

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No. PU-15-486

COMMISSION AMENDED
RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND
RECOMMENDED ORDER

December 16, 2015

Appearances

Lawrence Bender and Danielle M. Krause, Attorneys at Law, Fredrikson & 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, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street, Suite 303, Bismarck, North Dakota 58503 as Substantive Hearing Officer.

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 the Alexander Tank Farm Crude Oil Pipeline (the "Project"). The Project is an existing 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. Hiland seeks Commission approval to operate 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 Applications for a Certificate of Corridor Compatibility and Route Permit:

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 Project's 50-foot permanent right-of-way are limited to pipeline markers, rectifier sites, and block valves. Block valves were installed at the pipeline interconnection point with the Market Center System. Pig launchers and 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 Alexander Station 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 was a need for the Project because significant increase in oil extraction outpaced efficient transportation methods.

Study of Preferred Location

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

9. Field surveys were conducted on a 250-foot-wide area centered on the Project route 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. The Project is not within an exclusion area.

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 survey area.

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 impact on trees or shrubs.

19. The Company testified that there were no impacts on wildlife resources and no impacts 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 presented evidence and testimony indicating it has analyzed the relevant policy criteria and has expressed commitment 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. The Company stated in the hearing that no trees and shrubs were impacted by the Project and no mitigation is needed.

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 and backup control center in Colorado Springs, Colorado. 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 Notice System.

26. 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 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 Crude, LLC's application for a waiver of procedures and time schedules is granted.
2. Certificate of Corridor Compatibility No. 174 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. Route Permit No. 186 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 I.A.I 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 October 9, 2015 Certification Relating to Order Provisions – Transmission Facility Siting, with accompanying Tree & 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 Certification, the Certification provisions control.

PUBLIC SERVICE COMMISSION

		
Randy Christmann Commissioner	Julie Fedorchak Chairman	Brian P. Kalk Commissioner

**PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA**

Certificate of Corridor Compatibility Number 174

This is to certify that the Commission has designated a transmission facility corridor for Hiland Crude, LLC for the operation, and maintenance of approximately 4.5 miles of 8-inch diameter crude oil pipeline in McKenzie County, North Dakota.

This certificate is issued in accordance with the Order of the Commission dated December 16, 2015 in Case No. PU-15-486 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, December 16, 2015.

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Secretary


Commissioner

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

Route Permit Number 186

This is to certify that the Commission has designated a transmission facility route for Hiland Crude, LLC for the operation and maintenance of approximately 4.5 miles of 8-inch diameter crude oil pipeline in McKenzie County, North Dakota.

This permit is issued in accordance with the Order of this Commission dated December 16, 2015 in Case No. PU-15-486 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, December 16, 2015.

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Secretary


Commissioner

**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

**CERTIFICATION RELATING TO ORDER PROVISIONS
TRANSMISSION FACILITY SITING
GATHERING LINE CONVERSION TO TRANSMISSION LINE**

I am William E Wolf, 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 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.
3. Company agrees that it shall obtain all necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission prior to initiating operation of the transmission facility that requires said license or permit.
4. 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.
5. 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.
6. 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.

Construction:

7. Company agrees to hold a construction conference prior to initiating operation of the facility as a transmission facility, 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.
8. Company understands and agrees that all cultural resource mitigation plans must be submitted to the North Dakota State Historic Preservation Office and approved prior initiating operation of the facility as a transmission facility.
9. Company agrees to inform the Commission and the Commission's third-party construction inspector immediately prior to the Company initiating operation of the facility as a transmission facility.
10. Company certifies that the pipeline has been 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.
11. Company certifies that all topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas where cuts were made, was stripped and segregated from the subsoil. Any area on which excavated subsoil was placed was also be stripped of topsoil. After backfilling was completed, any excess subsoil was placed over the excavation area, blending the grade into existing topography. Topsoil was replaced over areas from which it was stripped only after the subsoil was replaced.
12. Company certifies that all buried facility crossings of graded roads were bored unless the responsible governing agency permitted Company to open cut the road.
13. Company certifies that staging areas or equipment were not located on land owned by a person other than Company unless otherwise negotiated with landowners.
14. Company understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site discovered during construction, was marked, preserved and protected from further disturbances until a professional examination could be made and a report of such examination was filed with the Commission and the State Historical Society and clearance to proceed was given by the North Dakota State Historic Preservation Office.

15. Company certifies that construction was suspended when weather conditions were such that construction activities would cause irreparable damage to roads or land, unless adequate protection measures were taken by Company.

Restoration and Maintenance:

16. Company certifies that upon completion of the construction of the facility, Company restored the area affected by the activities to as near as was practicable to the condition as it existed prior to the beginning of construction.
17. Company certifies that all pre-existing township and county roads and lanes used during construction were, or are being, repaired to a condition that is equal to or better than the condition prior to the construction of the transmission facility and accommodates their previous use, and that areas used as temporary roads or working areas during construction were, or are being, restored to their original condition.
18. Company certifies that reclamation, fertilization, and reseeding was, or is being done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
19. Company understands and agrees that its obligation for reclamation and maintenance of the transmission facility right-of-way, transmission facility, associated facilities, fences and gates, drainage tile, 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 certifies that it has removed all waste that was a product of construction and has properly disposed of it. Company understands and agrees that it shall remove all waste that is a product of operation, restoration, and maintenance of the site, and properly dispose of it on a regular basis.
22. Company certifies that it provided any necessary safety measures for traffic control or to restrict public access to the transmission facility during construction.

Communication with Landowners and PSC:

23. Company understands and agrees that, prior to operating its facility as a transmission facility, it shall send a letter to each landowner with whom an easement was executed for that location specifying the name and phone number of the company representative who is responsible for receiving and resolving landowner issues for the life of the easement.


24. Company understands and agrees that it will file with the Commission the name and phone number of the current company representative who is responsible for receiving and resolving landowner issues for the transmission facility. The Company will update this information whenever there is a change to the current company representative for the life of all easements for the transmission facility.
25. Upon request, Company agrees to provide the Commission with engineering design drawings of the transmission facility prior initiating operation of the facility as a transmission facility.
26. Company understands and agrees that it shall advise the Commission as soon as reasonably possible of any extraordinary events which take place at the site of the transmission facility, including injuries to any person.
27. Company agrees to report to the Commission, as soon as reasonably possible, the presence in the permit area of any critical habitat or threatened or endangered species of which Company becomes aware and which were not previously reported to the Commission.
28. 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.
29. 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 commencement of operation of the facility as a transmission facility. Company also agrees to provide an electronic version of the corridor approved by the Commission and the facility design specifications 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 commencement of operation of the facility as a transmission facility. 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.
30. 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 activities conducted under the certificate or permit issued in this proceeding. In the event of any damage to underground facilities, Company shall suspend activities 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.

31. 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 1st day of October, 2015.

HILAND CRUDE, LLC

By  _____

Its Assistant General Counsel _____

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

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).