

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Belle Fourche Pipeline Company  
6" Skunk Hill to DPR Pipeline Conversion Project  
Siting Application**

**Case No. PU-18-405**

**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 14<sup>th</sup> 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 6-inch existing crude oil gathering pipeline to a transmission line, and associated facilities in Stark, Dunn, and Billings Counties, North Dakota ("Project").

Between January 14 and 17, 2019, and subsequently on March 25, 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 10, 2019, at 1:00 p.m. Central Time at TownePlace Suites by Marriott, 240 29<sup>th</sup> Street West, Dickinson, North Dakota 58601.

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 10, 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 18 miles of transmission pipeline and is located within Stark, Dunn, and Billings Counties, North Dakota. The Project will originate at the Skunk Hill Pump Station in Billings County, approximately 10.5 miles northeast of Belfield North Dakota and runs 18 miles to the Marathon Dickinson Refinery, which is located five miles southwest of Dickinson, North Dakota. The Project includes five block valves, one pig launcher facility, a receiver facility, and booster pumps located at the Skunk Hill and Dickinson Stations.

3. The Project utilizes an existing 6-inch diameter crude oil gathering pipeline. The maximum potential flow rate of the Project is 20,000 bpd. The Project has a maximum operating pressure of 1,100 pounds per square inch.

4. The Project consists of multiple connecting pipeline segments that have been laid from 1995 to 2015. In 1995 the Project was originally constructed as a gathering pipeline. In 2011, the pipeline was extended into the Skill Pump Station in Billings County and served as a gathering line flowing west from Dickinson. In 2011, the pipeline was extended into the Bakken Oil Express rail facility located in Dickinson. The pipeline was last modified in 2015 when the line was extended one-half mile into the Marathon Dickinson Refinery, west of Dickinson to deliver crude oil supplies to the refinery. In 2016, while still serving as a gathering pipeline, the line also reversed and flowed from Skunk Hill to the Bakken Oil Express rail facility. In 2017, Belle Fourche transferred the gathering function of the pipeline to other infrastructure. The Project currently operates as a crude oil supply line from the Skunk Hill Station to the Marathon Dickinson Refinery. No new construction is required for the conversion of the Project. The Project is jurisdictional to Commission under North Dakota Century Code ch. 49-22.1.

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 \$10 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 69-06-01-05. The following agencies provided comments regarding the Project:

- a. Federal: U.S. Air Force, and U.S. Fish and Wildlife Service.
- b. State: North Dakota Dept. of Health; North Dakota Parks and Recreation; North Dakota Game and Fish Department; North Dakota Department of Environmental Quality; North Dakota Geological Survey; North Dakota State Historical Preservation Office; and, North Dakota State Water Commission.
- c. Local: Stark County Planning and Zoning; Billings County Zoning Director.

#### 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. Areas which are geologically unstable are designated as Avoidance Areas. One area of potential geologic instability is located along the outer edge of the Project Corridor but it is not crossed or impacted by the Project route. *See*, Late-Filed Exhibit 7, Map pg. 1 (Docket No. 51). Belle Fourche testified this area was evaluated and the Project's distance from this feature is sufficient to address concerns regarding erosion.

19. 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 September 25, 2017, the State Historical Society of North Dakota issued a "No Historic Properties Affected" concurrence. *See*, Docket No. 1, Exhibit C.

20. 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.

21. Belle Fourche testified it identified six occupied residences or places of business within five hundred feet of the Project route. Belle Fourche has obtained waivers from five of the landowners. *See* Docket No. 25 & Late-Filed Exhibit 9. Belle Fourche shall file the one remaining landowner waiver for the residence located in Township 140 North, Range 98 West, Section 1.

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

23. 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.

24. 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.

25. 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.

26. 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

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

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

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

30. 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.

31. Belle Fourche testified the Project was hydrostatic tested and has been under cathodic protection since 1995 to prevent the occurrence of corrosion. Belle Fourche has also utilized pipeline inspection gauges (SMART Pigs) to monitor the integrity of the Project. These tests have not identified any issues with respect to the Project's depth.

32. 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.

33. 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.

34. PHMSA received, reviewed, and approved Belle Fourche's Combined Operated Systems Oil Spill Response Plan. *See*, Docket No. 28.

35. 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.
36. Subject to obtaining all necessary authorizations and approvals, Belle Fourche will convert the existing manual block valve upstream of the Heart River to an automated block valve.
37. 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. 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.
5. The location, construction, and operation of the Project is 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.

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 18 miles of a 6-inch existing crude oil gathering pipeline to a transmission line, and associated facilities in Stark, Dunn, and Billings Counties, 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. 20 (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 18 miles of a 6-inch existing crude oil gathering pipeline to a transmission line, and associated facilities in Stark, Dunn, and Billings Counties, North Dakota. For purposes of this Permit, the designated route is the route of the Project as depicted in Docket No. 20 (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 file the remaining landowner waiver with the Commission.
5. 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.
6. 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**

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**Julie Fedorchak**  
**Commissioner**

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**Brian Kroshus**  
**Chairman**

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**Randy Christmann**  
**Commissioner**