cenex will minimize the potential for impacts to aquifers.
- i. In a July 18, 2017 comment letter, the DTL indicated it is cooperating with Cenex on the Project. Cenex will work with the DTL to finalize easements.

#### Siting Criteria

15. The Commission has established criteria pursuant to North Dakota Century Code Section 49-22.1-03 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. Cenex evaluated the Project with respect to the Exclusion, Avoidance, Selection, and Policy Criteria of the Commission.

16. 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 to protect the integrity of the Exclusion Area must be included. A transmission facility route must not be sited within an Exclusion Area.

17. Cenex testified that 38 cultural resource sites were identified during the Class III field survey for those areas where survey access was obtained. On June 28, 2017, the NDSHPO issued a letter (Exhibit 14) indicating that it concurs with a "no significant sites affected" determination provided the Project is of the nature stated, takes place in the locations plotted in the report provided by Cenex and the management recommendations for avoidance are followed as stipulated. Cenex will provide the NDSHPO with survey results for the areas remaining to be surveyed, and will avoid impacts to any cultural sites in accordance with NDSHPO recommendations.

18. Areas critical to the life stages of threatened or endangered animal or plant species are considered to be an Exclusion Area. Cenex testified that the Study Area contains 2.16 acres of

Dakota Skipper habitat, of which 0.69 acres is located in the Project's 75 foot right-of-way. Cenex testified it has adopted avoidance and mitigation strategies to avoid direct impacts to the species. In addition to construction specifications to minimize dust and noise within close proximity to potential habitat, Cenex will avoid ground disturbance within 50 feet of Dakota Skipper Habitat, fencing off habit with the inclusion of a 10 foot buffer, and boring areas when necessary to protect the integrity of Dakota Skipper habitat. The Commission finds Cenex's avoidance and mitigation strategies are suitable to protect the integrity of the Dakota Skipper habitat. As a result of these mitigation measures, a buffer zone to protect the integrity of this Exclusion Area has been established.

19. As a result, no Exclusion Areas are present with the Project's route.

20. An Avoidance Area is a geographical area that may not be considered in the routing of a transmission facility unless the applicant 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.

21. A transmission facility route may not be sited within an Avoidance Area unless the applicant demonstrates that under the circumstances there is no reasonable alternative. Economic considerations alone are not sufficient to establish no reasonable alternative.

22. The route will cross through a portion of the Haugen Waterfowl Protection Area. Cenex testified that this route had the least environmental impact because Cenex maintains an existing pipeline right-of-way within this area, and by following the existing pipeline route would cause the least disturbance to previously undisturbed areas. Cenex testified that the USFWS was conveyed title to this property subject to an existing right-of-way owned by Cenex (Exhibits 17 and 18). Cenex further testified that the USFWS has not objected to the crossing. Based on the foregoing, the Commission finds there is no reasonable alternative to the proposed route crossing this Avoidance Area.

23. A portion of the pipeline would be constructed within a delineated, groundwater dependent, Wellhead Protection Area associated with the City of Minot. Passing through the Wellhead Protection Area could not be avoided because the CHS Minot Terminal is located within the Wellhead Protection Area. Cenex testified the City of Minot has not objected to the route and has indicated that the terminus for the proposed pipeline will be outside of the Wellhead Protection Zone (Exhibit 19). Based on the foregoing, the Commission finds there is no reasonable alternative to the proposed route crossing this Avoidance Area.

24. A few areas which are geologically unstable are present within the route. Cenex testified the Project was sited to provide the least damaging environmental alternative while minimizing excessively routing the pipeline. Cenex has completed additional geotechnical investigations along the proposed route to ensure the pipe will be installed in geologically stable areas and to minimize the potential for pipeline integrity issues. Cenex will avoid impacting geologically unstable areas,

including boring when necessary. Based on the foregoing, the Commission finds that no geologically unstable areas will be impacted.

25. Pursuant to North Dakota Administrative Code § 69-06-08-02(2) areas within 500 feet of a residence, school or place of business are Avoidance Areas. Two inhabited residences are located within 500 feet of the pipeline route. Cenex has obtained waivers from the owners of these residences and has filed the waivers with the Commission.

