

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Hiland Crude, LLC  
Crude Oil Pipeline, McKenzie, Williams, Mountrail  
Siting Application

Case No. PU-13-136

**AFFIDAVIT OF SERVICE BY CERTIFIED MAIL**

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Kathy Acker** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **21st** day of **November, 2014**, she deposited in the United States Mail, at Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

**Amended Findings of Fact, Conclusions of Law and Order**

and an original of:

**First Amended Certificate of Corridor Compatibility Number 157  
First Amended Route Permit Number 169**

The envelope was addressed as follows:

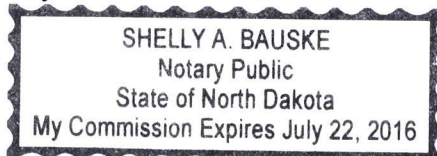
Lawrence Bender  
Jillian R Rupnow  
Fredrickson & Byron, P.A.  
1133 College Dr Ste 1000  
Bismarck, ND 58501-1215



**Cert. No. 7014 0150 0000 4831 4615**

The address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me  
this **21st** day of **November, 2014**.

SEAL



  
\_\_\_\_\_  
  
\_\_\_\_\_  
Notary Public

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

**Hiland Crude, LLC**  
**Crude Oil Pipeline, McKenzie, Williams, Mountrail**  
**Siting Application**

**Case No. PU-13-136**

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

**November 20, 2014**

**Appearances**

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

Lawrence Bender and Jillian R. Rupnow, Attorneys at Law, Fredrikson & Byron P.A., 1133 College Drive, Suite 1000, Bismarck, North Dakota 58501, on behalf of Hiland Crude, LLC.

Brian D. Schmidt, Special Assistant Attorney General, Legal Counsel for Public Service Commission, 122 East Broadway Avenue, Bismarck, North Dakota 58501.

Julie Prescott, Public Utility Analyst, Public Service Commission, 600 East Boulevard, Bismarck, North Dakota 58505.

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

**Preliminary Statement**

On March 26, 2013, Hiland Crude, LLC (Hiland) filed with the Public Service Commission (Commission) a Letter of Intent to submit a combined application for a Certificate of Corridor Compatibility and a Route Permit for a crude oil pipeline. Hiland indicated siting was not required for the initial construction and operation of the pipeline because it currently constitutes a gathering line pursuant to North Dakota Century Code section 49-22-03(12)(b).

On May 8, 2013, the Commission acknowledged a Letter of Intent was no longer required due to a change in the applicable law.

On March 27, 2014, Hiland filed with the Commission applications (Applications) for a certificate of corridor compatibility and a route permit to authorize the conversion of a gathering pipeline system in McKenzie, Mountrail, and Williams Counties, North Dakota into a transmission system (Project). Hiland included with its Applications a request for the Commission to waive certain procedures and time schedules required under North Dakota Century Code chapter 49-22, which requires separate filings and applications for

a certificate of corridor compatibility and a route permit, separate notice of such applications, separate hearings on such applications, and certain time schedules.

On May 6, 2014, the Commission deemed Hiland's Applications complete and issued a Notice of Filings and Notice of Hearing scheduling a hearing for June 17, 2014, at 10:00 a.m. CDT at Williston City Hall, 22 East Broadway, Williston, North Dakota 58802.

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 Application:

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 June 17, 2014, the hearing was held as scheduled.

On October 8, 2014, the Commission entered Findings of Fact, Conclusions of Law and Order issuing Certificate of Corridor Compatibility No. 157 and Route Permit No. 169 upon the grounds and with certain conditions as explained therein.

The October 8, 2014, Findings of Fact, Conclusions of Law and Order were served on Hiland on October 14, 2014.

On October 29, 2014, Hiland petitioned for reconsideration, requesting the Commission reconsider and amend Findings 18, 19, 20, 27, and any other necessary Findings as well as Order Numbers 2, 3, and 4. Hiland seeks an amended order allowing it to operate portions of the pipeline that are in compliance with the siting requirements as a transmission facility, with other sections remaining subject to the conditions described in the October 8 Findings of Fact, Conclusions of Law, and Order.

Having allowed all interested persons an opportunity to be heard, and having heard, reviewed and considered all testimony and evidence presented, and having fully considered Hiland's Petition for Reconsideration, the Commission makes the following:

### **Findings of Fact**

1. 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.
2. Hiland is an Oklahoma limited liability company. Hiland has been authorized to do business in the State of North Dakota since July 28, 2006, 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 April 4, 2014, in Case No. PU-13-148.

