

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Belle Fourche Pipeline Company
8-inch Wilson-Bowline Pipeline Conversion Project
Siting Application**

Case No. PU-18-404

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

July ____, 2019

Appearances

Commissioners Brian Kroshus, Randy Christmann, and Julie Fedorchak.

Casey A. Furey and Wade C. Mann, Attorneys at Law, Crowley Fleck PLLP, 100 West Broadway, Suite 250, Bismarck, North Dakota 58501, on behalf of Belle Fourche Pipeline Company.

Sarah Wall, Special Assistant Attorney General for the North Dakota Public Service Commission, 122 E. Broadway Ave., Bismarck, North Dakota 58501.

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 December 17, 2018, Belle Fourche Pipeline Company (“Belle Fourche”), filed with the North Dakota Public Service Commission (“Commission”), a consolidated application for a Certificate of Corridor Compatibility and Route Permit (“Application”) concerning an 8-inch existing crude oil gathering pipeline to a transmission line, and associated facilities in McKenzie County, North Dakota (“Project”).

Between January 14 and 17, 2019, and subsequently on March 19, 2019, Belle Fourche filed various supplemental information with the Commission in response to several information requests received from Commission staff.

On May 1, 2019, the Commission deemed Belle Fourche’s Application complete and issued a Notice of Filing and Public Hearing (“Notice”) scheduling a hearing for June 11, 2019, at 9:00 a.m. Central Time at Teddy’s Residential Suites, 113 9th Ave. SE, Watford City, North Dakota 58854.

The Notice identified the following issues to be considered with respect to the Application:

1. Will construction, operation, and maintenance of the facility at the proposed location produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?

2. Is the proposed facility compatible with the environmental preservation and the efficient use of resources?
3. Will construction, operation, and maintenance of the facility at the proposed location 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 June 11, 2019, the hearing was 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. Belle Fourche is a Wyoming corporation. Belle Fourche has been authorized to do business in the State of North Dakota, as evidenced by the Certificate of Good Standing filed with the Commission on January 30, 2019, as Docket No. 4 in Case No. PU-07-753.

Size, Type, and Preferred Location of Facility

2. The Project consists of approximately 20 miles of transmission pipeline and is located within McKenzie County, North Dakota. The Project will originate at the Wilson Station in McKenzie County approximately six miles south of Watford City, North Dakota and run to the Bowline Junction Station approximately 19 miles southeast of Alexander, North Dakota. The Project includes a midline block valve, one pig launcher facility, a receiver facility, and booster pumps located at Wilson Station.

3. The Project utilizes an existing 8-inch diameter crude oil gathering pipeline. The Project is capable of transporting up to 43,200 barrels per day. The Project has a maximum operating pressure of 1,440 pounds per square inch.

4. The four-mile segment of the Project route from Bowline Junction to Red Wing Creek was constructed in 1978. The remaining segment of the Project from Red Wing Creek to Wilson Station was constructed in 2012. The Project originally operated as solely a crude oil gathering system. Subsequently, in 2017, Belle Fourche constructed the Kermit to Wilson gathering pipeline that gathers crude oil upstream of the Wilson Station. The combination of storage and onsite pressure at the Wilson Station, as a result of the interconnection to the Kermit to Wilson gathering pipeline, makes the Project jurisdictional to Commission under North Dakota Century Code ch. 49-22.1. The Project retains operational function as a crude oil gathering pipeline, in addition to meeting the jurisdictional definition of a transmission pipeline. No new construction is required for the conversion of the Project.

5. The Project was constructed and is maintained and inspected in accordance with United States Department of Transportation Pipeline and Hazardous Materials Safety Administration

(“PHMSA”) Code of Federal Regulations Title 49 Part 195 governing hazardous liquids pipeline safety standards.

6. The estimated cost of the Project is approximately \$16 million dollars.

Study of Preferred Location

7. Belle Fourche conducted field surveys within a 200-foot-wide survey area centered on the Project route (“Project Corridor”) to survey for cultural resources, wildlife, wildlife habitat, sensitive, threatened and endangered species, vegetation, and to conduct a noxious weed survey.

