

October 26, 2011

VIA HAND DELIVERY

Mr. Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

RECEIVED

OCT 26 2011

PUBLIC SERVICE COMMISSION

**RE: HILAND OPERATING, LLC
6-INCH NATURAL GAS LIQUIDS PIPELINE
- MCKENZIE COUNTY
CASE NUMBER PU-10-554**

Dear Mr. Nitschke:

Hiland Operating, LLC, respectfully submits herewith an original and four (4) copies of the proposed Recommended Findings of Fact, Conclusions of Law and Order.

Also enclosed herewith is a CD containing this letter and the above-referenced document in electronic format. If you have any questions, please let me know.

Sincerely,



MOLLIE M. SMITH

MMS/tsv
Enclosures

cc: Michael Higgins (w/encl. - via e-mail)
Kathleen Spilman (w/encl. - via e-mail)

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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Hiland Operating, LLC
Natural Gas Liquids Pipeline – McKenzie County
Siting Application

Case No. PU-10-554
OAH File No. 20110324

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

November __, 2011

Appearances

Allen C. Hoberg, Administrative Law Judge, Substantive Hearing Officer, Office of Administrative Hearings, 2911 North 14th Street – Suite 303, Bismarck, ND 58503.

Mollie M. Smith, Attorney-at-Law, Fredrikson & Byron, P.A., 200 North Third Street, Suite 150, Bismarck, North Dakota 58501, on behalf of Hiland Operating, LLC.

Mitchell D. Armstrong, Special Assistant Attorney General, Legal Counsel for the North Dakota Public Service Commission.

Patrick Fahn, Director – Compliance and Competitive Markets Division, Public Service Commission, 600 East Boulevard, Bismarck, North Dakota 58505.

Preliminary Statement

Under North Dakota Century Code, Section 49-22-07, a utility may not begin construction of a transmission facility in the state without first having obtained a route permit. The facility must be constructed, operated, and maintained in conformity with the permit and any terms, conditions, or modifications of the permit.

On July 12, 2011, Hiland Operating, LLC (“Hiland Operating”), filed with the North Dakota Public Service Commission (“Commission”) a consolidated application for a Certificate of Corridor Compatibility and Route Permit (“Application”) to authorize construction of a natural gas liquids (“NGLs”) pipeline project (“Project”) in McKenzie County, North Dakota. Hiland Operating also filed an application requesting waiver of the following procedures and time schedules: (1) that the Commission hold a separate hearing on Hiland Operating’s waiver request, Certificate of Corridor Compatibility application and Route Permit application; (2) separately filed applications for a Corridor Certificate and a Route Permit, and separate publication of notices of filing the applications; and (3) the submission of mylar maps and stereo-pair aerial photographs, per the Commission’s Application Guidelines for a Corridor Certificate and a Route Permit.

On August 10, 2011, the Commission approved a motion to request appointment of an Administrative Law Judge to preside as a substantive hearing officer. On August 17, 2011,

Administrative Law Judge Allen C. Hoberg was designated as substantive hearing officer (“Hearing Officer”).

On September 1, 2011, the Hearing Officer issued a Notice of Filings and Notice of Hearing stating that the Application had been deemed complete and scheduling a public hearing for November 21, 2011, at 10:00 am CST (9:00 am MST) at the McKenzie County Court House, 201 5th Street NW, Watford City, North Dakota.

On September 20, 2011, the Hearing Officer issued a Notice of Filings and Notice of Rescheduled Hearing rescheduling the public hearing for October 24, 2011, at 10:00 am CST (9:00 am MST) at the McKenzie County Court House, 201 5th Street NW, Watford City, North Dakota.

The Notice of Filings and Notice of Rescheduled Hearing 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 of Filings and Notice of Rescheduled Hearing identified the following issues to be considered with respect to the applications for a 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 October 24, 2011, the public 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 Hearing Officer makes the following:

Findings of Fact

1. Hiland Operating is a Delaware limited liability company, that is headquartered in Enid, Oklahoma.

2. Hiland Operating has been authorized to do business in the State of North Dakota since January 5, 2005, as evidenced by the Certificate of Good Standing issued by the North Dakota Secretary of State on October 26, 2010 and the testimony presented by Hiland Operating at the public hearing.

Size, Type, and Preferred Location of Facility

3. The Project will consist of an approximately 14.1-mile long underground pipeline that will transport NGLs.

4. The Project will extend from the Hiland Operating Watford City natural gas processing plant ("Hiland Operating Plant") to the Hiland Operating rail loading facility ("Hiland Operating Rail Terminal") located next to the Yellowstone Valley Railroad line. The Project will be located entirely in McKenzie County, North Dakota.

5. The Project will utilize 6-inch steel pipe and the maximum allowable operating pressure will be 740 pounds per square inch gauge. The pipeline will have a maximum capacity of 600 gallons per minute or 864,000 gallons per day.

