

March 1, 2016

**VIA HAND DELIVERY**

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



**RE: Hiland Crude, LLC –  
Case No. PU-13-136**

Dear Mr. Nitschke:

Enclosed for filing, please find an original and ten (10) copies of the following:

- Application of Hiland Crude, LLC for Modification of Certification Relating to Order Provisions – Transmission Facility Siting, and accompanying modified Certification.

Also enclosed is a CD containing the above-referenced documents in PDF format. If you have any questions, please advise.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lawrence Bender".

LAWRENCE BENDER

LB/dmk  
Enclosures

cc: Mitch Armstrong (w/ encl. - via e-mail)  
Julie Prescott (w/ encl. - via e-mail)  
Bill Wolf (w/ encl. - via e-mail)

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**96 PU-13-136** Filed: 3/1/2016 Pages: 15  
**Application for Modification of Certification Relating to Order Provisions**

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

**Hiland Crude, LLC  
Crude Oil Pipeline, McKenzie, Williams, &  
Mountrail Counties**

**CASE NO. PU-13-136**

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**Application of Hiland Crude, LLC for Modification of Certification Relating  
to Order Provisions – Transmission Facility Siting**

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Hiland Crude, LLC's ("Hiland") hereby moves the North Dakota Public Service Commission ("Commission") for a modification to the Certification Relating to Order Provisions – Transmission Facility Siting, which is incorporated and made part of the orders in the above-captioned matter, for Hiland's approximately 197 mile, 8-inch steel crude oil pipeline and associated facilities ("Project"), located in McKenzie, Williams, and Mountrail Counties, North Dakota.

In support of its application, Hiland states as follows:

1.

On March 27, 2014, Hiland filed with the Public Service Commission ("Commission") a Consolidated Application for a Corridor Certificate and Route Permit ("Consolidated Application") to authorize the conversion of a gathering pipeline system in McKenzie, Williams, and Mountrail Counties, North Dakota into a transmission system.

2.

On October 8, 2014, the Commission entered its Findings of Fact, Conclusions of Law and Order ("Order") issuing Certificate of Corridor Compatibility Number 157 and Route Permit Number 169 for the Project, subject to certain conditions as set forth in the Order.

3.

On October 29, 2014, Hiland filed a petition for reconsideration, requesting the Commission reconsider and amend portions of the Order, essentially allowing Hiland to continue operating the sections of the pipeline that were in compliance with the siting requirements for a transmission facility.

4.

By Amended Findings of Fact, Conclusions of Law and Order (“Amended Order”) dated November 20, 2014, the Commission granted Hiland the authority to convert portions of the Project to be operated as a transmission line, with the other sections remaining subject to the conditions described in the original Order. In conjunction with the Amended Order, the Commission issued First Amended Certificate of Corridor Compatibility Number 157 and First Amended Route Permit Number 169.

5.

On December 17, 2014, Hiland filed with the Commission a request for a route deviation to reroute a portion of the Project located within five hundred feet of an occupied rural residence, an avoidance area.

6.

The Commission issued a Notice of Filings and Notice of Opportunity for Hearing with respect to the route deviation request, and after receiving no requests for hearing, the Commission issued its Second Amended Findings of Fact, Conclusions of Law and Order (“Second Amended Order”) dated February 25, 2015. In conjunction with the Second Amended Order, the Commission

issued Second Amended Certificate of Corridor Compatibility Number 157 and Second Amended Route Permit Number 169.

7.

Incorporated by reference and attached to the Order, Amended Order, and Second Amended Order is the June 3, 2014 Certification Relating to Order Provisions – Transmission Facility Siting (“Certification”), which was executed by a representative of Hiland.

8.

The Certification contains the following provision at Paragraph 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.

9.

As currently written, Paragraph 33 of the Certification is contrary to the laws of North Dakota, and specifically North Dakota Century Code § 49-22-03(3) commonly referred to as the “Footprint Rule.” The Footprint Rule, an exception to the construction definition contained in Chapter 49-22, allows companies to provide certain information to the Commission to construct a facility within a previously designated corridor without having to file an application for a Route Permit or Site Certificate. *See* N.D.C.C. § 49-22-03(3).

10.

During the 2015 Legislative Session, revisions were made to the language of North Dakota Century Code § 49-22-03(3) to add additional clarifying information as to the appropriate use of the Footprint Rule and limit the type of facility that can be built under the rule.

11.

Due in part to the changes made during the last legislative session, the Commission no longer includes the language contained in Paragraph 33, or similar language, in any certification document now being signed by companies appearing before the Commission.

12.

Because of the inconsistencies between North Dakota law and the provision contained in the Certification incorporated into the Second Amended Order for the above matter, Hiland respectfully requests that the provision disallowing utilization of the Footprint Rule under North Dakota Century Code Section 49-22-03 be removed from the Certification document, as depicted on the attached modified Exhibit 3 previously submitted to the Commission.

WHEREFORE, Hiland respectfully requests the following:

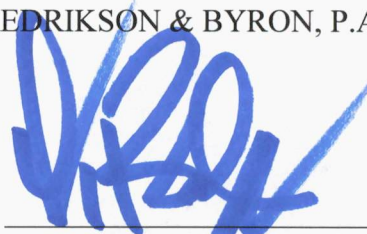
- a. In accordance with North Dakota law, that Hiland not be required to comply with Paragraph 33 of the Certification, and that the following language be stricken from the Certification and Second Amended Order:

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.

- b. Further relief as the Commission deems just and proper under the circumstances.

DATED this 1st day of March, 2016.

FREDRIKSON & BYRON, P.A.

A handwritten signature in blue ink, appearing to be 'L. Bender', written over a horizontal line.

By

LAWRENCE BENDER, ND Bar #03908  
DANIELLE M. KRAUSE, ND Bar #06874  
*Attorneys for Hiland Crude, LLC*  
1133 College Drive, Suite 1000  
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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

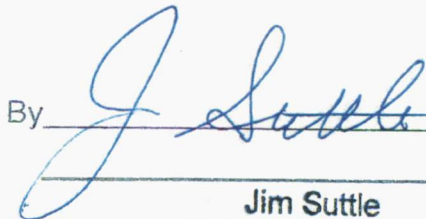
- b. Certification that construction activities will not affect any known exclusion area;
- c. Certification that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist within the designated corridor and route;
- d. Certification that 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 \_\_\_\_\_