



Wade C. Mann  
DIRECTOR

**OFFICE OF ADMINISTRATIVE HEARINGS**

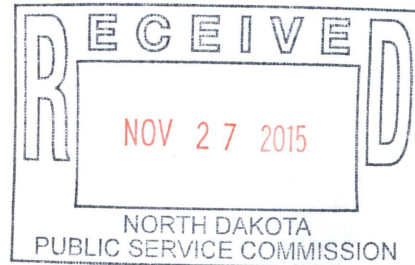
STATE OF NORTH DAKOTA

2911 North 14th Street - Suite 303  
Bismarck, North Dakota 58503

November 25, 2015

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Illona Jeffcoat-Sacco  
General Counsel  
Public Service Commission  
600 East Boulevard Avenue, Dept. 408  
Bismarck, ND 58505-0480



Re: Hiland Crude, LLC / Case No. PU-15-486  
Alexander Tank Farm Crude Oil Pipeline – McKenzie County Siting Application  
OAH No. 20150347

Dear Ms. Jeffcoat-Sacco:

Enclosed for the Public Service Commission’s consideration are my revised Recommended Findings of Fact, Conclusions of Law and Recommended Order (“Recommended Findings and Order”), in the above-referenced matter. I am providing this document to the parties by electronic mail and regular mail.

My initial Recommended Findings and Order filed with the Commission on November 13, 2015, contained a signature block for the Commissioners at the bottom of the order. I have revised the Recommended Findings and Order to replace the Commissioners signature block with my own. This is the only change to my Recommended Findings and Order.

The Commission may adopt the recommended findings as submitted, or modify, or reject them, and make such additional findings as they deem appropriate. So that we may keep apprised of the ultimate outcome of administrative proceedings involving the Office of Administrative Hearings, please provide us with a copy of the final Order of the Commission.

Thank you for your attention to these matters.

Sincerely,

Wade C. Mann  
Director

WCM/lmw

cc: Lawrence Bender, counsel for Hiland Crude, LLC  
Brian Schmidt, Special Assistant Attorney General

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

**Hiland Crude, LLC**  
**Alexander Tank Farm Crude Oil Pipeline- McKenzie County**  
**Siting Application**

**Case No. PU-15-486**

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

**November 24, 2015**

**Appearances**

Lawrence Bender and Danielle M. Krause, Attorneys at Law, Fredriksen & Byron, P.A., 1133 College Drive, Suite 1000, Bismarck, North Dakota 58501, on behalf of Hiland Crude, LLC.

Brian Schmidt, Special Assistant Attorney General, Legal Counsel for Public Service Commission, 122 E. Broadway Avenue, Bismarck, North Dakota 58502.

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

**Preliminary Statement**

On July 8, 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 the Alexander Tank Farm Crude Oil Pipeline (the "Project") from a gathering pipeline to a transmission line. The Project is an approximately 4.5-mile, 8-inch crude oil pipeline with origin 5 miles north-northeast of Alexander, North Dakota, at a connection with Hiland's Market Center Pipeline System ("Market Center System") and a terminus at Continental Resource Inc.'s Alexander Station. The Project was originally designed and constructed to serve delivery points at Alexander Station in conformance with gathering line activities, but based on conversion of the Market Center System to a transmission line, Hiland seeks Commission approval to utilize the Project as a transmission line.

In accordance with North Dakota Administrative Code Chapter 69-06-06, Hiland also filed with its Application 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 September 2, 2015, the Commission deemed Hiland's Application complete and issued a Notice of Filings and Public Hearing scheduling a hearing for October 7, 2015, at 9:00

a.m. CST at Teddy's Residential Suites, 113 9th Avenue SE, Watford City, North Dakota 58854.  
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 Public 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 October 7, 2015, the hearing was held as scheduled.

Having allowed all interested persons an opportunity to be heard, and having heard, reviewed and considered all testimony and evidence presented, the Commission makes the following:

#### **Findings of Fact**

1. Hiland is 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**

2. The Project consists of approximately 4.5 miles of pipeline located in McKenzie County.
3. The Project utilizes 8-inch diameter steel pipeline capable of transporting a maximum of 50,000 barrels of oil per day. The pipeline has a maximum operating pressure of 1,440 pounds per square inch.
4. Construction of the 8-inch gathering pipeline commenced in October of 2013. The gathering pipeline was completed and first moved oil through the gathering pipeline in April of 2014. Conversion is now desired to convert the Project from a gathering line to a

transmission line.

