

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

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

**Case No. PU-17-97**

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

**March 14, 2018**

**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.

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 Vandenberg, 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.

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

Timothy Dawson, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street-Suite 303, Bismarck, North Dakota 58503, as Procedural Hearing Officer.

**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 pipeline and associated facilities for the transmission of refined petroleum products (Project). The Project is to be located in Williams, Mountrail and Ward Counties, North Dakota.

Also on March 2, 2017, Cenex filed an application for waiver of procedures and time schedules established under North Dakota Century Code sections 49-22-07.2, 49-22-08, 49-22-08.1, and 49-22-13 (due to Legislative changes are now 49-22.1-05, 49-22.1-06, 49-22.1-07, 49-22.1-10), and North Dakota Administrative Code chapter 69-06-06 and section 69-06-01-02, requiring separate filings, separate notices, and separate hearings on the certificate of corridor compatibility and a route permit applications.

On May 10, 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 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 information was timely filed.

Also on May 10, 2017, the Commission issued a Notice of Filings and Public 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 such 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, construction, 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, a Petition to Intervene was filed by the Laborers' District Council of Minnesota and North Dakota. On July 19, 2017, the Administrative Law Judge granted the Petition to Intervene.

On July 15, 2017, Commissioner Randy Christmann recused himself from Case No. PU-17-97.

On July 20, 2017, a Petition to Intervene was filed by Dennis Johnsrud and Mavis Johnsrud, Dale Livdahl, Glenn and Susan Jorgenson, Robert and Elaine Ruprich, Leon Vandenberg, and Shirley Schumacher. On July 24, 2017, the Administrative Law Judge granted the Petition to Intervene.

On July 24, 2017 and July 25, 2017, the hearings were held as scheduled.

On September 25, 2017, Cenex filed a geotechnical investigation report and plan regarding geologically unstable areas.

On October 9, 2017, Cenex filed the type and location of mainline valves.

On October 9, 2017, Cenex filed a worst-case spill scenario analysis.

On October 9, 2017, Cenex filed a Dakota Skipper Avoidance Strategy Report.

On October 9, 2017, Cenex filed updated Exhibits containing surveys for areas not yet surveyed.

On October 10, 2017, Cenex filed addendums to Late Filed Exhibit 25.

On November 29, 2017, Cenex filed a trench breaker specification drawing and endorsement by Terracon Consultants, Inc.

On December 27, 2017, Cenex filed a State Historical Society of North Dakota concurrence letter.

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:

## Findings of Fact

1. Cenex Pipeline, LLC (Cenex) is a foreign limited liability company authorized to do business in the State of North Dakota on August 18, 1998, as evidenced by the corporate papers filed with the Commission on March 8, 2017 (see Case No. PU-16-44).
2. Cenex is a wholly-owned subsidiary of CHS Inc. that owns common carrier petroleum pipelines in Montana and North Dakota.

### Size, Type, and Preferred Location of Facility

3. Cenex owns and operates an 8-inch pipeline for the transport of refined petroleum from its oil refinery in Laurel, Montana to Fargo, North Dakota. The new pipeline will replace the existing 8-inch pipeline between Sidney, Montana and Minot, North Dakota with a 10-inch pipeline (Project).
4. The total distance of the pipeline replacement is approximately 181.5 miles of which 149.7 miles is in Williams, Mountrail, and Ward Counties, North Dakota. The pipeline will enter the state southwest of Williston and continue north and then east to the CHS terminal located approximately one mile west of Minot.
5. Pipe wall thickness will be 0.307 inches, except at river and road crossing sites where the thickness will be 0.365 inches. The maximum operating pressure for the pipeline will be 1,440 pounds per square inch throughout the Project
6. The Project will include 13 main line valves, 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 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.
9. The Project's permanent right-of-way will primarily consist of a 50-foot wide easement. During construction, up to an additional 25 feet in width of temporary workspace will be necessary for a total of up to 75 feet of construction right-of-way.
10. The total cost of the Project is approximately \$115 million.

## Study of Preferred Location

11. Cenex conducted a Class I cultural literature search for a six-mile corridor centered on the proposed route (Study Area). Cenex conducted a Class III cultural resources field inventory within a 200-foot-wide corridor centered on the proposed route (Survey Area).
12. Cenex also conducted field surveys within the Survey Area to inventory biological and wetland resources.
13. 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 Air Force 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 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 Geotechnical Hazard Analysis for the Project.