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

3. The Project consists of approximately 197 miles of pipeline located in McKenzie, Mountrail, and Williams Counties, North Dakota. The pipeline transports crude oil from Williams, McKenzie, and Mountrail Counties to major markets via (1) Enbridge's pipeline using a connection at Beaver Lodge; (2) COLT Rail Hub using a connection near Epping, North Dakota; (3) Plains' Bakken North Pipeline at Trenton Station, Savage Rail Station, and Enbridge Trenton Station using connections near Trenton, North Dakota; (4) Musket Rail using a loading station near Dore, North Dakota with a potential connection to Hiland's proposed Double H pipeline at this location; and (5) Bridger's Four Bears pipeline using a connection near Johnson's Corner.
4. The Project utilizes 8-inch diameter steel crude oil pipeline and the maximum operating pressure will be 1,440 pounds of pressure per square inch gauge. The maximum daily output will be 65,000 barrels per day.
5. The Project was built in six segments, with construction starting and ending as follows: Tioga segment (September 2010 – May 2011), Plains segment (July 2011 to January 2013, with a partial segment completed in February 2012), Dore segment (October 2011 to March 2012), Johnson Corner segment (August 2011 to October 2012), Epping/Tioga segment (July 2011 to April 2012), and the New Town segment (October 2012 to March 2013). In addition to these segments, the evidence reflected an approximately 10-mile loop (loop) was constructed, with approximately 6.5 miles being constructed in late 2013 and operational in the first quarter of 2014. Hiland testified the loop was constructed as part of the gathering line to reduce pressure in the pipeline.
6. Aboveground facilities include mainline valves, block valves, pig launching and receiving stations, rectifiers, and pipeline markers. Hiland intends to add tank facilities

and pumps at several outlets, to reduce overall line pressure and increase the maximum daily output of the pipeline system.

### Need for the Facility

7. Hiland concluded there is a need for the additional facilities because the recent and significant increase in oil extraction has outpaced efficient transportation methods. Current crude oil transportation from oil wells to distribution points is primarily accomplished by tanker truck, or limited pipeline transportation. Increased production of crude oil and limited pipeline access combine to increase tanker truck traffic on North Dakota highways. In turn this increases road damage, the need to update or repair highways, emissions levels and raises concern for driver safety. The construction of additional pipelines would have a positive effect on efficient transportation of crude oil and would relieve some of the impacts resulting from trucking the crude oil. Addition of storage tanks and pumping facilities to the existing Project would provide a reliable transportation method for up to 65,000 bpd. In addition, the increase in maximum daily output will reduce truck traffic and negate the need for a parallel pipeline, reducing even further the overall impact of crude oil transportation in the area. Finally, the use of storage tanks will reduce overall pressure in the pipeline, increasing safety of the Project.

### Study of Preferred Location(s)

8. Hiland evaluated a one-mile-wide study area (study area) centered on the existing pipeline route. Field surveys were conducted based upon a minimum of a 250-foot wide area centered on the existing pipeline alignment (survey area). The purpose of the field survey was to inventory any potential resource issues such as wetlands, water bodies, protected species, critical habitats, and/or cultural resources.

9. Hiland conducted a Class I literature search in the study area and a Class III cultural resource inventory in the survey area. 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.

10. The following agencies were contacted by Hiland and provided comments: North Dakota Parks and Recreation; North Dakota Game and Fish Department; United States Army Corps of Engineers; U.S. Fish and Wildlife Service (USFWS); North Dakota State Historical Preservation Office (SHPO); and North Dakota Department of Health. No agencies expressed concern with the Project, but the USFWS indicated it had insufficient information to allow an adequate review. According to Hiland, the USFWS does not provide comments on projects already constructed.

11. 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.

### Siting Criteria

12. 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 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.

13. A transmission facility route must not be sited within an exclusion area. No exclusion areas will be impacted by the Project.

14. 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.

15. Pursuant to North Dakota Century Code section 49-22-05.1, areas within five hundred feet of an inhabited rural residence must be designated avoidance areas. The five hundred foot avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing. In addition, North Dakota Administrative Code section 69-06-08-02(2), designates areas within five hundred feet of a residence, school, or place of business as avoidance areas. The Project is within five hundred feet of twenty rural residences. Waivers have been obtained from all but five of the owners of the residences. The location of the rural residences for which waivers have not been obtained is shown in Late-Filed Exhibit No. 5.

