

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

**Liberty Midstream Solutions, LLC**  
**8-inch Residue Gas Pipeline – Mountrail & Williams**  
**Siting Application**

**Case No. PU-20-022**

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

**May 15, 2020**

**Appearances**

Commissioners Brian Kroshus, Julie Fedorchak, and Randy Christmann.

Lawrence Bender, Attorney at Law, Fredrikson & Byron, P.A., 1133 College Drive, Suite 1000, Bismarck, North Dakota 58501, on behalf of Liberty Midstream Solutions, LLC.

Brian L. Johnson, Special Assistant Attorney General, as Counsel for the North Dakota Public Service Commission, 600 E. Boulevard Avenue, Dept. 408, Bismarck, North Dakota 58505.

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

**Preliminary Statement**

On January 17, 2020, Liberty Midstream Solutions, LLC (Liberty), filed with the North Dakota Public Service Commission (Commission) a consolidated application for a certificate of corridor compatibility and route permit (Application) concerning the location of a residue gas pipeline, approximately 4.7-miles long, in Mountrail and Williams Counties, North Dakota (Project).

Also on January 17, 2020, Liberty filed with the Commission an application for waiver or reduction of procedures and time schedules established under North Dakota Century Code chapter 49-22.1 and North Dakota Administrative Code section 69-06-01-02 and chapter 69-06-06, regarding separate notices and separate hearings on such applications.

On February 3, 2020, the Commission provided notification of the Application to the townships with retained zoning authority, cities, and counties in which any part of the proposed pipeline corridor would be located.

In response to requests for additional information submitted to Liberty by the Commission, Liberty filed supplemental documents with the Commission on January 31, February 6, March 13 and April 13, 2020.

On March 4, 2020, the Commission deemed Liberty's Application complete and issued a Notice of Filing and Public Hearing (Notice) scheduling a hearing for April 14, 2020, at 9:00 a.m. Central Time at Neset Consulting Service, 6844 State Highway 40, Tioga, North Dakota 58852.

The Notice identified the following issues to be considered with respect to the application for waiver of procedures and time schedules:

1. Are the proposed facilities of such length, design, location, or purpose that they will produce minimal adverse effects and that adherence to applicable procedures and time schedules may be waived?
2. Is it appropriate for the Commission to waive any procedures and time schedules as requested in the application?

The Notice identified the following issues to be considered with respect to the 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 April 14, 2020, the hearing was held as scheduled via live, remote communication, allowing any interested parties to present testimony in person at Neset Consulting Service or via telephone. Hearing Exhibit 1 was admitted at the hearing.

The opportunity for public comment remained open until April 24, 2020.

On April 29, 2020, Liberty filed Late-Filed Exhibit 2.

Having allowed all interested persons an opportunity to be heard, and having heard, reviewed and considered all testimony and evidence presented, the Commission makes its:

## Findings of Fact

1. Liberty Midstream Solutions, LLC is a Delaware limited liability company authorized to do business in the State of North Dakota, as evidenced by the corporate papers filed with the Commission on January 31, 2020, in Case No. PU-20-040.

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

2. The Project is comprised of an 8-inch steel residue gas transmission line located in Mountrail and Williams Counties, North Dakota. The Project will transport residue gas from the existing Liberty County Line Gas Plant in Williams County to an interconnection point with Alliance Pipeline's Tioga Lateral transmission line in Mountrail County for further transportation to markets in the Chicago, Illinois area. The proposed facility corridor and pipeline route is identified in Appendix A, Hearing Exhibit 1.

3. The proposed pipe will have a wall thickness of 0.322-inches and a maximum operating pressure of 2,180 pounds per square inch. The maximum operating temperature of the pipeline will be 120 degrees Fahrenheit.

4. The initial flow rate for the pipeline will be 10 million standard cubic feet per day or less with expansion capabilities of up to 120 million standard cubic feet per day.

5. Aboveground facilities for the Project will be limited to pipeline markers and cathodic test stations.

6. The estimated cost of the Project is \$4.6 million.

7. The estimated in-service date is the summer of 2020.

### Study of Preferred Location

8. Liberty conducted a Class I cultural resource literature review and a desktop analysis for wetlands, waterbodies, and other sensitive environmental resources across a one-mile-wide area centered on the pipeline route (Study Area).

