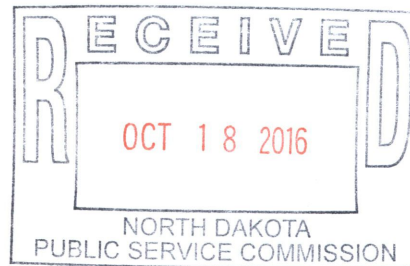


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October 18, 2016

**Hand Delivered**

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



*Re: In the Matter of Caliber Bear Den Interconnect LLC 12.75-Inch Crude Oil Pipeline –  
McKenzie County Siting Application  
Case No. PU-16-420  
Our File No. 019660-000004*

Dear Mr. Nitschke:

Enclosed please find an original and ten copies of Proposed Findings of Fact, Conclusions of Law and Order in the above-captioned case.

If you have any questions or need any additional information, please contact me at your earliest convenience. Thank you.

Sincerely,

CROWLEY FLECK PLLP

A handwritten signature in blue ink that reads "Wade C. Mann".

Wade C. Mann

sc  
Enclosures

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

**Caliber Bear Den Interconnect LLC**  
**12.75-inch Crude Oil Pipeline – McKenzie County**  
**Siting Application**

**Case No. PU-16-420**

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

**November \_\_, 2016**

**Appearances**

Wade C. Mann, Attorney at Law, Crowley Fleck PLLP, 100 West Broadway Suite 250, Bismarck, North Dakota 58501, on behalf of Caliber Bear Den Interconnect LLC.

Brian Schmidt, Special Assistant Attorney General, 122 E. Broadway Ave., Bismarck, North Dakota 58502.

Patrick J. Ward, Administrative Law Judge, Office of Administrative Hearings, 316 North Fifth Street, Bismarck, North Dakota 58503, as Substantive Hearing Officer.

**Preliminary Statement**

On July 5, 2016, Caliber Bear Den Interconnect LLC (Caliber), filed with the North Dakota Public Service Commission (Commission) a Consolidated Application for a Certificate of Corridor Compatibility and Route Permit (Application) for an approximately 5.3-mile, 12.75-inch crude oil pipeline and associated facilities in McKenzie County, North Dakota. On July 26, 2016, Caliber filed an Addendum to update the Application.

On July 19, 2016, Caliber filed an Application for Waiver of Procedures and Time Schedules under North Dakota Century Code Sections 49-22-07, 49-22-08, 49-22-08.1, 49-22-13, and North Dakota Administrative Code Section 69-06-01-02 and Chapter 69-06-06, requiring separate filings, separate notices, and separate hearings on the certificate of corridor compatibility application, route permit application, and the waiver of procedures and time schedules application.

On September 7, 2016, the Commission deemed Caliber's Application complete and issued a Notice of Filings and Public Hearing (Notice) scheduling a hearing for October 7, 2016, at 11:30 a.m. Central Time, at Teddy's Residential Suites, 113 9<sup>th</sup> Ave. SW, Watford City, North Dakota 58854.

The Notice 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 issues to be considered in the applications for a certificate of corridor compatibility and a route permit are:

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?

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

#### **Findings of Fact**

1. Caliber is a Delaware limited liability company authorized to do business in the State of North Dakota, as evidenced by the corporate papers filed with the Commission on July 19, 2016, in case No. PU-16-541.

#### **Need for the Facility**

2. Caliber concluded there is a need for the Project to reduce the burden on existing infrastructure and provide wider market access to North Dakota oil and gas operators. The Project will provide firm, reliable transport of crude oil from a truck offload station connected to Enable Midstream's Devore Terminal to the proposed Dakota Access Pipeline (DAPL) Watford City terminal. From this facility, the crude can continue through to the DAPL terminal near Patoka, Illinois for distribution to refineries across the United States.

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

3. The Project will consist of approximately 5.3-miles of 12.75-inch steel pipeline with a nominal wall thickness of 0.188-inches.

4. The maximum operating pressure of the pipeline will be 600 pounds per square inch.

5. The maximum design flow rate of the pipeline will be approximately 75,000 barrels per day with a normal throughput of approximately 50,000 barrels per day.