16. Four of these rural residences are within five hundred feet of the pipeline, but the owners do not own the land on which the pipeline was built (Exhibit 6). The evidence regarding these rural residences reflects the McGinnity residence is located along the Tioga segment of the pipeline. The Vance residence is located along the Epping to Tioga segment of the pipeline. The Smith and Moline residences are located along the Plains segment of the pipeline. One of the rural residences within five hundred feet of the pipeline route is owned by a person who also owns the property on which the pipeline is located. This residence is owned by Lyle D. and Dorothy Kuester and is located along the Plains segment of the pipeline near the Smith and Moline residences. According to Hiland, an easement has been obtained for the Kuester property.

17. Of these rural residences, only LaVern and Julianna Vance appeared at the public hearing. Lavern Vance testified he made requests to move the pipeline further from the Vance residence during construction, but was unsuccessful. He testified to receiving a

letter from Diamond Resources, on behalf of Hiland, seeking a waiver, but neither Hiland nor Diamond ever consulted with him further about the pipeline. The Vances' attorney also testified and described that the first time she was contacted by Hiland was the day prior to the public hearing.

18. The evidence provided by Hiland about why the waivers were not obtained was vague and speculative, and indicated Hiland used minimal efforts to obtain the waivers. Hiland appears to rely upon the fact that the pipeline is already in place as a substitute for meaningful attempts to obtain waivers.

19. The Commission finds Hiland has failed to show no reasonable alternative exists to locating the pipeline within five hundred feet of these rural residences. Economic considerations alone are not sufficient to establish no reasonable alternative exists to siting within an avoidance area. Hiland's position appears to be that moving the pipeline is not a reasonable alternative because there would be additional environmental impact, inconvenience to landowners where the pipeline is located, and expense. Essentially, Hiland's argument is no reasonable alternative exists because the pipeline is already constructed. However, the failure to obtain waivers or locate the pipeline more than five hundred feet from the residences is a problem of Hiland's own making. The Commission is not convinced no reasonable alternatives exist to siting the pipeline within five hundred feet of these rural residences merely because Hiland constructed this project in phases as gathering lines and then, at some indeterminate point, decided to convert it to a transmission line. This situation could have been avoided by better planning. Finding no reasonable alternative exists in this situation would open the door for a potential end-around of the Commission's siting criteria and the policy established in North Dakota Century Code section 49-22-05.1.

20. Hiland has not sought approval or identified options to reroute the pipeline in the areas within five hundred feet of the rural residences and testified it had not explored other alternatives. Therefore, there is no information from which the Commission can find a different route meets the Commission's siting criteria. Accordingly, as a condition of Hiland's requested certificate of corridor compatibility and route permit, Hiland must obtain waivers from the owners of these five rural residences pursuant to North Dakota Century Code section 49-22-05.1. With respect to the Kuester residence, Hiland asserts the signing of the easement is essentially the equivalent of the waiver under North Dakota Century Code section 49-22-05.1. However, the signing of an easement and the granting of a waiver are not necessarily the same. Hiland may file the easement obtained for the Kuester property for the Commission's evaluation of whether it satisfies the waiver requirement. Prior to undertaking any construction or operation activities that fall within the Commission's jurisdiction, Hiland must file with the Commission waivers complying with North Dakota Century Code section 49-22-05.1. Hiland may also seek to reroute the pipeline so it is not within five hundred feet of these residences to the extent allowed by law.

21. In its Petition for Reconsideration, Hiland requests the Commission allow it to operate the Dore (Musket Lateral) segment, the Johnsons Corner segment, and a portion of the Plains Delivery segment from the Bethel Injection Station to the Dore Junction as a transmission facility and not be subject to the conditions outlined in paragraph 20. The portions of the pipeline Hiland seeks to operate are not in the areas in which the residences are within 500 feet of the pipeline route. Accordingly, the special conditions described in paragraph 20 do not apply to the Dore (Musket Lateral) segment, the Johnsons Corner Segment, and the portion of the Plains Delivery segment from the Bethel Injection Station to the Dore Junction. The remaining portions of the pipeline (the Tioga segment, the portion of the Plains Delivery segment from the Bethel Injection Station to the Epping Injection station, the Epping/Tioga Segment, and the New Town segment) shall remain subject to the conditions set forth in Paragraph 20 and below. See Late-Filed Exhibit 5.