9. Liberty conducted several surveys across an approximately 200-foot-wide area centered on the Project route (Survey Area). Liberty conducted surveys for wetlands, waterbodies, threatened and endangered species, critical habitats, noxious weeds, and trees/saplings/shrubs.

10. Liberty conducted a Class III cultural resource inventory across the Survey Area. The Class III reports were submitted to the North Dakota State Historic Preservation Office (SHPO). In a response dated February 7, 2020, SHPO concurred with a determination of "No Significant Sites Affected" for the Project, provided it takes place in the location and in the manner described in the documentation.

11. Liberty initiated correspondence seeking comments from the following federal, state and local agencies and entities as follows:

- a. Federal: (1) Federal Aviation Commission; (2) U.S. Army Corps of Engineers; (3) U.S. Department of Defense; and (4) U.S. Fish and Wildlife Service;
- b. State: (1) North Dakota Aeronautics Commission; (2) North Dakota Attorney General; (3) North Dakota Department of Agriculture; (4) North Dakota Department of Career and Technical Education; (5) Job Service of North Dakota; (6) North Dakota Department of Environmental Quality; (7) North Dakota Department of Health; (8) North Dakota Department of Human Services; (9) North Dakota Department of Transportation; (10) North Dakota Department of Trust Lands; (11) North Dakota Energy Development Impact Office; (12) North Dakota Game and Fish Department; (13) North Dakota Indian Affairs Commission; (14) North Dakota Industrial Commission; (15) North Dakota Labor Department; (16) North Dakota Parks and Recreation Department; (17) North Dakota Pipeline Authority; (18) North Dakota Soil Conservation Committee; (19) North Dakota State Water Commission; (20) North Dakota Transmission Authority; (21) North Dakota Geological Survey; (22) SHPO; and (23) Office of the Governor;
- c. Local: (1) Mountrail County Commission; and (2) Williams County Commission.

#### Siting Criteria

12. The Commission has established 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. Liberty evaluated the Project for the Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria of the Commission.

14. An Exclusion Area may not encompass more than fifty percent of a corridor width unless there is no reasonable alternative. An Exclusion Area must be excluded in the consideration of a route for a transmission facility. A buffer zone of a reasonable width to protect the integrity of an Exclusion Area must be included in the siting of the transmission facility.

15. Liberty's studies and surveys did not record any Exclusion Areas within the Survey Area.

16. An Avoidance Area is a geographic 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.

17. Liberty's studies and surveys did not record any Avoidance Areas within the Survey Area.

18. In accordance with the Commission's Selection Criteria set forth in North Dakota Administrative Code section 69-06-08-02(3), a transmission facility route shall be approved 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 managed and maintained at an acceptable minimum. Liberty has analyzed the impacts of the Project in relation to all of the relevant Selection Criteria. The Project will have no significant adverse effects on the Commission's Selection Criteria.

19. Wetlands are a selection criteria. Three wetlands were identified within the Survey Area. Two will be crossed using the horizontal directional drilling technique, and one will be crossed using the open-cut method. The impacted areas will be revegetated, and the wetlands will be restored to its previous contours. Furthermore, silt fence will be installed along the right-of-way adjacent to wetlands.

20. The impact upon agricultural production and family farms and ranches is a selection criteria. Following completion of the pipeline, Liberty will restore any right-of-way to its original, preconstruction elevation and contours, and landowners will be able to resume agricultural and ranching operations. If yield deficiencies are caused by pipeline construction, the cost of applying fertilizer to remedy soil nutrient levels will be paid to the landowner.

21. In accordance with the Commission's Policy Criteria set forth in North Dakota Administrative Code section 69-06-08-02(4), preference may be given to an applicant demonstrating certain benefits of the transmission facility. Liberty submitted evidence to demonstrate its commitment to maximize the benefits of the proposed transmission facility to the extent possible so as to meet the Policy Criteria.

#### Additional Measures to Minimize Impact

22. Liberty has agreed to a number of steps to mitigate the impact of the Project, as indicated by the executed Certification Relating to Order Provisions – Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications, which is incorporated by reference and attached to this Order.