26. Cenex conducted wetland delineations within the Study Area identified for a majority of the route, and will complete any remaining field surveys. Impacts to wetlands will be minimized by temporarily trenching through basins or avoided by boring. All work within USACE jurisdictional areas will be in compliance with Nationwide Permit Number 12.

27. In accordance with the Commission's Selection Criteria, a transmission facility route shall be designated if it is demonstrated that any significant adverse effects resulting from the location, construction, and maintenance of the transmission facility will be at an acceptable minimum, or will be managed and maintained at an acceptable minimum. Cenex has analyzed the impacts of the Project in relation to all of the relevant Selection Criteria. No significant adverse impacts will result from the location, construction and operation of the Project.

28. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the transmission facility. Cenex has analyzed the relevant Policy Criteria and has demonstrated its commitment to maximizing the benefits of the proposed transmission facilities so as to meet the Policy Criteria, such as use of an existing pipeline corridor for a portion of the route.

29. It is appropriate to authorize the corridor and route as depicted in Cenex Exhibit 11.

#### Measures to Minimize Impact

30. Cenex committed to providing landowners with company contact information.

31. Cenex testified that a supervisory control and data acquisition system, a computational pipeline monitoring leak detection system, and a cathodic protection system for prevention of corrosion will be installed as part of the Project, and that operations will be continuously monitored by a control center located in Laurel, Montana.

32. Cenex testified it will retain environmental inspectors on each pipeline spread to ensure regulatory and environmental compliance.

33. Cenex testified that emergency response trained personnel and/or equipment will be located in Glendive, Montana, and New Town, Watford City, and Minot, North Dakota. Cenex is a member of the Sakakawea Area Spill Response and the Williston Basin Oil Spill Cooperative.

34. Cenex testified it will participate in the North Dakota One-Call notification system.

35. Cenex testified it will use best management practices in order to minimize erosion and sediment discharge during construction.
36. Cenex testified that the Shell and Beaver Creeks and Little Muddy, White Earth, and Little Knife Rivers in North Dakota will be bored to a minimum depth of twenty feet below the bed.
37. In the event that construction is undertaken by Cenex after topsoil has frozen to the point that frost inhibits soil segregation, Cenex has committed to the following applicable winter construction guidelines as set forth in the following documents: North Dakota State University Extension Service, Publication R1728, "Successful Reclamation of Lands Disturbed by Oil and Gas Development and Infrastructure Construction, August 2014; INGAA Foundation, Inc. Report No. 2013.04, "Planning Guidelines for Pipeline Construction During Frozen Conditions," December 2013.
38. Cenex committed to stripping and segregating topsoil up to 12 inches, or to the depth of cultivation, whichever is greater.
39. Cenex testified that impacts to wooded draws, wind breaks and other wooded areas within the right-of-way would be limited to a 50-foot disturbance area so as to minimize tree and shrub removal.
40. Cenex has developed a Construction Environmental Program (Exhibit 6), which outlines construction related environmental policies, procedures and protection measures for construction of the Project.
41. Cenex has developed a draft Emergency Procedures Manual and Oil Response Plan (Exhibit 8) in consultation with the federal Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA). The manual will be submitted to PHMSA prior to the Project being placed in service.
42. Cenex has agreed to a number of steps to mitigate the impact of the Project as indicated by the Certification Relating to Order Provisions – Transmission Facility Siting with accompanying Tree and Shrub Mitigating Specifications filed in this proceeding, which is incorporated by reference and attached to this Order.
43. Cenex testified that it has been in contact with zoning officials for Williams, Mountrail and Ward Counties, North Dakota. Zoning officials in each of these counties have indicated that a conditional use permit for the Project is not required. Williams County has filed a letter indicating the same with the Commission. Cenex has also been in contact with zoning officials for the City of Minot. The city has indicated (Exhibit No. 19) that no conditional use permits are required. Cenex has also been in contact with organized townships along the Project route. Several of these townships have filed letters with the Commission. Cenex has indicated it is working with these townships in order to secure any approvals that may be required.

