

**UNITED STATES OF AMERICA
BEFORE THE
NORTH DAKOTA PUBLIC SERVICE COMMISSION**

Case No. PU-15-788

SUPPLEMENTAL COMMENTS OF BADLANDS NGLS, LLC

On January 27, 2016, as corrected on January 29, 2016, Badlands NGLs, LLC ("Badlands") submitted Comments to address issues raised by the North Dakota Public Service Commission during its January 26, 2016 work session involving the Alliance Pipeline LP proceeding in Docket No. RP15-1022-000, which is currently pending before the Federal Energy Regulatory Commission ("FERC"). Badlands submits these Supplemental Comments to reinforce one key point and address a recent development.

First, as discussed in Badlands' Comments, Alliance Pipeline LP ("Alliance") transports a rich gas stream that contains natural gas liquids ("NGLs"), including ethane. All Alliance shippers have executed **exclusive** Extraction Agreements with Aux Sable Liquid Products, LP ("Aux Sable"), an affiliate of Alliance. As a result, all gas transported by Alliance is exclusively processed by Aux Sable. The problem is that the Alliance/Aux Sable corporate family has denied Badlands access to ethane. This is illegal for a number reasons, including that it is unduly discriminatory.

Because the exclusive arrangement discriminates against a North Dakota industry and State interests, state law requires the Commission to take action: NDCC § 49-02-17 provides that the Commission "shall" urge a public utility (in this case Alliance, a natural gas pipeline) to stop discriminating against North Dakota citizens, industries, and interests, while NDCC § 49-02-18 provides that, if the discrimination is not remedied, the Commission "shall" take action to obtain relief. **At this juncture, the Commission can comply with the NDCC by simply urging**

Alliance, in the settlement negotiations at FERC, to address in a meaningful way the discrimination concerns raised by Badlands.

Second, on February 2, 2016, Alliance Pipeline, L.P. filed at FERC in Docket No. RP16-581-000 proposed revisions to its FERC Gas Tariff. For the reasons discussed below, the proposed tariff revisions do **not** resolve the discrimination issues raised by Badlands, but simply maintain the *status quo*.

In its FERC transmittal letter, Alliance recognizes that Aux Sable owns, in Illinois, the only extraction and fractionation plant connected to Alliance's pipeline. But Alliance contends that it "is proposing tariff revisions to accommodate the future potential for additional processing plants connecting to the Alliance system, replacing references to the Aux Sable Plant with the more generic term 'Processing Plant.'"¹ That statement is disingenuous. As explained below, there is no future potential for additional processing plants, unless they are owned by Aux Sable.

- a. **All gas transported by Alliance is exclusively processed by Aux Sable in Illinois.**
- b. **All shippers on Alliance have entered into Extraction Agreements granting Aux Sable the exclusive right to extract and take title to NGLs transported by Alliance.**
- c. **The Extraction Agreement "will remain in full force and effect for the term of each Transportation Arrangement and a period of two (2) years after the expiry or termination of every Transportation Arrangement." Template Extraction Agreement (US) § 11. As long as Alliance transports a shipper's gas, Aux Sable will be the shipper's exclusive processor.**
- d. **The Extraction Agreements provide: "Aux Sable may construct additional or replacement Extraction Facilities on the Alliance System. In such case, Shipper agrees to do all such things as may be reasonably requested by Aux Sable to facilitate the exercise of Aux Sable's rights under this Agreement." *Id.* § 5. Aux Sable can construct additional processing facilities, and shippers are required to support Aux Sable.**
- e. **Alliance Pipeline Limited Partnership ("Alliance Canada")—the upstream transporter and affiliate of Alliance—requires shippers, as a condition to**

¹ Transmittal letter at 2. Alliance neglected to tell FERC that Aux Sable is an affiliate of Alliance.

transportation, to grant Aux Sable—the downstream processor—the **exclusive right** to extract and purchase NGLs. *See* Alliance Canada's Firm Transportation Service Agreement, Article 5 & Schedule C.

- f. In its FERC tariff filing, Alliance proposes to modify the definition of Extraction Agreement by replacing "Aux Sable" with "designated Processing Plant." That is merely a change in nomenclature. What has not changed is more important: the tariff definition still provides that a "designated Processing Plant"—*i.e.*, Aux Sable—retains "the **sole and exclusive right** to extract and take title to" NGLs.

To recap, the Alliance corporate family requires shippers to grant Aux Sable (an affiliate) **exclusive** extraction rights. All gas transported by Alliance is processed by Aux Sable, and the existing extraction agreements reflect this **exclusive** arrangement. Cast in this light, the proposed tariff changes are simply "window dressing,"² which maintains Aux Sable's **exclusive** extraction rights. There is no future potential for additional processing plants, unless they owned by Aux Sable. **Therefore, Alliance's proposed tariff changes do not resolve concerns that the Alliance/Aux Sable corporate family are discriminating against North Dakota citizens, industries, and interests.**

WHEREFORE, Badlands respectfully requests that the Commission accept these Supplemental Comments and in compliance with NDCC § 49-02-17 urge Alliance, in the settlement negotiations at FERC, to address in a meaningful way the discrimination concerns raised by Badlands.

Respectfully submitted,

William J. Gilliam

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² *Merriam Webster* defines "window dressing" as "the act or an instance of making something appear deceptively attractive or favorable."