6. Surface facilities installed as part of the Project will include: product pumps; a "pig" launcher and receiver; block valves; pressure and flow controllers; isolation valves; main line valve settings; rectifiers and test stations associated with the cathodic protection system; and pipeline markers.

7. The eastern 5.1 miles of the Project will be located adjacent to Hiland Operating's existing 8-inch natural gas pipeline permitted by the Commission in Case No. PU-10-555.

Need for the Facility

8. Hiland Operating has concluded that there is a need for the facility because large quantities of natural gas produced in northwestern North Dakota must be flared due to insufficient infrastructure to facilitate transportation of marketable natural gas by-products, such as NGLs, to market. The Project will provide a safe, efficient means of transporting NGLs from the Hiland Operating Plant to the Hiland Operating Rail Terminal, which will facilitate transportation of the NGLs to markets served by the rail system both within and outside of North Dakota.

Study of Preferred Route(s)

9. In its application, Hiland Operating conducted record searches and database reviews for a two-mile wide study area. Hiland Operating then conducted field surveys for Federal and State parks, protected and sensitive plant and animal species, and civil and social structures (e.g., recreational areas, rural homes, farmsteads) within a one-mile wide survey area. For the purpose of conducting cultural resource field surveys, Hiland Operating identified an approximately 250-foot wide survey corridor.

10. Hiland Operating analyzed a number of alternatives and factors, including engineering, economic, and environmental factors to determine the most feasible route. The potential

alternatives considered included a no action alternative, an alternative pipeline design and size, and an alternative destination.

11. Hiland Operating consulted with the following governmental agencies and entities: United States Army Corps of Engineers (“USACE”); United States Fish and Wildlife Service (“USFWS”); North Dakota Department of Transportation; North Dakota Game and Fish Department; North Dakota State Water Commission; North Dakota Parks & Recreation Department; North Dakota Department of Health; State Historical Society of North Dakota, State Historic Preservation Office (“SHPO”); Lower Yellowstone Project Board of Control; and McKenzie County.

12. Hiland Operating conducted Class I literature searches on a two-mile wide study area, and Class III cultural resource inventories were completed on a 250-foot wide survey corridor. Additionally, environmental data collected included information on soils, land use, wetlands and waterbody crossings, trees and shrubs and protected species.

13. The SHPO has concurred with the determination that no historic properties will be affected by the Project provided the Project remains in the surveyed area identified in the Class III Cultural Resources Inventory reports and Hiland Operating follows the recommendations set forth in the June, 2011 Class III Cultural Resources Inventory report and attached to the SHPO’s July 28, 2011 concurrence letter provided as Exhibit 5.

14. The Commission has established criteria pursuant to North Dakota Century Code Section 49-22-05.1 to guide the Commission in evaluating the suitability of granting an application for a Certificate of Corridor Compatibility and Route Permit. The criteria, as set forth in North Dakota Administrative Code Section 69-06-08-02, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria and Policy Criteria.

15. A transmission facility route must not be sited within an Exclusion Area. One type of Exclusion Area, federally protected plant species known as *Townsendia exscapa* and *Townsendia hookeri*, are located within the study area; however, the protected plant species will not be crossed by the route. One area of the plant species is within the proposed construction zone, but the area will be marked and will be bored under to avoid impacts to the plant species.

16. A transmission facility route must not be sited within an Avoidance Area unless the applicant shows that under the circumstances there are no reasonable alternatives. In determining whether an Avoidance Area shall 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. Three types of Avoidance Areas are located within the study area: cultural resources; designated or registered state management areas; and residences.

17. Seven cultural resource sites were identified within the 250-foot wide survey corridor. One of the cultural resource sites was determined not to be eligible for the National Register of Historic Places (“NRHP”), and no avoidance or mitigation is necessary. With respect to two of the cultural resource sites, a Route was selected that avoids the sites, the construction ROW will be narrowed to 25 feet in order to avoid the areas by approximately 100 feet, the site boundaries

will be fenced, and the sites will be monitored by an archaeologist during construction. One site is recommended ineligible for NRHP-listing and is avoided by the Route. One cultural resource site has already been disturbed and the Route will stay within the inventoried area north of Hiland Operating's existing 8-inch natural gas pipeline to avoid impacting the site. The two remaining cultural resource sites (the Northern Pacific Railroad and the Lower Yellowstone Irrigation Canal System) will be bored under so as to avoid impacting the sites.

18. Three Wildlife Management Areas ("WMAs") are located within the study corridor: the Overlook WMA, the Trenton WMA and the Sullivan WMA. None of the WMAs will be crossed by the proposed route.

19. Six occupied residences and two abandoned residences are within 500 feet of the route. Hiland Operating has obtained written waivers of the avoidance area criterion from the owners of each of the occupied residences that are within 500 feet of the route. Hiland Operating provided evidence demonstrating that the abandoned residences are not occupiable.