6. The steel pipeline will meet U.S. Department of Transportation (DOT) regulations, specifically the design criteria outlined in 49 C.F.R. part 195 subpart C. The Project will be constructed per 49 C.F.R. part 195 subpart D, and operated and maintained per 49 C.F.R. part 195 subpart F.

7. The Project will be located entirely in McKenzie County, North Dakota, and will result in a transmission pipeline originating at a truck off-load facility connected to the Devore terminal approximately 7.2 miles south of Watford City and will extend to the northwest to terminate at DAPL's Watford City terminal.

8. The Project will include truck off-load stations at each end of the proposed line that will tie into the line. A 5-acre pipe laydown yard is proposed in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14, Township 149 North, Range 99 West adjacent to the pipeline route.

9. The total anticipated cost of the Project is approximately \$12 million with an anticipated cost of approximately \$8 million for the pipeline and approximately \$4 million for the associated facilities.

#### Study of Preferred Location

10. Caliber identified a one-mile-wide area centered upon the preferred pipeline alignment (Study Area) routed from the truck off-load facility at Devore terminal to the DAPL Watford City terminal. Caliber evaluated the Study Area for the Exclusion, Avoidance, Selection and Policy criteria of the Commission.

11. Field surveys were conducted on a 250-foot-wide area centered upon the proposed route (Survey Corridor) to inventory any potential resource issues regarding wetlands, waterbodies, protected species, critical habitats or cultural resources within the survey corridor, and to provide the baseline field data necessary to prescribe alternative routing or mitigation as necessary to minimize environmental impacts.

12. Caliber conducted a Class I cultural resource literature search within the Study Area and a Class III cultural resource inventory of the Survey Corridor.

13. The following agencies were contacted by Caliber regarding the Project: McKenzie County Weed Control Board; McKenzie County Office of Emergency Management; McKenzie County Rural Fire Department; McKenzie County Sheriff's Office; North Dakota Department of Transportation (NDDOT); North Dakota Department of Health (NDDOH); North Dakota State Historic Preservation Office (NDSHPO); North Dakota Department of Trust Lands (NDDTL); North Dakota Parks and Recreation (NDPRD); North Dakota Game and Fish Department

(NDGFD); North Dakota State Water Commission (NDSWC); North Dakota Industrial Commission (NDIC); United States Army Corps of Engineers (USACE); United States Fish and Wildlife Service (USFWS).

14. In a response dated June 1, 2016, the McKenzie County Weed Control Board concluded that the Project meets state and county requirements.

15. In a response dated June 7, 2016, the McKenzie County Office of Emergency Management approved Caliber's Emergency Response Plan for the Project.

16. In a response dated May 27, 2016, the McKenzie County Rural Fire Department indicated that they had no issues or comments with respect to the Project.

17. In a response dated May 27, 2016, the McKenzie County Sheriff's Office indicated that they had no issues with the Project.

18. In a response dated July 6, 2016, the NDDOH provided standard comments to Caliber regarding proper construction methods. NDDOH indicated that environmental impacts from construction of the Project will be minor and can be controlled by proper construction methods. Caliber's construction practices encompass the suggestions set forth by the NDDOH in the letter.

19. In a response dated July 8, 2016, the NDSHPO concurred with a "No Significant Sites Affected" recommendation for the Project.

20. In a response dated June 24, 2016, the NDSWC provided comments to Caliber regarding the proper disposal of all waste material associated with the project and that it is not to be placed in any identified floodway. Caliber will dispose of all waste material properly.

#### Siting Criteria

21. The Commission has established criteria pursuant to the 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. A transmission facility route must not be sited within an Exclusion Area.

23. An Exclusion Area may not encompass more than 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.

24. No Exclusion Areas are intersected by the pipeline route and none will be adversely impacted by the Project. Archeological sites were identified within the Study Area but all direct

impacts to archeological sites will be avoided. NDSHPO concurred with Caliber's "No Significant Sites Affected" recommendation for the Project.

25. Avoidance areas are geographic areas that may not be considered in the routing of a transmission facility, unless it is shown there is no reasonable alternative under the circumstances. A proposed corridor may contain avoidance areas; however, avoidance areas may not encompass more than 50% of the corridor width at any point, unless there is no reasonable alternative. In determining whether an Avoidance Area shall be designated for a 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.

26. Areas within 500-feet of a residence, school or place of business, and reservoirs and municipal water supplies are designated as avoidance areas.

