

December 10, 2009

& BYRON, P.A.

HAND DELIVERED

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

RECEIVED

DEC 10 2009

PUBLIC SERVICE COMMISSION

**RE: Hawthorn Oil Transportation
(North Dakota), Inc.
Case No. PU-09-153**

Dear Mr. Nitschke:

Please find enclosed herewith for filing an original and ten copies of the following:

1. Letter requesting the North Dakota Public Service Commission to consider additional affidavits;
2. Affidavit of Lawrence Bender and attached exhibits; and
3. Affidavit of Gust Benninger.

Also enclosed herewith is a disk containing the same in PDF format.

Please note that the Affidavit of Gust Benninger is a copy. We will forward the original after receipt of the same from our client.

Should you have any questions, please advise.

Sincerely,

Lawrence Bender

LAWRENCE BENDER

LB(kf)

Enclosure

cc: Mr. Pat Fahn – (w/enc.) *Via Hand Delivery*
Ms. Illona Jeffcoat-Sacco – (w/enc.) *Via Hand Delivery*
Mr. Cary Loughman – (w/o enc.) *Via Email*
Mr. Greg Jacobsen – (w/o enc.) *Via Email*
Mr. Jodie Davis – (w/o enc.) *Via Email*

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36 PU-09-153 Filed: 12/10/2009 Pages: 122
Affidavit of Lawrence Bender with Exhibits A
through F and Affidavit of Gust Benninger

Hawthorn Oil Transportation (North Dakota), Inc.
Lawrence Bender, Atty. Fredrikson&Byron

December 10, 2009

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

**RE: Hawthorn Oil Transportation (North Dakota),
Inc. 8-inch Crude Oil Pipeline – Mountrail County
Siting Application
Case No. PU-09-153**

Dear Mr. Nitschke:

Hawthorn Oil Transportation (North Dakota), Inc. (“Hawthorn”) requests the Commission to consider the attached affidavits and corresponding exhibits when issuing its Order in the above-captioned matter.

Section 28-32-25 of the North Dakota Century Code governs the consideration of information that is not presented at hearings. This statute provides that an administrative agency may consider competent and relevant information and evidence in addition to evidence presented at a hearing.

The statute disallows an agency from considering the additional evidence until it sends all parties of record a copy of the additional evidence. *See Hulse v. Job Serv. N.D.*, 492 N.W.2d 604, 605 n.1 (N.D. 1992). Further, the statute requires notice to be served upon other parties in the manner according to the North Dakota Rules of Civil Procedure. However, in the above-captioned matter, there are no other parties of record, and no interveners appeared at the November 30, 2009 hearing. Therefore, these statutory provisions are inapplicable.

Hawthorn respectfully requests that the Commission receive the attached affidavits and corresponding exhibits, which are submitted according to N.D. Cent. Code 28-32-25, and consider these documents when issuing its Order in the above-captioned matter.

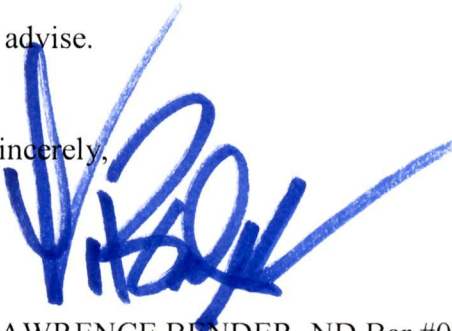
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Mr. Darrell Nitschke
December 10, 2009
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If you have any questions, please advise.

Sincerely,

A handwritten signature in blue ink, appearing to read 'L. Bender', is written over the word 'Sincerely,'.

LAWRENCE BENDER, ND Bar #03908
*Attorney for Hawthorn Oil Transportation (North
Dakota), Inc.*
200 North 3rd Street, Suite 150
Post Office Box 1855
Bismarck, North Dakota 58502-1855

Enclosure
LB:ee

cc: Mr. Cary Loughman – (w/o enc.) *Via Email*