

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

**Hiland Crude, LLC**  
**New Town Expansion Project – Mountrail County**  
**Siting Application**

**Case No. PU-15-416**

**[PROPOSED] FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

**November \_\_\_\_\_, 2015**

**Appearances**

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

Danielle M. Krause, Attorney at Law, Fredrikson & Byron, P.A., 1133 College Drive, Suite 1000, Bismarck, North Dakota 58501, on behalf of Hiland Crude, LLC.

John Schuh, Special Assistant Attorney General, Legal Counsel for Public Service Commission, 600 East Boulevard Avenue, Dept. 408, Bismarck, North Dakota 58505-4080.

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

**Preliminary Statement**

On June 26, 2015, Hiland Crude, LLC (“Hiland”), filed with the North Dakota Public Service Commission (“Commission”) a consolidated application for a Certificate of Corridor Compatibility and Route Permit (“Application”) for conversion of an approximately 42.5-mile, 8-inch crude oil pipeline and associated facilities located in Mountrail County, North Dakota (the “Project”). The Project consists of installation of interconnect facilities to a third party storage facility and the resulting conversion of an existing 42.5-mile-long crude oil gathering pipeline to transmission service.

Hiland also filed with its Application a request for the Commission to waive certain procedures and time schedules established under North Dakota Century Code sections 49-22-08, 49-22-08.1, 49-22-13, and North Dakota Administrative Code section 69-06-01-02 requiring separate filings and applications for a certificate of corridor compatibility and a route permit, separate notices, separate hearings on such applications, and certain time schedules on such applications.

On July 31, 2015, the Commission deemed Hiland’s Application complete and issued a Notice of Filings and Notice of Public Hearing scheduling a hearing for September 17, 2015, at 9:00 a.m. Central Time at the Mountrail County South Complex, 8103 61<sup>st</sup> Street NW, Stanley, North Dakota 58784.

The Notice of Filings and Notice of Public 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 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 September 17, 2015, the hearing was held at 9:00 a.m. Central Time, Stanley City Hall, 208 South Main Street, Stanley, North Dakota, 58784, due to unforeseen circumstances at the Mountrail County South Complex. Proper notice was posted at the original noticed location to allow for the location change.

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. 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 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, and is currently in good standing, as evidenced by the corporate papers filed with the Commission on July 20, 2015, in Case No. PU-13-148.

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

3. The Project consists of installation of interconnect facilities to a third party storage facility, various modifications, and the resulting conversion of an existing 42.5-mile-long underground crude oil gathering pipeline to transmission service.

4. In its current configuration, the pipeline associated with the Project gathers oil from lease sites in Mountrail County as depicted in Hearing Exhibit 2 (hereinafter referred to as the “New Town Pipeline”). The New Town Pipeline provides gathering services for producers seeking to move crude oil to points near the terminus of the pipeline near the pre-existing third party Targa Badlands LLC (“Targa”) New Town Terminal. Currently, there are no storage sites along the route where pressure could be increased for further transport, and additional construction and modifications are necessary for the Project to be utilized as a transmission facility.

5. The Project consists of a proposed interconnect to be constructed within the Targa New Town Terminal site. The interconnect will consist of measurement facilities, interconnecting piping for receipt of crude from Targa’s existing 30,000 barrel (“bbl”) tank, and associated above-ground appurtenances and ancillary electrical control systems. Piping will then connect the proposed equipment to Hiland’s existing New Town Pipeline where the right-of-way (“ROW”) abuts the Targa facility. All construction and associated activities will be completed on previously disturbed areas of the existing Targa facility.

6. The Project will also involve the modification of Hiland’s pre-existing five (5) acre New Town Receipt Station facility, which consists of valves, pumping, metering, traps, a 1,200 bbl pressure relief tank, and associated appurtenances. The Project involves conversion of the 1,200 bbl pressure relief tank to an inline supply tank. Construction of piping and electrical facilities is required to allow for the conversion of the 1,200 bbl pressure relief tank to an inlet supply tank. All work will be completed on previously disturbed areas of the New Town Receipt Station. The purpose of this conversion is to improve suction pressure control to the pumps at the existing New Town Receipt Station.

7. Upon construction of the additional portions of the Project and the necessary modifications, the existing 42.5 mile gathering New Town Pipeline will require conversion to transmission service. There will be no modification to the New Town Pipeline, but the additional construction and modifications are required for utilization of the New Town Pipeline as a transmission line. The New Town Pipeline runs from the White Earth Injection Station to the Dakota Plains Rail Terminal Interconnect as depicted in Hearing Exhibit 2 and Late-Filed Exhibit 9. Other surface facilities located within the ROW along the New Town Pipeline include pipeline markers, valves, and other ancillary facilities along the length of the pipeline. All of these facilities are pre-existing.