5. The Project's segments are buried underground. Surface structures located within the valves were installed at the pipeline interconnection point with the Market Center System. Pig launchers and/or receivers were installed at the Alexander Station. Additionally, at Alexander Station there is an interconnect facility for custody transfer of crude oil between Hiland and a third party entity. Hiland facilities at the location include measurement equipment, crude pumps, associated piping and valves, and ancillary electrical and control equipment.

6. The total cost of the Project was estimated to be \$3.6 million.

#### Need for the Facility

7. Hiland concluded there is a need for the Project 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. This increases road damage, the need to update or repair highways, emissions levels, and raises concern for driver safety. 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. Conversion of the current gathering line to transmission service would provide a reliable transportation method for up to 50,000 barrels per day.

#### Study of Preferred Location(s)

8. Hiland conducted a Class I literature review of the Project in May of 2014 using a one-mile-wide study corridor for the entire route. A Class III intensive pedestrian survey was conducted of a 250-foot-wide corridor centered on the Project centerline in July of 2014.

9. 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.

10. 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: U.S. Army Corps of Engineers, North Dakota Parks and Recreation, North Dakota Game and Fish Department, U.S. Fish and Wildlife Service, McKenzie County Planning Department, North Dakota State Water Commission, North Dakota Department of Health, and the McKenzie County Commission. No agencies expressed concern with the Project.

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

## 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 application 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. No cultural resources were identified within the field study corridor.

16. 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 one rural residence. A waiver has been obtained from the residence.

17. A wetlands and waterbodies inventory was completed along the proposed route. 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.

18. A tree count was completed along the proposed route. No trees or shrubs were determined to be at risk. The Project will have no significant impact on trees or shrubs.

19. The Project may have resulted in temporary modification of habitat and temporary displacement of wildlife, due to clearing and construction. The Project has not had a significant impact on fish and wildlife resources and no permanent impacts have occurred to endangered, threatened, or sensitive plant or animal species.

20. 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.

21. 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

22. Hiland has agreed to a number of steps to mitigate the impact of the Project, as indicated by the executed 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.

23. The Project's permanent right-of-way ("ROW") is 50 feet wide, depending on the location, while its temporary construction ROW was 75 feet wide. Hiland used existing public roads to access the construction ROW. No permanent access roads were constructed as part of the Project.

24. 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.

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

26. 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 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 Project meets the definition of a transmission facility as set forth 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 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.

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

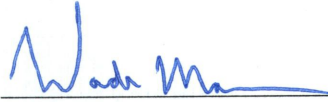
#### **Recommended Order**

1. That Hiland's application for a waiver of procedures and time schedules is granted.
2. A Certificate of Corridor Compatibility is issued to Hiland Crude, LLC designating a corridor for the operation and maintenance of an approximately 4.5-mile, 8-inch crude oil pipeline in McKenzie 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. A Route Permit is issued to Hiland Crude, LLC designating a route for the operation and maintenance of an approximately 4.5-mile, 8-inch crude oil pipeline in McKenzie 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 As-Built Profile included in Appendix 4.F.
4. That the Certification Relating to Order Provisions – Transmission Facility Siting 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 Certification, the Certification provisions control.

Dated at Bismarck, North Dakota on this 25<sup>th</sup> day of November 2015.

State of North Dakota  
Public Service Commission



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Wade C. Mann  
Administrative Law Judge  
Office of Administrative Hearing  
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Telephone: (701) 328-3200

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Hiland Crude, LLC  
Alexander Tank Farm Crude Oil Pipeline- McKenzie County  
Siting Application

Case No. PU-15-486

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the **RECOMMEND FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER** was mailed, inside mail, at the State Capitol, on the 25 day of November 2015, to:

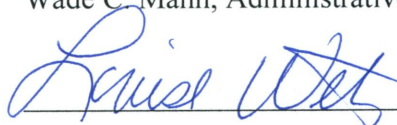
Darrell Nitschke  
Executive Secretary  
Public Service Commission  
State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505-0480

and that true and correct copies of the above document was mailed, regular mail, on the 25 day of November 2015, to

Lawrence Bender  
Fredrikson & Byron, PA  
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Bismarck, ND 58501

Brian Schmidt  
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OFFICE OF ADMINISTRATIVE HEARINGS  
Wade C. Mann, Administrative Law Judge



Louise Wetzel