23. The Project will be designed, constructed, and operated in accordance with U.S. Department of Transportation regulations governing the transportation of hazardous liquids by pipeline, which are set forth in 49 Code of Federal Regulations (CFR) Part 192.
24. Liberty testified that it will follow a written manual of procedures for conducting normal operations and maintenance activities and for handling abnormal operations and emergencies in accordance with 49 CFR Part 192. In the event that the pipeline's pressure exceeds operating tolerance, Liberty's County Line Gas Plant is equipped with a pressure release valve. Furthermore, once constructed, a leak detection and monitoring system will be employed.
25. Liberty will have third-party inspectors on site during construction who will oversee the Project's environmental mitigation measures, and they will have the authority to stop construction activities and order corrective mitigation.
26. Liberty testified that they conduct outreach meetings with local emergency response officials to educate them on the steps Liberty takes during pipeline emergencies.
27. Liberty testified it co-located approximately a third of the pipeline with an existing utility corridor.
28. Liberty has developed several project control documents that will be utilized in connection with the construction and operation of the Project including a Storm Water Pollution Prevention Plan, Weed Management Plan, Dust Control Plan, Emergency Action Plan, Damage Prevention Program plan, and an Unanticipated Discovery Plan.
29. Liberty testified that it will conduct regular pipeline monitoring, periodic inspection, internal inspections, and foot patrol inspections as required by the Department of Transportation regulations.
30. Prior to the beginning of construction, Liberty will clean contractor vehicles and equipment of soil and debris capable of spreading noxious weeds. Furthermore, Liberty will ensure that seed mixes are certified weed free from approved certified sources as recommended by the county weed agencies.
31. Liberty testified that it will participate in the North Dakota One-Call notification system.
32. Liberty testified that it will comply with all applicable safety laws and standards.
33. The Project's permanent right-of-way will typically be 25 feet wide, while the temporary construction right-of-way will be 100 feet wide.

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

## **Conclusions of Law**

1. The Commission has jurisdiction over the applicant, Liberty Midstream Solutions, LLC, and the subject matter of the Application under Chapter 49-22.1 of the North Dakota Century Code.
2. Liberty is a utility as defined in Section 49-22.1-01(12) of the North Dakota Century Code.
3. The Project is a gas or liquid 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 Project is compatible with environmental preservation and the efficient use of resources.
6. The construction, operation, and maintenance of the Project minimizes 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. It is appropriate for the Commission to waive those certain procedures and time schedules as requested in the application for waiver of procedures and time schedules and pursuant to North Dakota Century Code Section 49-22.1-05 and North Dakota Administrative Code Chapter 69-06-06.

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

### **Order**

1. Liberty's application for a waiver of procedures and time schedules is granted.
2. Certificate of Corridor Compatibility No. \_\_\_ is issued to Liberty Midstream Solutions, LLC designating a corridor for the construction, operation, and maintenance of approximately 4.7 miles of a new 8-inch diameter natural gas pipeline in Mountrail and Williams Counties, North Dakota. The Corridor will consist of a typical 200-foot-wide corridor centered on the pipeline route as depicted on Figure 1, Appendix A, Hearing Exhibit 1.
3. Route Permit No. \_\_\_ is issued to Liberty Midstream Solutions, LLC designating a route for the construction, operation, and maintenance of approximately 4.7 miles of a new 8-inch diameter natural gas pipeline in Mountrail and Williams Counties, North Dakota, as depicted on Figure 1, Appendix A, Hearing Exhibit 1.

4. The Certification Relating to Order Provisions – Transmission Facility Siting (“Certification”), with accompanying Tree and Shrub Mitigation Specifications, executed April 13, 2020 is incorporated by reference and attached to this Order.
5. To the extent there are any conflicts or inconsistencies between Liberty’s Application and the Certification, the Certification provisions control.
6. Liberty shall obtain all other necessary licenses and permits prior to commencing construction on such portion of the Project for which the license and/or permit is required, and shall provide copies of such licenses and permits to the Commission prior to construction.
7. Liberty 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 designated in this proceeding.
8. Liberty shall file a copy of its Damage Prevention Program plan with the Commission prior to construction.

**PUBLIC SERVICE COMMISSION**

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**Julie Fedorchak  
Commissioner**

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**Brian Kroshus  
Chairman**

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**Randy Christmann  
Commissioner**