8. The New Town Pipeline portion of the Project was constructed using 8-inch diameter steel pipeline with 0.188-inch wall thickness. The pipe was installed and tested to maintain a maximum operating pressure of 1,440 pounds per square inch gauge.

9. The current operating pressure of the gathering pipeline is below 1,000 pounds per square inch gauge, with a current flow rate of approximately 18,000 barrels of oil per day. Such

operating pressure and flow rate will be increased upon conversion of the New Town Pipeline to a transmission facility. The maximum design flow rate of the Project is 36,000 barrels of oil per day.

10. The modifications and construction of the additional facilities required to utilize the Project as a transmission facility will take approximately six (6) months to complete.

11. The total cost of the Project is estimated to be approximately \$15 million.

#### Need for the Facility

12. Hiland concluded there is a need for the Project because the recent and significant increase in oil extraction has outpaced efficient transportation methods. The construction of additional transmission 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 or transporting the crude oil by rail. Conversion of the current gathering New Town Pipeline would provide a reliable transportation method for up to 36,000 barrels per day.

13. Upon the necessary modifications and additional construction for the Project, conversion of the New Town Pipeline to transmission service will allow for a reverse of flow on the New Town Pipeline. This reverse of flow will facilitate movement of crude oil from the New Town Pipeline by the Double H Pipeline, which was placed in service in March of 2015, as opposed to transport by truck or rail. The path to the Double H Pipeline is depicted in Late-Filed Exhibit 9.

#### Study of Preferred Location(s)

14. Hiland conducted a Class I cultural resource literature search on a two-mile-wide study area centered on the proposed Project route (“Study Area”) prior to construction of the gathering pipeline. A Class III intensive pedestrian survey was conducted using a variable 250 to 1,414 foot-wide area.

15. Field surveys were conducted to inventory any potential resource issues such as wetlands, water bodies, protected species, critical habitats, and/or cultural resources. 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.

16. The designated agencies identified in North Dakota Administrative Code Section 69-06-01-05 were contacted by Hiland regarding the Project. The following agencies responded and provided comments: North Dakota Parks and Recreation (“NDPRD”), North Dakota Game and Fish Department (“NDGFD”), United States Fish and Wildlife Service (“USFWS”), North Dakota Department of Health, United States Air Force (“USAF”), and the North Dakota State Historical Preservation Office (“SHPO”). No agencies expressed concern with the Project.

17. In a response dated June 26, 2014, the NDPRD indicated that the Project will not affect state park lands managed by or Land and Water Conservation Fund recreation projects coordinated by their agency.

18. In a response dated July 14, 2014, the NDGFD indicated that the Project should not have any significant adverse effects on wildlife or wildlife habitat, including species of concern, provided the recommendations of the NDGFD are implemented where appropriate.

19. In a response dated July 23, 2014, the USFWS offered comments to insure the conservation of listed plant and animal species for construction of the Project.

20. 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 III Cultural Resource Inventory Report, and Hiland follows any site avoidance measures set forth in the report.

#### Siting Criteria

21. 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.

22. Hiland evaluated the Project for the Exclusion, Avoidance, Selection, and Policy Criteria of the Commission.

23. Exclusion Areas must be excluded from consideration of a route for a transmission facility. An Exclusion Area may not encompass more than fifty percent (50%) of a corridor width unless there is no reasonable alternative. A buffer zone of a reasonable width to protect the integrity of the area must be included. Natural screening may be considered in determining the width of the buffer zone.

24. Cultural resources are present within the field study corridor, but impacts to cultural resources will be avoided. Twenty-eight (28) previously unrecorded cultural resources and twenty-three (23) previously recorded cultural resources were identified within the field study corridor during the Class III Cultural Resources Inventory. Of these cultural resources, thirty-four (34) Native American stone feature sites were recommended potentially eligible for the National Register of Historic Places. Beaver Creek Archaeology, Inc. recommended these sites be avoided by a minimum of fifty (50) feet; sites on the Fort Berthold Reservation had a recommended avoidance by a minimum of seventy-five (75) feet. Four (4) archaeological sites and four (4) architectural sites were recommended not eligible for the National Register of Historic Places. Boring was recommended for one site, as it is an active railroad. During the pedestrian survey, no evidence was observed of the eight (8) cultural material scatter site leads. One (1) isolated find was not relocated during the inventory.

25. No Exclusion Areas will be impacted by the Project.

26. 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.