8. Belle Fourche conducted a desktop survey to review wetlands and waterbodies along the Project route.

9. Belle Fourche conducted a Class I archeological file search using a one-mile-wide study area centered on the Project route.

10. Belle Fourche conducted a Class III cultural resource field inventory of the Project Corridor. Per the request of the State Historical Society of North Dakota, the cultural resource location details are not presented in a publicly available document.

11. Belle Fourche initiated correspondence with the federal, state, and local departments, agencies, entities, and individuals designated in N.D. Admin. Code section 69-06-1-05. The following agencies provided comments regarding the Project:

- a. Federal: U.S. Army Corps of Engineers; U.S. Air Force; and, U.S. Fish and Wildlife Service.
- b. State: North Dakota Department of Environmental Quality; North Dakota Geological Survey; North Dakota State Historical Preservation Office; North Dakota Industrial Commission; North Dakota State Water Commission; and, North Dakota Department of Trust Lands.
- c. Local: McKenzie County Sheriff; McKenzie County Weed Board; McKenzie County Weed Board; McKenzie County Planning Department; Alexander City & Rural Fire; Arnegard Rural Fire Department; and, Watford City Fire Department.

Siting Criteria

12. The Commission has developed criteria pursuant to North Dakota Century Code section 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.

13. Belle Fourche evaluated the Project Corridor and route regarding the designated Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

14. North Dakota Administrative Code section 69-06-08-02 states “[e]xclusion and avoidance 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 width unless there is no reasonable alternative.”

15. An Exclusion Area is a geographic area that must be excluded in the consideration of a route for a transmission facility. A transmission facility route must not be sited within an Exclusion Area. A buffer zone of a reasonable width to protect the integrity of the area must be included. Natural screening may be considered in determining the width of the buffer zone. North Dakota Administrative Code section 69-06-08-02(1) designates the following Exclusion Areas:

- a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; monuments; and wilderness areas.
- b. Designated or registered state: parks; historic sites; monuments; historical markers; archaeological sites; and nature preserves.
- c. County parks and recreational areas; municipal parks; and parks owned or administered by other governmental subdivisions.
- d. Areas critical to the life stages of threatened or endangered animal or plant species.
- e. e. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
- f. Areas within one thousand two hundred feet of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.
- g. Areas within thirty feet on either side of a direct line between intercontinental ballistic missile (ICBM) launch or launch control facilities to avoid microwave interference.

16. Belle Fourche’s studies and surveys did not record any known Exclusion Areas within the Project Corridor.

17. An Avoidance Area is a geographical area that may not be considered in the routing of a transmission facility unless the applicant demonstrates that under the circumstances, there is no reasonable alternative. In determining whether an Avoidance Area should be designated for a 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. Economic considerations alone will not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area will be included unless a distance is specified in the criteria. Natural screening may be considered in determining the width of the buffer zone. North Dakota Administrative Code section 69-06-08-02(2) designates the following Avoidance Areas:

- a. Designated or registered national: historic districts; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
- b. Designated or registered state: wild, scenic, or recreational rivers; game refuges; game management areas; management areas; forests; forest management lands; and grasslands.
- c. Historical resources which are not specifically designated as exclusion or avoidance areas.
- d. Areas which are geologically unstable.

- e. Within five hundred feet [152.4 meters] of a residence, school, or place of business. This criterion shall not apply to a water pipeline transmission facility.
- f. Reservoirs and municipal water supplies.
- g. Water sources for organized rural water districts.
- h. Irrigated land. This criterion shall not apply to an underground transmission facility.
- i. Areas of recreational significance which are not designated as exclusion areas.

18. Designated or registered national grasslands are an Avoidance Area. The Project crosses four parcels of USFS National Grasslands. Belle Fourche testified the Project utilizes an existing easement obtained from the USFS as part of the Project's original construction. The Project is not anticipated to any adverse effects to USFS National Grasslands. Conversion of the existing pipeline will minimize impacts that would otherwise be associated with construction of a new pipeline. The Commission finds there is no reasonable alternative to the Project's crossing of the USFS National Grassland parcels.