- 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.

14. 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 that no conditional use permits are required. Cenex has also been in contact with organized townships along the Project route. Cenex has indicated it is working with these townships in order to secure any approvals that may be required.

#### Siting Criteria

15. The Commission has developed criteria pursuant to North Dakota Century Code section 49-22-05.1 (due to Legislative changes is now 49-22.1-03) to guide the site, corridor, and route suitability evaluation and designation process. 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.

16. Cenex evaluated the Project with respect to the Exclusion, Avoidance, Selection, and Policy criteria of the Commission.

17. Exclusion areas may be located within a corridor, but at no given point may such an area or areas encompass more than fifty percent of the corridor unless there is no reasonable alternative. A transmission facility route must not be sited within an Exclusion Area. A buffer zone to protect the integrity of the Exclusion Area must be included.

18. 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 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. In December 2017, Cenex provided the NDSHPO with survey results for additional areas surveyed. On December 22, 2017, the NDSHPO issued a letter indicating that "[T]here has been a good faith effort to identify and avoid impacts to "Significant Sites," provided the projects remain as described and mapped. The December 22, 2017, NDSHPO letter identifies four sites that the project should avoid, and one of those sites that should have fencing and archaeological monitoring. NDSHPO also found acceptable Cenex" Cultural Resource Unanticipated Discovery and Monitoring Plan. Cenex will avoid impacts to any cultural sites in accordance with NDSHPO recommendations. Class III cultural resource surveys will be completed for any portions of the corridor not yet surveyed.

19. 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. Potential Dakota skipper habitat was delineated if it visually met the Dakota skipper habitat descriptions in the US Fish and Wildlife Service's Section 7 Guidance (May 2016). Seventeen areas of potential Dakota skipper habitat were delineated within the study area. 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 install a fence providing a 10-foot buffer around all identified potential Dakota skipper habitat within the study area and will place a 50-foot buffer on all identified potential Dakota skipper habitat within the study area for ground clearing activities. In those areas where the 50-foot buffer does not allow sufficient right-of-way for construction, Cenex will horizontally directional drill the pipeline and pass machinery through the right-of-way until on the other side where ground clearing activities can resume. Cenex provided information specific to the avoidance plans for each site. As a result of these mitigation measures, a buffer zone to protect the integrity of this Exclusion Area has been established.

20. The route would 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. 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. Cenex further testified that the USFWS has not objected to the crossing.

21. No other exclusion areas are located within the Survey Area.

22. 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.

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

24. Areas within five hundred feet of a residence, school, or place of business are Avoidance Areas. Pursuant to North Dakota Century Code section 49-22.1-03, the five hundred foot avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing.

25. 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. The Commission finds there is no reasonable alternative to the proposed route crossing this Avoidance Area.

26. Three geologically unstable areas are present within the Survey Area in SW1/4, Section 33, Township 154N, Range 103W, Williams County, in NW1/4, Section 3, Township 155N, Range 96W, Williams County, and in N1/2, Section 27, Township 155N, Range 94W, Mountrail County. Cenex stated that avoiding these areas would require crossing similar geologically unstable areas. Cenex completed additional geotechnical investigations to ensure the pipe will be installed in geologically stable areas and to minimize the potential for pipeline integrity issues. For these geologically unstable areas Cenex will use the Cut and Cover method described in its and (1) align the pipeline perpendicular or nearly perpendicular to the contours, (2) bury the pipeline at 8 feet, (3) utilize trench-breakers consistent with the Trench Breaker Specification Drawing filed on November 29, 2017, (4) utilize native cohesive materials to backfill the trench, (5) compact the backfill to 95 percent of the maximum dry density and optimum moisture (-1 to +2%) per ASTM D698, (6) provide drainage in order to prevent water from ponding or collecting near the top of the slope or along the excavation, and (7) install water bars and complete appropriate reclamation.

27. The Project will be located within five hundred feet of two inhabited residences. Cenex has obtained waivers from the owners of these residences and has filed the waivers with the Commission

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

29. In accordance with the Commission's Selection Criteria, a transmission facility route shall be designated if it is demonstrated that any significant adverse effects that will result 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.

30. Cenex has analyzed the impacts of the Project in relation to all of the relevant Selection Criteria. No significant adverse impact will result from the location, construction, and operation of the Project.