22. The Project also crossed the Missouri River, an avoidance area. However, the pipeline was bored via horizontal directional drilling, and did not impact this avoidance area. Further, given the location of this pipeline and its purpose, crossing the Missouri River is unavoidable. Given the construction methods used and the impossibility of entirely avoiding the Missouri River, the Commission finds no reasonable alternative exists.

23. Thirteen potential historical sites within the field study corridor were previously impacted by the original pipeline construction which did not require an archaeological inventory at the time of design and construction. Of these thirteen sites, two were previously recorded and none are designated national or state historic sites. SHPO indicated the archaeology report submitted by Hiland was acceptable and found no significant sites with respect to the Project. Future construction of storage tanks and pumping facilities will not affect any avoidance areas.

24. A wetlands and waterbodies inventory was completed along the proposed route. Several wetlands or waterbodies are present within the study area. All saturated wetlands and waterbodies were bored, and therefore no adverse impacts occurred. No impacts to wetlands or waterbodies are anticipated to occur as a result of installation of tanks and pumps. Isolated finds of tree rows and wooded areas were located within the survey area. Any trees or shrubs removed during construction of the Project will be replaced in accordance with the Commission's Tree and Shrub Mitigation Specifications.

25. 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.

26. In accordance with the Commission's selection criteria, 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. Hiland 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.

27. 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.

28. It is appropriate to authorize a corridor only for the area of the survey area which is 250-feet on center of the pipeline route depicted on Hearing Exhibit 2, subject to the conditions described herein.

#### Measures to Minimize Impact

29. Hiland has agreed to a number of steps to mitigate the impact of the Project, as indicated by the June 3, 2014 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.

30. The Project's permanent right-of-way (ROW) is 50 feet wide, while its temporary construction ROW was 75 feet wide. Hiland constructed temporary access roads for Project construction, which were or will be restored to pre-construction conditions following Project construction. Similarly, any access roads required for tank and pump installation will be temporary. No permanent roads will be constructed as part of the Project.

31. The design, construction, and operation of the pipeline must be in accordance with the United States Department of Transportation regulations governing the transportation of crude oil, including U.S. Department of Transportation regulations as set forth in 49 CFR Part 195.

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

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

From the foregoing Findings of Fact, and subject to the conditions explained therein, the Commission now makes the following:

## **Conclusions of Law**

1. The Commission has jurisdiction over Hiland and the subject matter of the Applications 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.

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

### **Order**

1. That Hiland Crude, LLC's application for a waiver of procedures and time schedules be granted.
2. First Amended Certificate of Corridor Compatibility No. 157 is issued to Hiland Crude, LLC, designating a corridor for the construction, operation, and maintenance of an approximately 197-mile, 8-inch crude oil pipeline and associated facilities in McKenzie, Mountrail, and Williams Counties, North Dakota. For purposes of the Certificate, the Corridor will consist of a 250-foot-wide corridor centered on the pipeline route as shown on the map provided in Hearing Exhibit 2. The Certificate of Corridor Compatibility shall be subject to the special condition described below.
3. First Amended Route Permit No. 169 is issued to Hiland Crude, LLC, granting authority to construct and operate an approximately 197-mile, 8-inch crude oil pipeline and associated facilities in McKenzie, Mountrail, and Williams Counties, North Dakota.


The designated route is shown on the map provided in Hearing Exhibit 2. The Route Permit is subject to the special condition described below.

4. The Certificate of Corridor Compatibility and the Route Permit shall be subject to and include the special condition that Hiland must obtain and file with the Commission executed waivers consistent with North Dakota Century Code section 49-22-05.1 from the owners of the McGinnity, Vance, Smith, Moline, and Kuester residences within five hundred feet of the pipeline route before any construction or operation activities occur to make the pipeline a transmission facility on the Tioga segment, the portion of the Plains Delivery segment from the Bethel Injection Station to the Epping Injection station, the Epping/Tioga Segment, and the New Town segment (as depicted in Late-filed Exhibit 5). With respect to the Kuester property, the easement obtained by Hiland may be sufficient if its contents establish a waiver. To the extent Hiland may be unable to obtain the waivers, it may apply for a reroute to the extent allowed by law. Hiland is authorized to perform construction and operation activities associated with a transmission facility on the Dore (Musket Lateral) segment, the Johnsons Corner Segment, and the portion of the Plains Delivery segment from the Bethel Injection Station to the Dore Junction (as depicted on Late-filed Exhibit No. 5). Hiland must ensure that no construction, operation, or other activities relating to a transmission facility are undertaken on the Tioga segment, the portion of the Plains Delivery segment from the Bethel Injection Station to the Epping Injection station, the Epping/Tioga Segment, and the New Town segment until the conditions described herein are satisfied. Further, Hiland must maintain sufficient records and/or other information to establish these segments are not being operated as a transmission facility prior to satisfying the conditions herein. The Commission retains all of its investigative, enforcement, and all other powers granted to it under the law to ensure Hiland's compliance with these conditions.

