

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



Hiland Operating, LLC
6-Inch Natural Gas Pipeline Project — Burke and Divide Counties
Siting Application

Case No. PU-12-190
OAH File No. 20130079

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

October __, 2013

Appearances

Commissioners: Brian P. Kalk, Randy Christmann, and Julie Fedorchak

Bonnie M. Fetch, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street, Suite 303, Bismarck, North Dakota 58503.

Sarah Cardwell, Public Utility Analyst, Public Service Commission, 600 East Boulevard, Bismarck, North Dakota 58505.

Brian Schmidt, Legal Counsel, 122 East Broadway Avenue, Bismarck, North Dakota 58502, on behalf of Public Service Commission.

Jillian R. Rupnow, Attorney at Law, Fredrikson & Byron P.A., 200 North Third Street, Suite 150, Bismarck, North Dakota 58501, on behalf of Hiland Operating, LLC.

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 January 31, 2013, Hiland Operating, LLC (“Hiland”), 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 and operation of a natural gas pipeline (“Project”) in Burke and Divide Counties, North Dakota. Hiland also filed an application requesting waiver of the following procedures and time schedules.

On February 12, 2013, the Commission submitted a request for an Administrative Law Judge to the Office of Administrative Hearings. On February 13, 2013, Allen C. Hoberg, Director of the Office of Administrative Hearings, designated Bonnie M. Fetch as Administrative Law Judgment in the above-captioned matter.

On May 20, 2013, Hiland filed a Post-Construction Restoration Report, Post-Construction Tree Survey, and letters from federal agencies approving the Project.

On August 21, 2013, the Commission issued a Notice of Filings and Notice of Hearing stating that the Application was deemed complete and scheduling a public hearing for October 8, 2013 at 10:00 a.m. CDT at the Tioga City Hall, 12 1st Street NE, Tioga, North Dakota 58852.

On August 21, 2013, the Commission issued a Revised Notice of Filings and Notice of Hearing, rescheduling the public hearing for October 8, 2013 at 10:00 a.m. CDT at the Powers Lake City Hall, 218 Main Street, Powers Lake, North Dakota 58773.

The Notice of Filings and Notice of 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 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 8, 2013, 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 Commission makes the following:

Findings of Fact

1. Hiland is a Delaware limited liability company.
2. Hiland has been authorized to do business in the State of North Dakota since January 5, 2005, when it filed its Articles of Incorporation with the North Dakota Secretary of State, as evidenced by the corporate papers filed with the Commission on October 28, 2010 (*see* Case No. PU-10-618).

3. Hiland constructed and began operating the Project prior to siting by the Commission. Hiland was unaware of the requirements of the Commission's Siting Act and Siting Rules when it constructed the Project. When Hiland became aware of the Siting Act and Siting Rules, it self-reported the existence of the Project and began the siting process.

Size, Type, and Preferred Location of Facility

4. The Project consists of approximately 6 miles of pipeline that originates at Norse Gas Plant in Divide County, North Dakota, and terminates at WBI's Transmission Line Tie-In in Burke County, North Dakota.

5. The Project utilizes 6-inch nominal diameter steel pipe and the maximum operating pressure is 1,200 pounds of pressure per square inch gauge. The maximum capacity is 20 MMCF per day.

6. Aboveground facilities include block valves, pig launching and receiving stations, rectifiers, and pipeline markers.

Need for the Facility

7. Hiland concluded there is a need for the facility because existing pipelines for transporting natural gas in the area are at capacity. The Project provides an additional means of transporting Bakken and Three Forks natural gas to the WBI Transmission Line Tie-In, from which the gas can be transported to key markets within the United States.

Study of Preferred Route(s)

8. In its Application, Hiland defined a one-mile-wide study area centered on the preferred pipeline route. Hiland identified a survey corridor a minimum of 250 feet wide for the purpose of conducting cultural resource field surveys, biological and wetland/waterbody field surveys, and other environmental field assessments. Field surveys were also conducted for all Project facility locations and temporary workspace areas. The field survey corridor for the Project, which encompasses the final proposed Project route, is identified in the maps provided in Appendix 4 to the Route Application.

9. Hiland analyzed a number of alternatives and factors, including engineering, economic, and environmental factors to determine the most feasible route. The alternatives considered included a larger or smaller diameter pipeline, as well as an alternative pipeline route from Hiland's Norse Gas Plant to the Prairie Rose Pipeline, which is operated by Pecan Pipeline (North Dakota), LLC.