31. Major water bodies crossed by the Project include the Missouri River in Montana, the Little Muddy River, White Earth River, and Little Knife River. An upstream main pipeline valve and a downstream main pipeline valve would be located each of the crossings. 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.

32. 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.

#### Measures to Minimize Impact

33. Cenex committed to providing landowners with company contact information for the life of the project.

34. 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.

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

36. 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.

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

38. Cenex testified it will use best management practices in order to minimize erosion and sediment discharge during construction.

39. 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. In addition, unless otherwise approved by the Commission, topsoil must be removed before topsoil freezes in the late fall/early winter to the point that frost inhibits proper soil segregation.

40. 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.

41. Cenex has developed a Construction Environmental Program, which outlines construction related environmental policies, procedures and protection measures for construction of the Project

42. Cenex has developed a draft Emergency Procedures Manual and Oil Response Plan 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 pipeline being placed in service.

43. 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 Mitigation Specifications filed in this proceeding, which is incorporated by reference and attached to this Order.

44. It is appropriate to authorize the corridor and route as depicted in Cenex Hearing Exhibit No. 11.

From the foregoing Findings of Fact the Commission makes the following conclusions of law:

## **Conclusions of Law**

1. The Commission has jurisdiction over Cenex Pipeline, LLC (Cenex) and the subject matter of these applications under North Dakota Century Code chapter 49-22.1.
2. Cenex is a utility as defined in North Dakota Century Code section 49-22.1-01(12).
3. The Project proposed by Cenex is a transmission facility as defined in North Dakota Century Code section 49-22.1-01(7).
4. The location, construction, and operation of the Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
5. The location, construction, and operation of the Project are compatible with the environmental preservation and the efficient use of resources.
6. The Project 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.
7. The Project is of such design and location that it will produce minimal adverse effects, as defined under 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 waiver application under North Dakota Century Code section 49-22.1-05 and North Dakota Administrative Code chapter 69-06-06.

From the Findings of Fact and Conclusions of Law, the Commission makes the following order:

### **Order**

The Commission orders:

1. Cenex Pipeline, LLC application for a waiver of procedures and time schedules is granted.
2. Certificate of Corridor Compatibility No. 202 is issued to Cenex Pipeline, LLC 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. For purposes of the Certificate, the designated corridor is the proposed corridor depicted in Hearing Exhibit No. 11 and consists of a 200-foot wide area centered on the designated route.

3. Route Permit No. 212 is issued to Cenex Pipeline, LLC designating a route 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. For purposes of the Permit, the designated route is the proposed route depicted in Hearing Exhibit No. 11.
4. The July 11, 2017 Certification Relating to Order Provisions – Transmission Facility Siting (Certification), with accompanying Tree and Shrub Mitigation Specifications, is incorporated by reference and attached to this Order.
5. To the extent that there are any conflicts or inconsistencies between Cenex applications in this proceeding and the Certification, the Certification provisions control.
6. Cenex shall complete Class III cultural resource surveys for any portions of the designated corridor not yet surveyed. Cenex shall file with the Commission documentation from NDSHPO indicating concurrence that no historic properties or sites will be affected prior to beginning construction in those areas.
7. Cenex shall file with the Commission surveys for biological and wetlands resources for any portions of the designated corridor not yet surveyed. Cenex shall not commence construction in any unsurveyed areas until approval from the Commission to proceed has been given.
8. Prior to commencing construction of any portion of the proposed Project, Cenex shall obtain all necessary licenses and permits for construction of such portion, and provide copies to the Commission prior to construction of that portion of the project.
9. Thirty days prior to commencing construction, Cenex will inform the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration of the intent to start construction.
10. Cenex will participate in the North Dakota One-Call Notification System.
11. 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 follow-up email to the Commission's Executive Secretary.
12. One year after the Project is placed in service, Cenex shall file with the Commission a summary of the status of restoration activities related to the Project, including any restoration-related issues raised by landowners or identified by Cenex.
13. Cenex is required to comply with all applicable laws, rules, and/or regulations in the event it desires to construct another or a different transmission facility than was specified in the application within the corridor granted in this proceeding.