20. In accordance with the Commission's Selection Criteria, a transmission route shall be approved if it is demonstrated that any significant adverse impacts 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. Hiland Operating has analyzed the impacts of the Project in relation to all of the relevant Selection Criteria. The Project will have no significant adverse impacts on the Commission's Selection Criteria.

21. Wetland surveys were completed along the proposed route. Wetlands are present within the corridor, but wetlands and waterbodies will be avoided by the route to the extent practicable. If avoidance is not possible, Hiland Operating will take steps to protect wetlands and waterbodies. Small amounts of woodlands, generally shelter belts, are present within the corridor, and have been avoided by the route to the extent practicable. An inventory of trees and shrubs that would be affected by the Project has been completed, and trees and shrubs will be replaced in accordance with the Commission's tree and shrub mitigation specifications.

22. The Project may result in temporary displacement of wildlife, due to clearing and construction, but impacts are expected to be temporary and minimal. The Project will have no significant impact on fish and wildlife resources and no impacts are anticipated to endangered, threatened or sensitive plant or animal species.

23. The USFWS comments focused on threatened and endangered species, candidate species, migratory birds, bald and golden eagles, and high value habitat avoidance. With the exception of the USFWS's recommendation to obtain an Incidental Take Permit, Hiland Operating testified that it will comply with the USFWS's recommendations found in Exhibit 6.

24. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the transmission facility. Hiland Operating has analyzed the relevant Policy Criteria and has expressly committed to designing, constructing and operating the pipeline in accordance with all applicable federal, state and local laws and regulations; energy conservation through the facility's location, process and design; training and utilizing available labor in the state; constructing the Project to take advantage of economies of

scale; achieving transmission capacity in the most minimally intrusive and most efficient way possible; and coordinating with state and local officials. Hiland Operating submitted evidence to demonstrate commitment to maximize the benefits of the proposed transmission facility as far as is possible so as to meet the Policy Criteria.

25. It is appropriate to authorize a corridor only for the area for which Hiland Operating performed the more thorough cultural resource study.

Measures to Minimize Impact

26. Hiland Operating has agreed to a number of steps to mitigate the impact of the Project, as indicated by the October 16, 2011 Certification Relating to Order Provisions – Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications.

27. The Project's permanent right-of-way ("ROW") will be 100 feet wide. The Project's temporary ROW will generally be an additional 25 feet wide. The construction ROW will be reduced to 50 feet wide in wooded areas. The eastern 5.1 miles of the proposed ROW will be located adjacent to Hiland Operating's existing 8-inch natural gas pipeline. Hiland Operating will use existing public roads to access the ROW, so no permanent road modifications or construction is anticipated. Temporary access roads may be required.

28. The design, construction and operation of the pipeline will be in accordance with the United States Department of Transportation ("DOT") regulations governing the transportation of natural gas liquids, as prescribed under 49 CFR Parts 194 and 195.

29. Hiland Operating will implement a preventative maintenance program that meets or exceeds the minimum federal safety standards set by the DOT Pipeline and Hazardous Materials Safety Administration.

30. Hiland Operating will utilize environmental inspectors during construction.

31. Hiland Operating will participate in the North Dakota One-Call Excavation Notice System.

32. Hiland Operating has prepared an Emergency Response Plan, and the plan has been submitted to and approved by the DOT Pipeline and Hazardous Materials Safety Administration.

From the foregoing Findings of Fact, the Hearing Officer issues the following:

Conclusions of Law

1. The Commission has jurisdiction over the applicant, Hiland Operating, LLC, and over the subject matter of this application under North Dakota Century Code Chapter 49-22.

2. Hiland Operating is a utility as defined in North Dakota Century Code Section 49-22-03(13).

3. The proposed pipeline is a transmission facility as defined in North Dakota Century Code Section 49-22-03(12).
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 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, in accordance with North Dakota Century Code Section 49-22-07.2.
8. It is appropriate for the Commission to waive those certain procedures and time schedules as requested in the Application and provided under North Dakota Century Code Section 49-22-07.2.

From the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer issues the following:

Recommended Order

1. That Hiland Operating, LLC's application for a waiver of procedures and time schedules be granted.
2. That a Certificate of Corridor Compatibility be issued to Hiland Operating, LLC, designating a corridor for the construction, operation, and maintenance of the proposed pipeline. For purposes of the Certificate, the Corridor will consist of a 200-foot wide area centered on the pipeline route for the length of the route.
3. That a Route Permit be issued to Hiland Operating, LLC, granting authority to construct and operate a 6-inch natural gas liquids pipeline and associated facilities in McKenzie County, North Dakota.
4. That the October 16, 2011 Certification Relating to Order Provisions – Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications, be incorporated by reference and attached to the Order issued by the Commission.
5. That, to the extent there are any conflicts or inconsistencies between the Application and the certification provisions, the certification provisions control.

State of North Dakota
Public Service Commission

By: _____
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Administrative Law Judge
Substantive Hearing Officer
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