10. Hiland also conducted a Post-Construction Restoration Report and Post-Construction Tree Survey and determined that the pipeline ROW had been satisfactorily restored and revegetated.

11. The following agencies were contacted by Hiland and provided comments: North Dakota Department of Health, State Historical Society of North Dakota, State Historic Preservation Office ("SHPO"), North Dakota Game and Fish Department, North Dakota Geological Survey

Division, North Dakota Parks and Recreation Department, North Dakota State Water Commission, U.S. Fish and Wildlife Service North Dakota Field Office, Lostwood Wetland Management District.

12. Hiland conducted a Class I literature search on a two-mile-wide corridor, and a Class III cultural resource inventory was completed on a narrower 250-foot-wide field survey corridor. Additionally, environmental data collected included information on soils, land use, wetlands and waterbody crossings, noxious weeds, trees, saplings, and shrubs, and protected species and habitats.

13. The SHPO has concurred with the determination that no historic properties or significant sites will be affected by the Project so long as the Project remains of the nature and in the location described in the Class I and Class III Cultural Resource Inventory Report, and Hiland follows any site avoidance measures set forth in those reports.

14. The Commission has established criteria pursuant to Section 49-22-05.1 of the North Dakota Century Code to guide the Commission in evaluating the suitability of granting a Certificate of Corridor Compatibility and Route Permit. The criteria, as set forth in Section 69-06-08-02 of the North Dakota Administrative Code, 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. No Exclusion Areas will be impacted by the Project.

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. No Avoidance Areas will be impacted by the Project.

17. In accordance with the Commission's Selection Criteria, a transmission facility 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 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.

18. A wetlands and waterbodies inventory was completed along the proposed route. Eleven wetlands or waterbodies are present within the study area. All wetlands were bored to avoid impacts. No permanent impacts to wetlands or waterbodies are anticipated. One tree row was crossed during Project construction. However, the row was bored and it is believed that no trees were impacted. Any trees or shrubs removed during construction of the Project will be replaced in accordance with the Commission's Tree and Shrub Mitigation Specifications.

19. The Project may have resulted in temporary modification of habitat and temporary displacement of wildlife, due to clearing and construction. 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.

20. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the transmission facility. Hiland has analyzed the relevant Policy Criteria and has 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 capacity in the most minimally intrusive and most efficient way possible; and coordinating with state and local officials. Hiland 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.

21. It is appropriate to authorize a corridor only for the area for which Hiland performed the more thorough field surveys.

Measures to Minimize Impact

22. Hiland has agreed to a number of steps to mitigate the impact of the Project, as indicated by the October 7, 2013 Certification Relating to Order Provisions – Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications, which is attached to this Order.

24. The Project's permanent right-of-way ("ROW") is 50 feet wide, while its temporary construction ROW was 125 feet wide. Hiland has used existing public roads to access the ROW, and no new roads were constructed as part of the Project.

25. The design, construction, and operation of the pipeline is in accordance with the United States Department of Transportation regulations governing the transportation of natural gas.

26. Hiland participates in the North Dakota One-Call Excavation Notice System.

27. Hiland's existing emergency response plan includes the Project.

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

Conclusions of Law

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

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

3. The proposed pipeline is a transmission facility as defined in Section 49-22-03(12) of the North Dakota Century Code.

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 Section 49-22-07.2 of the North Dakota Century Code.
8. It is appropriate for the Commission to waive those certain procedures and time schedules as requested in the Application and provided under Section 49-22-07.2 of the North Dakota Century Code.
9. Hiland's actions in constructing and operating the Project prior to complying with the Commission's Siting Act and Siting Rules were unintentional and were not willful as described in Section 49-22-21 of the North Dakota Century Code.

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

Recommended Order

1. The 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 a 6-inch natural gas pipeline and associated facilities in Burke and Divide Counties, North Dakota. For purposes of the Certificate, the Corridor will consist of the field survey corridor identified in the maps provided in Appendix 4 of the Route Application.
3. That a Route Permit be issued to Hiland Operating, LLC, granting authority to construct and operate a 6-inch natural gas pipeline and associated facilities in Burke and Divide Counties, North Dakota.
4. That the October 7, 2013 Certification Relating to Order Provisions – Transmission Facility Siting be incorporated by reference and attached to the Order issued by the Commission.

**State of North Dakota
Public Service Commission**

**Commissioner
Julie Fedorchak**

**Chairman
Brian Kalk**

**Commissioner
Randy Christmann**

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