27. One residence is located within 500-feet of the pipeline route. The route on this landowner's property was placed within 500-feet of the residence at the owner's request to minimize impacts to local topography and surface water. The owner of the residence executed a written waiver allowing the proposed pipeline to be located within 500-feet of her residence.

28. One area of geologic instability consisting of landslide deposits is located within the Study Area but is avoided and not crossed by the pipeline route.

29. No other Avoidance Areas are present within the Project Study Area or Survey Corridor.

30. Wetland surveys and a jurisdictional determination were completed for the proposed route.

31. Two wetlands were identified within the Study Area totaling approximately 0.53 acres. One wetland is located in a depression along a perennial stream and will be open cut. The other wetland runs along the south side of 22<sup>nd</sup> Street NW and will be crossed using horizontal directional drilling.

32. Two waterbodies were identified within the Study Area, with both being perennial streams. Only one of these waterbodies remains in the project area. This perennial stream encompasses approximately 0.42 acres and will be crossed using horizontal directional drilling. No permanent impacts to any waterbodies are anticipated.

33. In accordance with the Commission's Selection Criteria, a transmission facility shall be approved only if it is determined that any significant adverse effects that will result from the location, construction and operation of the facility as they relate to the Selection Criteria will be at an acceptable minimum, or will be managed and maintained at an acceptable minimum. Caliber has analyzed the impacts of the Project in relation to all relevant Selection Criteria. No significant adverse impact will result from the location, construction and operation of the Project.

34. In accordance with the Commission's Policy Criteria, preference may be given to an application demonstrating certain benefits of the transmission facility. Caliber has analyzed the relevant policy criteria and has committed to: designating, 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 the economics of scale; achieving capacity in the most minimally intrusive and most efficient way possible; and coordinating with state and local officials. Caliber 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

35. Caliber has agreed to 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.

36. Caliber has, and will continue to coordinate with local authorities and emergency managers regarding emergency response measures and follow Caliber's emergency response plan for the Project.

37. Standard operating procedures will conform to applicable United States Department of Transportation requirements, which include regular pipeline monitoring and periodic inspection.

38. Caliber participates in the North Dakota One-Call Excavation System.

39. All landowner easements needed for construction of the Project have been obtained.

From the foregoing Findings of Fact, the Hearing Officer now makes the following:

#### Conclusions of Law

1. The Commission has jurisdiction over Caliber and the subject matter of the Application under N.D.C.C. ch. 49-22.

2. Caliber is a utility as defined in N.D.C.C. § 49-22-03(13).

3. The Project proposed by Caliber is a transmission facility as defined in N.D.C.C. § 49-22-03(12).

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 proposed transmission facility survey area and route 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, and, therefore, it is appropriate for the Commission to grant Caliber's application for a waiver of procedures and times schedules under N.D.C.C. § 49-22-07.2.

From the foregoing Findings of Fact and Conclusions of Law, the Commission now makes its:

### **Order**

The Commission orders:

1. Caliber Bear Den Interconnect LLC's application for waiver of procedures and time schedules is granted.

2. Certificate of Corridor Compatibility No. \_\_\_ is issued to Caliber designating a corridor in McKenzie County, North Dakota for the construction, operation and maintenance of an approximately 5.3-mile 12.75-inch diameter crude oil transmission pipeline. For purposes of the Certificate, the designated corridor is approximately 5.3-miles long and 250-feet wide centered on the pipeline route designated in this order.

3. Route Permit No. \_\_\_ is issued to Caliber, designating a route in McKenzie County, North Dakota for the construction and operation of an approximately 5.3-mile long crude oil transmission pipeline. For purposes of this Permit, the designated route is the proposed route depicted in Figure 2 of the Consolidated Application.

4. The Certification Relating to Order Provisions - Transmission Facility Siting (Certification), with accompanying Tree and Shrub Mitigation Specifications executed on September 19, 2016 and filed with the Commission on September 30, 2016 is incorporated by reference and attached to this Order.

5. To the extent there are any conflicts or inconsistencies between Caliber's Applications and the Certification filed September 30, 2016, the Certification provisions control.

Dated at Bismarck, North Dakota this \_\_\_ day of October, 2016.

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Patrick J. Ward  
Administrative Law Judge  
Office of Administrative Hearings