19. Areas that are geologically unstable or potentially unstable are an Avoidance Area. Based on June 3, 2019 correspondence from the North Dakota Geological Survey (Docket No. 37), three locations of potential slope instability were observed near or within the Project route. Belle Fourche testified it will conduct geotechnical evaluations for these three areas and will file a copy of said evaluations with the Commission.

20. Historical resources which are not specifically designated as Exclusion or Avoidance Areas are a designated Avoidance Area. Belle Fourche testified that historical resources not specifically designated as Exclusion or Avoidance Areas are located within the Project Corridor; however, they will not be crossed by the Project route and impacts will be avoided. On January 22, 2019, the State Historical Society of North Dakota issued a "No Historic Properties Affected" concurrence. *See*, Docket No. 20.

21. Areas within five hundred feet of a residence, school, or place of business are an Avoidance Area. North Dakota Century Code section 49-22.1-03 provides that the five-hundred-foot Avoidance Area criteria may be waived by the landowner in writing.

22. Belle Fourche testified it identified two residences within five hundred feet of the Project route. Belle Fourche has obtained a waiver for the residence located in Township 148 North, Range 101 West, Section 27, and has filed a copy with the Commission. *See* Docket No. 21.

23. With respect to the remaining residence located in Township 138 North, Range 101 West, Section 33, Belle Fourche shall file a copy of this waiver with the Commission.

24. Belle Fourche's studies and surveys did not identify any other known Avoidance Areas within the Project Corridor.

25. The Commission's Selection Criteria is set forth in North Dakota Administrative Code section 69-06-08-02(3). A corridor or route shall be approved only if it is determined that any significant adverse effects that will result from the location, construction and operation of the facility as they relate to the selection criteria will be at an acceptable minimum, or will be managed

and maintained at an acceptable minimum. Belle Fourche analyzed the effects that may result from the location, construction, and operation of the Project to determine that no significant adverse effects will result.

26. Belle Fourche testified that wetlands and streams were bored for the segment of the Project constructed in 2012 extending from Red Wing Creek to Wilson Station.

27. The Project Corridor has been reclaimed from original construction. Belle Fourche testified that during field surveys, no reclamation issues from prior construction were noted. The Project will not result in impacts to agricultural production or land use. Adverse impacts to wildlife and human health and safety are not anticipated. To the extent the Project results in any adverse impacts to Selection Criteria, the Commission finds they will be managed and maintained at an acceptable minimum.

28. The Commission's Policy Criteria is set forth in North Dakota Administrative Code section 69-06-08-02(4). The Commission may give preference to an applicant demonstrating certain benefits from the proposed transmission facility.

29. Belle Fourche testified it has maximized the benefits that result from implementing the policies and practices applicable to the Project through the use and coordinate of existing facilities and right-of-way. The Project's location and design provides necessary take away for Bakken crude oil. The Commission finds that Belle Fourche has maximized the benefits that result from the adoption of the Commission's Policy Criteria.

Measures to Minimize Impact

30. Belle Fourche has made representations and covenants as indicated by the Certification Relating to Order Provisions – Transmission Facility Siting Gathering Line Conversion to Transmission Line, with accompanying Tree and Shrub Mitigation Specifications as provided for in Hearing Exhibit 4 (Docket No. 49).

31. Belle Fourche has minimized the Project's environmental disturbance by utilizing existing right-of-way, infrastructure, utilities, and gathering systems.

32. Belle Fourche testified it has a public awareness program that includes periodic landowner contact and post-construction follow up.

33. Belle Fourche has executed a Weed Management Plan with McKenzie County to assist in controlling noxious weeds. *See* Docket No. 26.

34. The Project was designed and constructed in compliance with the applicable provisions of Code of Federal Regulations Title 49, Part 195, hazardous liquids pipeline safety standards and is regulated by the PHMSA.

35. The Project contains a leak detection system that monitors the flow and pressure of the Pipeline system. The system allows Belle Fourche to identify and respond to situations outside of normal operating conditions. The Project also contains a Supervisory Control and Data Acquisition (“SCADA”) system that allows Belle Fourche to monitor the Project 24 hours a day, 7 days a week, and 365 days a year by trained controls personnel.