5. That the June 3, 2014 Certification Relating to Order Provisions – Transmission Facility Siting be incorporated by reference and attached to this Order.

6. To the extent there are any conflicts or inconsistencies between Hiland's Applications and the June 3, 2014 Certification, the Certification provisions Control.

**PUBLIC SERVICE COMMISSION**

  
Randy Christmann  
Commissioner

  
Brian P. Kalk  
Chairman

  
Julie Fedorchak  
Commissioner

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Hiland Crude, LLC  
Crude Oil Pipeline, McKenzie, Williams, Mountrail  
Siting Application

Case No. PU-13-136

CERTIFICATION RELATING TO ORDER PROVISIONS  
TRANSMISSION FACILITY SITING

I am Jim Suttle, a representative of Hiland Crude, LLC, ("Company") with authority to bind Company to requirements to be set forth by the Commission in its Order and I certify the following:

1. Company understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission will be subject to the conditions and criteria set forth in Chapter 49-22 of the North Dakota Century Code and Chapter 69-06-08 of the North Dakota Administrative Code, and that Company shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. Company agrees to hold a preconstruction conference prior to commencement of any construction, which must include a Company representative, its construction supervisor, and a representative of Commission Staff, to ensure that Company fully understands the conditions set forth in the Commission's order.
3. Company agrees to comply with the rules and regulations of all other agencies having jurisdiction over any phase of the transmission facility including all city, township, and county zoning regulations.
4. Company understands and agrees that it shall obtain all other necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission prior to construction activity associated with the transmission facility that requires said license or permit.
5. Company agrees to inform the Commission and the Commission's third-party construction inspector of its intent to start construction on the transmission facility prior to the commencement of construction. Once construction has started, Company shall keep the Commission and the Commission's third-party construction inspector updated on construction activities on a weekly basis.
6. Company understands and agrees that the pipeline will be buried to a minimum depth from the ground surface to the top of the pipe of 48 inches in range land, 48 inches for cultivated land, 48 inches at the bottom of the ditch for road crossings, and 72 inches across undeveloped section lines.

7. Company understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission is subject to suspension or revocation and may, in an appropriate and proper case, be suspended or revoked for failure to comply with the Commission's order, the conditions and criteria of the certificate or subsequent modification, or failure to comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies.
8. Company agrees to maintain records that will demonstrate that it has complied with the requirements of the Commission's order issuing a Certificate of Corridor Compatibility or Route Permit, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.
9. Company agrees to construct and operate the transmission facility in the manner described in Company's application, in any late filed exhibits, and supplemental materials (Application). To the extent there are any conflicts or inconsistencies between Company's Application and the provisions in this Certification Relating to Order Provisions, the Certification provisions control.
10. Company agrees to report promptly to the Commission the presence in the permit area of any critical habitat or threatened species, endangered species, bald eagles, or golden eagles of which Company becomes aware and which were not previously reported to the Commission.
11. Company understands and agrees that all cultural resource mitigation plans must be submitted to the North Dakota State Historic Preservation Office and approved prior to the start of any fieldwork and construction activity in the affected area.
12. Company understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made and a report of such examination is filed with the Commission and the State Historical Society and clearance to proceed is given by the Commission.
13. Company understands and agrees that all buried facility crossings of graded roads must be bored unless the responsible governing agency specifically permits Company to open cut the road.
14. Company understands and agrees that all pre-existing township and county roads and lanes used during construction must be repaired or restored to a condition that is equal to or better than the condition prior to the construction of the transmission facility and that will accommodate their previous use, and that areas used as

temporary roads or working areas during construction must be restored to their original condition.