27. 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 nineteen (19) rural residences. Waivers have been obtained from all residences.

28. Accordingly, no Avoidance Areas will be impacted by the Project.

29. A wetlands and waterbodies inventory was completed along the proposed route. Several wetlands or waterbodies are present along the route, but any indirect impacts from pipeline placement were temporary. The Project will have no significant impact on wetlands or waterbodies.

30. The Project may have resulted in temporary modification of habitat and temporary displacement of wildlife, due to clearing and construction. The Project did not have a significant impact on fish and wildlife resources and no impacts are anticipated to endangered, threatened, or sensitive plant or animal species for future construction.

31. A post-construction estimation inventory of trees and shrubs potentially impacted by the Project has been completed. Trees and shrubs will be replaced in accordance with the Commission's Tree and Shrub Mitigation Specifications.

32. 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.

33. In accordance with the Commission's policy criteria, preference may be given to an application 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.

## Measures to Minimize Impact

34. Hiland has agreed to a number of steps to mitigate the impact of the Project, as indicated by Late-Filed Exhibit 15, which includes the executed Certification Relating to Order Provisions – Transmission Facility Siting, New Facility Construction, and Certification Relating to Order Provisions – Transmission Facility Siting, Gathering Line Conversion to Transmission Line, with accompanying Tree and Shrub Mitigation Specifications, which is incorporated by reference and attached to this Order.

35. The Project's permanent right-of-way ("ROW") is fifty (50) feet wide, while its temporary construction ROW was seventy-five (75) feet wide. Hiland used existing public roads to access the construction ROW, and did not modify roads or create new permanent access roads as part of the Project.

36. Hiland testified that the Project will be monitored twenty-four (24) hours per day, seven (7) days per week at a control center in Houston, Texas. The control center will have the ability to remotely shut-down the Project.

37. Hiland testified that it will participate in the North Dakota One-Call Excavation System.

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

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

### **Conclusions of Law**

1. The Commission has jurisdiction over Hiland and 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 New Town Pipeline associated with the Project is currently being operated as a gathering system, which is defined in Section 49-22-03(12) of the North Dakota Century Code as "the pipelines and associated facilities used to collect oil from the lease site to the first pipeline storage site where pressure is increased for further transport." As noted above, the New Town Pipeline currently gathers oil from lease sites in Mountrail County, with no storage sites along the route where pressure could be increased for further transport, in line with the definition of a gathering system.
4. Upon construction of the additional facilities and modifications to the current facilities, the Project will meet the definition of a transmission facility as defined in Section 49-22-03(12) of the North Dakota Century Code. Specifically, upon conversion of the New Town Pipeline and additional construction, the Project will be capable of transporting crude oil from storage sites where pressure has been increased for further transport, which meets the definition of a transmission facility.

5. 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.
6. The location, construction, and operation of the Project are compatible with environmental preservation and the efficient use of resources.
7. 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.
8. 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.
9. It is appropriate for the Commission to waive the certain procedures and time schedules as requested in the Application and provided under Section 49-22-07.2 of the North Dakota Century Code and North Dakota Administrative Code Chapter 69-06-06.

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

### **Order**

1. That Hiland's application for a waiver of procedures and time schedules is granted.
2. Certificate of Corridor Compatibility No. \_\_\_ is issued to Hiland Crude, LLC designating a corridor for the construction, operation, and maintenance of an approximately 42.5-mile, 8-inch crude oil pipeline and associated facilities in Mountrail County, North Dakota. For purposes of the Certificate, the Corridor will consist of a 250-foot-wide corridor centered on the pipeline route as surveyed.
3. Route Permit No. \_\_\_\_ is issued to Hiland Crude, LLC granting authority to construct and operate an approximately 42.5-mile, 8-inch crude oil pipeline and associated facilities in Mountrail County, North Dakota. The designated route is shown on the map included as Figure 1.A.1 in the Consolidated Application for a Certificate of Corridor Compatibility and Route Permit, and further depicted in the Pipeline Profile submitted as Late-Filed Exhibit 8.
4. That the Certification Relating to Order Provisions – Transmission Facility Siting, New Facility Construction, and Certification Relating to Order Provisions – Transmission Facility Siting, Gathering Line Conversion to Transmission Line, with accompanying Tree and Shrub Mitigation Specifications, be incorporated by reference and attached to this Order.
5. To the extent there are any conflicts or inconsistencies between Hiland's Applications and the Certifications, the Certification provisions control.

**State of North Dakota  
Public Service Commission**

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**Randy Christmann  
Commissioner**

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**Julie Fedorchak  
Chairman**

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**Brian Kalk  
Commissioner**

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