PUBLIC SERVICE COMMISSION



**Brian Kroshus**  
Commissioner

**"Recused"**

**Randy Christmann**  
Chairman



**Julie Fedorchak**  
Commissioner

**PUBLIC SERVICE COMMISSION**  
**STATE OF NORTH DAKOTA**

**Certificate of Corridor Compatibility Number 202**

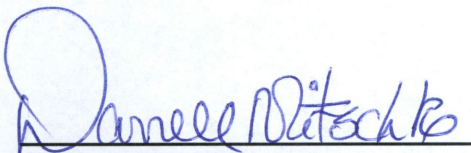
*This is to certify that the Commission has designated a transmission facility corridor for Cenex Pipeline, LLC for the construction, operation, and maintenance of approximately 149.7 miles of 10-inch inside diameter pipeline and associated facilities in Williams, Mountrail, and Ward Counties, North Dakota, for the transportation of refined petroleum products.*

*This Certificate is issued in accordance with the Order of the Commission dated March 14, 2018 in Case No. PU-17-97 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, March 14, 2018.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
\_\_\_\_\_  
**Executive Secretary**

  
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**Commissioner**

**PUBLIC SERVICE COMMISSION**  
**STATE OF NORTH DAKOTA**

**Route Permit Number 212**

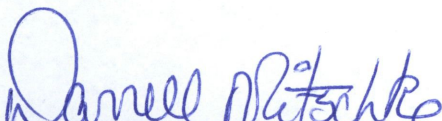
*This is to certify that the Commission has designated a transmission facility route for Cenex Pipeline, LLC for the construction, operation, and maintenance of approximately 149.7 miles of 10-inch inside diameter pipeline and associated facilities in Williams, Mountrail, and Ward Counties, North Dakota, for the transportation of refined petroleum products.*

*This Permit is issued in accordance with the Order of this Commission dated March 14, 2018 in Case No. PU-17-97 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, March 14, 2018.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
**Executive Secretary**

  
**Commissioner**

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

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

**Case No. PU-17-97**

**CERTIFICATION RELATING TO ORDER PROVISIONS  
TRANSMISSION FACILITY SITING**

I am Richard S. Petersen, a representative of Cenex Pipeline, LLC ("Company") with authority to bind the Company to requirements to be set forth by the Commission in its Order and I certify the following:

1. Company understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission will be subject to the conditions and criteria set forth in Chapter 49-22 of the North Dakota Century Code and Chapter 69-06-08 of the North Dakota Administrative Code, and that Company shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. Company agrees to comply with the rules and regulations of all other agencies having jurisdiction over any phase of the transmission facility including all city, township, and county zoning regulations.
3. Company understands and agrees that it shall obtain all other necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission prior to construction activity associated with the transmission facility that requires said license or permit.
4. Company understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission is subject to suspension or revocation and may, in an appropriate and proper case, be suspended or revoked for failure to comply with the Commission's order, the conditions and criteria of the certificate or subsequent modification, or failure to comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies.
5. Company agrees to maintain records that will demonstrate that it has complied with the requirements of the Commission's order issuing a Certificate of Corridor Compatibility or Route Permit, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.
6. Company understands and agrees that the authorizations granted by any Certificate of Corridor Compatibility or Route Permit issued by the Commission for the

transmission facility are subject to modification by order of the Commission if deemed necessary to protect further the public or the environment.

**Construction:**

7. Company agrees to hold a preconstruction conference prior to commencement of any construction, which must include a Company representative, its construction supervisor, and a representative of Commission Staff, to ensure that Company fully understands the conditions set forth in the Commission's order.
8. Company understands and agrees that all cultural resource mitigation plans must be submitted to the North Dakota State Historic Preservation Office and approved prior to the start of any fieldwork and construction activity in the affected area.
9. Company understands and agrees that topsoil removal will begin when the Commission's third-party construction inspector is present at the Project site to observe that topsoil is properly removed and kept segregated from subsoil until replacement occurs. Company shall establish the date and time for the Commission's third-party construction inspector's topsoil removal oversight in the preconstruction conference.
10. Company agrees to inform the Commission and the Commission's third-party construction inspector of its intent to start construction on the transmission facility prior to the commencement of construction. Once construction has started, Company shall keep the Commission and the Commission's third-party construction inspector updated on construction activities on a monthly basis.
11. Company understands and agrees that the pipeline will be buried to a minimum depth from the ground surface to the top of the pipe of 48 inches in range land, 48 inches for cultivated land, 48 inches at the bottom of the ditch for road crossings, and 72 inches across undeveloped section lines.
12. Company understands and agrees that all topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas where cuts will be made, must be carefully stripped and segregated from the subsoil. Any area on which excavated subsoil will be placed must also be stripped of topsoil. The stripped topsoil must not be stockpiled in natural drainages, and must be protected from water erosion. Care must be taken to protect topsoil from unnecessary compaction by heavy machinery. Unless otherwise approved by the Commission, topsoil must be removed before topsoil freezes in the late fall/ early winter to the point that frost inhibits proper soil segregation. After backfilling with subsoil is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must be replaced over areas from which it was stripped only after the subsoil is replaced.