36. Belle Fourche testified PHMSA is currently conducting an audit of Belle Fourche’s SCADA and leak detection systems with respect to Belle Fourche’s protocols, processes, data calculation and presentation, control room management, procedures, and training. Belle Fourche testified it will provide the Commission a copy of PHMSA’s audit once it is received.

37. PHMSA has received, reviewed, and approved Belle Fourche’s Combined Operated Systems Oil Spill Response Plan. *See*, Docket No. 23.

38. Belle Fourche testified it has annual safety meetings and conducts annual mock safety drills with local emergency response officials and sends yearly correspondence regarding emergency preparedness to local emergency response officials.

39. Belle Fourche has obtained all applicable road and conditional use permits for the Project. *See* Docket Nos. 25 - 27.

40. Belle Fourche testified it will conduct a study to evaluate the Project’s depth and will file a copy of said study with the Commission.

41. Belle Fourche testified that it will comply with all applicable safety laws and standards.

From the foregoing Findings of Fact, the Commission makes the following:

Conclusions of Law

1. The Commission has jurisdiction over Belle Fourche and over the subject matter of the Application under North Dakota Century Code chapter 49-22.1.

2. Belle Fourche is a utility as defined in North Dakota Century Code section 49-22.1-01(12).

3. The Project is a transmission facility as defined in North Dakota Century Code section 49-22.1-01(7).

4. With respect to the portion of the Project that crosses USFS National Grasslands, the Commission finds Belle Fourche has mitigated impacts by utilizing existing infrastructure and there is no reasonable alternative to routing the Project in this location.

5. The construction, operation, and maintenance of the Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.

6. The location, construction, and operation of the Project is compatible with the environmental preservation and the efficient use of resources.

7. 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.

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

Order

The Commission orders:

1. Certificate of Site Compatibility No. ___ is issued to Belle Fourche Pipeline Company, designating a corridor for the construction, operation, and maintenance of approximately 20 miles of an 8-inch existing crude oil gathering pipeline to a transmission line, and associated facilities in McKenzie County, North Dakota. For purposes of this Certificate, the designated corridor consists of a 200-foot wide area centered on the designated Project route as depicted in Docket No. 16 (submitted within Hearing Exhibit 2).

2. Route Permit No. ___ is issued to Belle Fourche Pipeline Company, designating a route for the construction, operation, and maintenance of approximately 20 miles of an 8-inch existing crude oil gathering pipeline to a transmission line, and associated facilities in McKenzie County, North Dakota. For purposes of this Permit, the designated route is the route of the Project as depicted in Docket No. 16 (submitted within Hearing Exhibit 2).

3. The Certification Relating to Order Provisions – Transmission Facility Siting Gathering Line Conversion to Transmission Line with accompanying Tree and Shrub Mitigation Specifications executed July 23, 2019 (Late-Filed Exhibit 5), is incorporated by reference and attached to this Order. To the extent there are any conflicts or inconsistencies between Belle Fourche’s Application and the Certification, the Certification provisions control.

4. Belle Fourche shall conduct geotechnical evaluations for the areas identified in Docket No. 37 and shall file a copy of said evaluations with the Commission.

5. Belle Fourche shall a conduct a pipeline depth study for the Project and shall file a copy of said study with the Commission.

6. Belle Fourche shall file a copy of the remaining landowner waiver with the Commission.

7. Belle Fourche shall provide the Commission with a copy of PHMSA’s audit once it is received.

8. Belle Fourche shall obtain all other necessary licenses and permits prior to commencing any new construction on such portion of the Project for which the license and/or permit is required, and shall provide copies to the Commission.

9. Belle Fourche is required to comply with all applicable laws, rules, and/or regulations in the event it desires to construct another or a different transmission pipeline facility than was specified in the Application within the corridor designated in this proceeding.

PUBLIC SERVICE COMMISSION

Julie Fedorchak
Commissioner

Brian Kroshus
Chairman

Randy Christmann
Commissioner