15. Company understands and agrees that construction must be suspended when weather conditions are such that construction activities will cause irreparable damage to roads or land, unless adequate protection measures approved by the Commission are taken.
16. Company understands and agrees that all topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas where cuts will be made, must be stripped and segregated from the subsoil. Except along segments of the line using the double ditching method, any area on which excavated subsoil will be placed must also be stripped of topsoil. After backfilling is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must be replaced over areas from which it was stripped only after the subsoil is replaced.
17. Company understands and agrees that reclamation, fertilization, and reseeding is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
18. Company understands and agrees that its obligation for reclamation and maintenance of the right-of-way will continue throughout the life of the transmission facility.
19. Company understands and agrees that its obligation for reclamation and maintenance of the transmission facility, associated facilities, and roadways will continue throughout the life of the transmission facility.
20. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
21. Company understands and agrees that it shall repair or replace all fences and gates removed or damaged during all phases of construction and operation of the transmission facility.
22. Company understands and agrees that it shall repair or replace all drainage tile broken or damaged as a result of construction and operation of the transmission facility.
23. Company understands and agrees that staging areas or equipment shall not be located on land owned by a person other than Company unless otherwise negotiated with landowners.

24. Company understands and agrees that it shall remove all waste that is a product of construction and operation, restoration, and maintenance of the site, and properly dispose of it on a regular basis.
25. Company understands and agrees that it shall, as soon as practicable upon the completion of the construction of the transmission facility, restore the area affected by the activities to as near as is practicable to the condition as it existed prior to the beginning of construction.
26. Company understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the transmission facility.
27. Company understands and agrees that it shall advise the Commission of any extraordinary events which take place at the site of the transmission facility, including injuries to any person, or the death of any threatened or endangered species on the site within five business days of such event.
28. Company understands and agrees that it shall implement a procedure for how complaints concerning the transmission facility will be handled by Company
29. Upon request, Company agrees to provide the Commission with engineering design drawings of the transmission facility prior to construction.
30. Company understands and agrees that it shall inform the Commission in writing of any plans to modify the transmission facility or of any plans to modify the site plan for the transmission facility. Company understands and agrees to obtain written approval from the Commission prior to any modifications to the site plan or the transmission facility. Approval may be granted after notice and opportunity for hearing.
31. Company agrees to provide the Commission with both an electronic and a paper copy of the corridor approved by the Commission and the facility design specifications for the construction of the transmission facility showing the location of the transmission facility as built, and will provide this information within 3 months of the completion of the construction. Company also agrees to provide an electronic version of the corridor approved by the Commission and the facility design specifications for the construction of the transmission facility showing the location of the transmission facility as built that can be imported into ESRI GIS mapping software within 3 months of the completion of the construction. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in

the appropriate vertical datum for the coordinate system used. All submissions must specify the datum in which the data was developed.

32. Company understands and agrees that the authorizations granted by any Certificate of Corridor Compatibility or Route Permit issued by the Commission for the transmission facility are subject to modification by order of the Commission if deemed necessary to protect further the public or the environment.
33. Company understands and agrees that in the event Company desires to construct, within any corridor granted by a Certificate of Corridor Compatibility in this proceeding, a transmission facility or energy conversion facility that was not included in Company's application in this proceeding, Company shall apply to the Commission for a Route Permit or Site Certificate for the facility.
34. Company shall notify the Commission, as soon as reasonably possible, if any damage, as defined by North Dakota Century Code Chapter 49-23, occurs to underground facilities during construction conducted under the certificate or permit issued in this proceeding. In the event of any damage to underground facilities, Company shall suspend construction in the vicinity of the damage until compliance with One-Call Excavation Notice System requirements under North Dakota Century Code Chapter 49-23 has been determined and clearance to proceed has been given by the Commission.
35. Company understands and agrees that the corridor certificate and route permit are subject to suspension or revocation and may, after hearing, be suspended or revoked for failure to comply with the Commission's order, requirements of the One-Call Excavation Notice System under North Dakota Century Code Chapter 49-23, the conditions and criteria of the certificate or permit or subsequent modification, or failure to comply with applicable statutes, or rules, regulations, standards, and permits of other state or federal agencies.
36. Company agrees to utilize the following procedures if Company seeks a route adjustment before or during construction of the pipeline, pursuant under N.D.C.C. §49-22-16.3:
37. Company will specifically identify which subsection of NDCC 49-22-16.3 it is requesting the adjustment under. Company will file the name and contact information for a key contact person for the purposes of notice and communication during the adjustment application.
38. **ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED:** Before conducting any construction activities for any adjustment to the designated route within the designated corridor under NDCC 49-22-16.3(1), the Company will file:

- a. Certification and supporting documentation affirming that construction activities will be within the designated corridor, will not affect any known exclusion or avoidance areas within the designated corridor;
- b. Certification and supporting documentation, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, route and the route adjustment;
- c. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

39. **ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, AVOIDANCE AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22-16.3(2), within the designated corridor that may affect an avoidance area, and before conducting any construction activities for any adjustment to the designated route within the designated corridor, the Company will file:

- a. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying:
  - i. the designated corridor, route and the route adjustment;
  - ii. all exclusion and avoidance areas within the portion of the designated corridor containing the route adjustment
- b. Certification and supporting documentation affirming:
  - i. That construction activities will be within the designated corridor
  - ii. That construction activities will not affect any known exclusion area
- c. All field studies performed on the portion of the designated corridor containing the route adjustment;
- d. Specific information about any mitigation measures Company will take within the adjustment area;
- e. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment;
- f. Certification that unless the Commission previously authorized the impact to the same avoidance area, that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist;
- g. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

Company acknowledges and agrees that:

- 1. Written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity unless the

Commission fails to act within ten working days of receipt of filing a complete adjustment application, in which case the adjustment is deemed approved.

2. The initiation of the ten working days begins upon receipt of a complete filing, to include Company's certifications, supporting documentation and maps. However, Commission may extend the ten working day provision if Company, in the person of the key contact referenced above, is informed of the reason additional time is necessary for extension and has no objection to an extension.

40. **ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22-16.3(3), outside the designated corridor and not affecting any exclusion and avoidance area, before conducting any construction activities for any adjustment to the designated route outside the designated corridor, the Company will file:

- a. Certification and supporting documentation affirming that construction activities will not affect any known exclusion or avoidance areas,
- b. Certification and supporting documents stating the length of the proposed route outside of the corridor and a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, corridor adjustment, designated route and the route adjustment;
- c. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment; and
- d. Detailed field studies indicating exclusion and avoidance areas for the proposed adjustment area; and
- e. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route

41. **ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, AVOIDANCE AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22-16.3(4), outside the designated corridor that may affect an avoidance area, and before conducting any construction activities for any adjustment to the designated route outside the designated corridor, the Company will file:

- a. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying:
  - i. the designated corridor, corridor adjustment, route and the route adjustment;
  - ii. all exclusion and avoidance areas within the adjustment area

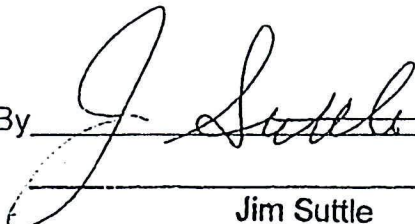
- b. Certification that construction activities will not affect any known exclusion area;
- c. Certification that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist within the designated corridor and route;
- d. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment;
- e. Provide specific information about any mitigation measures Company will take within the adjustment area;
- f. Detailed field studies indicating exclusion and avoidance areas for the proposed adjustment area; and
- g. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

Company acknowledges and agrees that:

- 1. Written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity unless the Commission fails to act within ten working days of receipt of filing a complete adjustment application, in which case the adjustment is deemed approved.
  - 2. The initiation of the ten working days begins upon receipt of a complete filing, to include Company's certifications, supporting documentation and maps. However, Commission may extend the ten working day provision if if Company, in the person of the key contact referenced above, is informed of the reason additional time is necessary for extension and has no objection to an extension.
42. When applicable, Company may submit the field studies from the original application for the corridor and route provided they cover the adjustment area.

Dated this 3<sup>rd</sup> day of JUNE, 2014.

HILAND CRUDE, LLC

By   
 \_\_\_\_\_  
 Jim Suttle  
 Sr. Vice President Crude Services  
 Its \_\_\_\_\_

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Hiland Crude, LLC  
Crude Oil Pipeline, McKenzie, Williams, Mountrail  
Siting Application