From the foregoing Findings of Fact, Commission now makes its:

**Conclusions of Law**

1. The Commission has jurisdiction over Cenex and the subject matter of this application under North Dakota Century Code Chapter 49-22.1.
2. The Project proposed by Cenex is a transmission facility as defined in North Dakota Century Code Section 49-22.1-01(5).
3. The location, construction, and operation of the proposed Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
4. The Application submitted by Cenex meets the Corridor and Route evaluation criteria required by North Dakota Century Code Chapter 49-22.1.
5. The proposed transmission facility Corridor and Route 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.
6. The location, construction, and operation of the proposed Project are compatible with environmental preservation and the efficient use of resources.
7. The Project is of such design and location that it will produce minimal adverse effects, pursuant to North Dakota Century Code Section 49-22.1-05.
8. It is appropriate for the Commission to waive those certain procedures and time schedules as requested in the Application pursuant to North Dakota Century Code Section 49-22.1-05.

From the foregoing Findings of Fact and Conclusions of Law, the Commission now issues its:

**Order**

The Commission orders:

1. Cenex's application for a waiver of procedures and time schedule is granted.
2. Certificate of Corridor Compatibility No. \_\_\_ is issued to Cenex, designating a corridor for the construction, operation, and maintenance of approximately 149.7 miles of 10-inch diameter refined petroleum products pipeline and associated facilities in Williams, Mountrail and Ward Counties, North Dakota. The Corridor designated is depicted in Exhibit 11 and consists of a 200-foot-wide area centered on the route.
3. Route Permit No. \_\_\_ is issued to Cenex, designating a route for the construction, operation, and maintenance of approximately 147.9 miles of 10-inch diameter refined petroleum products pipeline and associated facilities in Williams, Mountrail and Ward Counties, North Dakota. The designated route for this purpose is depicted in Exhibit 11.

4. Prior to commencing construction of any portion of the proposed Project, Cenex shall obtain all other necessary licenses and permits for construction of such portion, and provide copies to the Commission prior to construction of that portion of the project.
5. Cenex shall file with the Commission Late-Filed Exhibit 22 depicting the type and location of all mainline valves, Late-Filed Exhibit 23 worst case spill scenario analysis, and Late-Filed Exhibit 24 Dakota Skipper plan and buffer prior to beginning construction of the Project.
6. Cenex shall complete Class III cultural resource surveys on all remaining un-surveyed portions of the route and any re-route, and shall file with the Commission documentation from NDSHPO (Late-Filed Exhibit 21) indicating concurrence that no historic properties or sites will be affected prior to beginning construction.
7. Cenex shall file with the Commission Late-Filed Exhibit 25 consisting of an updated Geotechnical Hazard Assessment and plan for avoiding or boring under any geologically unstable areas. Cenex shall not begin construction on the Project area depicted in map A-47 in Exhibit 11 until such report has been filed with the Commission.
8. Cenex shall file with the Commission Late-Filed Exhibit 26 containing surveys for cultural, biological and wetlands resources for those portions of the Project not yet surveyed. Cenex shall not commence construction in any unsurveyed areas until documentation showing that the corridor and route in those areas meeting the requirements of the North Dakota Energy Conversion and Transmission Facility Siting Act, NDCC Chapter 49-22.1, has been filed and approval from the Commission to proceed has been given.
9. Thirty days prior to commencing construction, Cenex shall inform the United States Department of Transportation, Pipeline and Hazardous Material Safety Administration of the intent to start construction.
10. The Certification Relating to Order Provisions – Transmission Facility Siting (Certification), with accompanying Tree and Shrub Mitigation Specifications (Exhibit 2), is incorporated by reference and attached to this Order.
11. To the extent there are any conflicts or inconsistencies between Cenex’s applications in this proceeding and the Certification, the Certification provisions control.
12. If a spill by Cenex requires notification to any other state or federal agency, Cenex will also inform the Commission of such spill within 24 hours of occurrence by leaving a message at the Commission’s toll free number, with a followup email to the Commission’s Executive Secretary.
13. Cenex is required to comply with all applicable laws, rules and/or regulations in the event that it desires to construct another or different transmission facility than was specified in the application.

**PUBLIC SERVICE COMMISSION**

Recused

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**Julie Fedorchak**  
**Commissioner**

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**Randy Christmann**  
**Chairman**

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**Brian Kroshus**  
**Commissioner**