13. Company understands and agrees that all buried facility crossings of graded roads must be bored unless the responsible governing agency specifically permits Company to open cut the road.
14. Company understands and agrees that staging areas or equipment shall not be located on land owned by a person other than Company unless otherwise negotiated with landowners.
15. Company understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made and a report of such examination is filed with the Commission and the State Historical Society.
16. Company understands and agrees that construction must be suspended when weather conditions are such that construction activities will cause irreparable damage to roads or land, unless adequate protection measures are taken by Company.
17. Company understands and agrees that the Commission has authority to stop Project construction activities in the event of a probable violation of the siting laws, siting rules, or applicable Commission Orders if, in the opinion of the Commission, construction activities are likely to result in irreparable or significant harm.

**Restoration and Maintenance:**

18. Company understands and agrees that it shall, as soon as practicable upon the completion of the construction of the transmission facility, restore the area affected by the activities to as near as is practicable to the condition as it existed prior to the beginning of construction.
19. Company understands and agrees that all pre-existing township and county roads and lanes used during construction must be repaired or restored to a condition that is equal to or better than the condition prior to the construction of the transmission facility and that will accommodate their previous use, and that areas used as temporary roads or working areas during construction must be restored to their original condition.
20. Company understands and agrees that reclamation, fertilization, and reseedling is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.

21. Company will fulfill its obligation for reclamation and maintenance of the approved transmission facility right-of-way, transmission facility, and associated facilities continuing throughout the life of the transmission facility.
22. Company will repair all fences and gates removed or damaged during all phases of construction and operation of the transmission facility.
23. Company will repair or replace all drainage tile broken or damaged as a result of construction and operation of the transmission facility.
24. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
25. Company understands and agrees that it shall remove all waste that is a product of construction and operation, restoration, and maintenance of the site, and properly dispose of it on a regular basis.
26. Company understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the transmission facility.

**Communication with Landowners and PSC:**

27. Company understands and agrees that, prior to beginning construction of the transmission facility at a location, it shall send a letter to each landowner with whom an easement was executed for that location specifying the name and phone number of the company representative who is responsible for receiving and resolving landowner issues for the life of the easement.
28. Company understands and agrees that it will file with the commission the name and phone number of the current company representative who is responsible for receiving and resolving landowner issues for the transmission facility. The company will update this information whenever there is a change to the current company representative for the life of all easements for the transmission facility.
29. Upon request, Company agrees to provide the Commission with engineering design drawings of the transmission facility prior to construction.
30. Company understands and agrees that it shall advise the Commission as soon as reasonably possible of any extraordinary events which take place at the site of the transmission facility, including injuries to any person.
31. Company agrees to report to the Commission, as soon as reasonably possible, the presence in the permit area of any critical habitat or threatened or endangered species of which Company becomes aware and which were not previously reported to the Commission.

32. Company understands and agrees that it shall inform the Commission in writing of any plans to modify the transmission facility or of any plans to modify the site plan for the transmission facility.
33. Company agrees to provide the Commission with both an electronic and a paper copy of the corridor approved by the Commission and the facility design specifications for the construction of the transmission facility showing the location of the transmission facility as built, and will provide this information within 3 months of the completion of the construction. Company also agrees to provide an electronic version of the corridor approved by the Commission and the facility design specifications for the construction of the transmission facility showing the location of the transmission facility as built that can be imported into ESRI GIS mapping software within 3 months of the completion of the construction. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in the appropriate vertical datum for the coordinate system used. All submissions must specify the datum in which the data was developed.
34. Company shall notify the Commission as soon as reasonably possible if any damage, as defined by North Dakota Century Code Chapter 49-23, occurs to underground facilities during construction conducted under the certificate or permit issued in this proceeding. In the event of any damage to underground facilities, Company shall suspend construction in the vicinity of the damage until compliance with One-Call Excavation Notice System requirements under North Dakota Century Code Chapter 49-23 has been determined.