Case No. PU-13-136

Tree and Shrub Mitigation Specifications

Inventory

1. Trees and shrubs anticipated to be cleared, including those that are considered invasive species or noxious weeds (e.g., *Caragana arborescens*, *Elaeagnus angustifolia*, *Rhamnus cathartica*, *Tamarix chinensis*, *T. parviflora*, *T. ramosissima*, *Ulmus pumila*), must be inventoried before cutting. The inventory must record the location, number, and species of trees and shrubs.
2. In windbreaks, shelterbelts and other planted areas, trees or shrubs anticipated to be cleared, regardless of size, must be inventoried for replacement.
3. In native growth areas, trees anticipated to be cleared that are 1 inch diameter at breast height (dbh) or greater must be inventoried for replacement.
4. In native growth areas, shrubs anticipated to be cleared in the permanent right-of-way must be inventoried for replacement.
5. In native growth areas outside the permanent right-of-way, shrubs must be cut flush with the surface of the ground, taking care to leave the naturally occurring seed bank and root stock intact. If soil disturbance is necessary, the native topsoil must be preserved and replaced after construction. Shrubs must be allowed to regenerate naturally where native topsoil is preserved and replaced. Where native topsoil is not preserved and replaced, shrubs anticipated to be cleared must be inventoried for replacement.
6. In native growth areas, trees and shrubs may be inventoried by actual count or by a sampling method that will properly represent the woody vegetation

population. A sampling plan developed by the company, filed with the North Dakota Public Service Commission (Commission) and approved prior to the start of construction must define the sampling method to be used for trees, for tall shrubs and for low shrubs. The data from the sample plots must be extrapolated to the total acreage of the wooded area to be cleared to determine the species and quantity of trees and shrubs to be replaced.

#### **Clearing for Construction**

7. Trees and shrubs must be selectively cleared, leaving mature trees and shrubs intact where practical.
8. The maximum width of clear cuts through windbreaks, shelterbelts and all other wooded areas is 50 feet, unless otherwise approved by the Commission.
9. If the area of trees or shrubs actually cleared differs from the area inventoried, the difference in number of trees and shrubs to be replaced must be noted on the inventory.

#### **Replacement**

10. Prior to tree and shrub replacement, documentation identifying the number and variety of trees and shrubs removed, as well as the mitigation plan for the proposed number, variety, type, location and date of replacement plantings, must be filed with the Commission for approval.
11. Two 2-year-old saplings must be planted for every one tree removed. Two shrubs (stem cuttings) must be planted for every one shrub removed.
12. Except in the case of invasive or noxious species, trees and shrubs must be replaced by the same species or similar species, suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service. Invasive or noxious species must be replaced by similar non-invasive or non-

noxious species suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.

13. Tree and shrub replacement must not be conducted within a 20 to 30 foot wide path over the pipeline to facilitate visual inspections of the right-of-way in accordance with U.S. Department of Transportation safety regulations.
14. Landowners must be given the option of having replacement trees and shrubs planted on the landowner's property, either on or off the right-of-way. The landowner must also be given the opportunity to waive those options in writing in order to have replacement trees and shrubs planted off the landowner's property.
15. At the conclusion of the project, documentation identifying the actual number, variety, type, location and date of the replacement plantings must be filed with the Commission.
16. Tree and shrub replacements must be inspected annually, in September, for three years. The first annual inspection must be at least one year from the anniversary date of the original plantings. A report of each annual inspection must be submitted to the Commission by October 1 of each year, documenting the condition of plantings and any woodlands work completed as of September of each year. If after the third annual report the survival rate is less than 75%, the Commission may order additional planting(s).

**PUBLIC SERVICE COMMISSION  
STATE OF NORTH DAKOTA**

**First Amended  
Certificate of Corridor Compatibility Number 157**

*This is to certify that the Commission has designated a transmission facility corridor for Hiland Crude, LLC, for the construction, operation, and maintenance of approximately 197 miles of 8-inch diameter crude oil pipeline in McKenzie, Williams, and Mountrail Counties, North Dakota.*

*This certificate is issued in accordance with the Order of the Commission dated November 20, 2014 in Case No. PU-13-136 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, November 20, 2014.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
**Executive Secretary**

  
**Commissioner**

**PUBLIC SERVICE COMMISSION  
STATE OF NORTH DAKOTA**

**First Amended Route Permit Number 169**

*This is to certify that the Commission has designated a transmission facility route for Hiland Crude, LLC, for the construction, operation, and maintenance of approximately 197 miles of 8-inch diameter crude oil pipeline in McKenzie, Williams, and Mountrail Counties, North Dakota.*

*This permit is issued in accordance with the Order of this Commission dated November 20, 2014 in Case No. PU-13-136 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, November 20, 2014.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
**Executive Secretary**

  
**Commissioner**