**Route Adjustments Before or During Construction:**

35. Company agrees to utilize the following procedures if Company seeks a route adjustment before or during construction of the pipeline, pursuant under N.D.C.C. §49-22-16.3:
36. Company will specifically identify which subsection of NDCC 49-22-16.3 it is requesting the adjustment under. Company will file the name and contact information for a key contact person for the purposes of notice and communication during the adjustment application.
37. **ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED:** Before conducting any construction activities for any adjustment to the designated route within the designated corridor under NDCC 49-22-16.3(1), the Company will file:

- a. Certification and supporting documentation affirming that construction activities will be within the designated corridor, will not affect any known exclusion or avoidance areas within the designated corridor;
- b. Certification and supporting documentation, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, route and the route adjustment;
- c. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

38. **ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, AVOIDANCE AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22-16.3(2), within the designated corridor that may affect an avoidance area, and before conducting any construction activities for any adjustment to the designated route within the designated corridor, the Company will file:

- a. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying:
  - i. the designated corridor, route and the route adjustment;
  - ii. all exclusion and avoidance areas within the portion of the designated corridor containing the route adjustment
- b. Certification and supporting documentation affirming:
  - i. That construction activities will be within the designated corridor
  - ii. That construction activities will not affect any known exclusion area
- c. All field studies performed on the portion of the designated corridor containing the route adjustment;
- d. Specific information about any mitigation measures Company will take within the adjustment area;
- e. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment;
- f. Certification that unless the Commission previously authorized the impact to the same avoidance area, that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist;
- g. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

Company acknowledges and agrees that:

1. Written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity unless the Commission fails to act within ten working days of receipt of filing a complete adjustment application, in which case the adjustment is deemed approved.
2. The initiation of the ten working days begins upon receipt of a complete filing, to include Company's certifications, supporting documentation and maps. However, Commission may extend the ten working day provision if Company, in the person of the key contact referenced above, is informed of the reason additional time is necessary for extension and has no objection to an extension.

39. **ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, NO AVOIDANCE**

**AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22-16.3(3), outside the designated corridor and not affecting any exclusion and avoidance area, before conducting any construction activities for any adjustment to the designated route outside the designated corridor, the Company will file:

- a. Certification and supporting documentation affirming that construction activities will not affect any known exclusion or avoidance areas,
- b. Certification and supporting documents stating the length of the proposed route outside of the corridor and a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, corridor adjustment, designated route and the route adjustment;
- c. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment; and
- d. Detailed field studies indicating exclusion and avoidance areas for the proposed adjustment area; and
- e. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

40. **ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, AVOIDANCE**

**AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22-16.3(4), outside the designated corridor that may affect an avoidance area, and before conducting any construction activities for any adjustment to the designated route outside the designated corridor, the Company will file:

- a. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying:
  - i. the designated corridor, corridor adjustment, route and the route adjustment;


- ii. all exclusion and avoidance areas within the adjustment area
- b. Certification that construction activities will not affect any known exclusion area;
- c. Certification that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist within the designated corridor and route;
- d. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment;
- e. Provide specific information about any mitigation measures Company will take within the adjustment area;
- f. Detailed field studies indicating exclusion and avoidance areas for the proposed adjustment area; and
- g. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

Company acknowledges and agrees that:

- 1. Written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity unless the Commission fails to act within ten working days of receipt of filing a complete adjustment application, in which case the adjustment is deemed approved.
  - 2. The initiation of the ten working days begins upon receipt of a complete filing, to include Company's certifications, supporting documentation and maps. However, Commission may extend the ten working day provision if Company, in the person of the key contact referenced above, is informed of the reason additional time is necessary for extension and has no objection to an extension.
41. When applicable, Company may submit the field studies from the original application for the corridor and route provided they cover the adjustment area.

Dated this 11 day of July, 2017.

CENEX PIPELINE, LLC

By   
Richard S. Petersen

Its President

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

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

**Case No. PU-17-97**

**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 and approved by the Commission.
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).