

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

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

October 24, 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 58501, 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 (Project). 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 9th 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 recommended:

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.

Size, Type, and Preferred Location of Facility

2. The Project will consist of approximately 5.3-miles of 12.75-inch steel pipeline with a nominal wall thickness of 0.188-inches.
3. The maximum operating pressure of the pipeline will be 600 pounds per square inch.
4. 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.
5. 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.

6. 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.

7. 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.

8. 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

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

10. Field surveys were conducted on a 250-foot-wide Corridor centered upon the proposed route 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.

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

12. 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).

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

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

15. 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.

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

17. 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.

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

19. 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

20. 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.

21. A transmission facility route must not be sited within an Exclusion Area.

22. 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.

23. 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.

24. 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.

25. Areas within 500-feet of a residence, school or place of business are designated as avoidance areas. 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

26. 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.

27. No other Avoidance Areas are present within the Study Area or Corridor.

28. Wetland surveys and a jurisdictional determination were completed for the proposed route. Two wetlands were identified along the proposed route. 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 22nd Street NW and will be crossed using horizontal directional drilling.

29. Two perennial streams were identified within the Study Area, one of which is crossed by the proposed route. This perennial stream will be crossed using horizontal directional drilling. No permanent impacts to any waterbodies are anticipated.

30. 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.

31. 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

32. 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.

33. Caliber testified that a supervisory control and data acquisition system will be installed as part of the project, which will monitor pressure, flow and temperature twenty four hours per day, seven days per week. In the event of an emergency the system will automatically shut down the pipeline.

34. 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.

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

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

37. 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 recommended:

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 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 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, as defined under N.D.C.C. § 49-22-07.2.

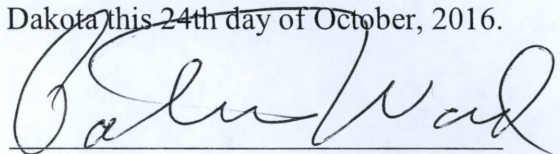
8. It is appropriate for the Commission to waive those certain procedures and time schedules as requested in the waiver application under N.D.C.C. § 49-22-07.2.

From the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends the following:

Order

1. Caliber's application for waiver of procedures and time schedules be granted.
2. A Certificate of Corridor Compatibility be 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. A Route Permit be 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 be 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.
6. Caliber be required to comply with all applicable laws, rules, and/or regulations in the event it desires to construct another or different transmission facility than was specified in the application within the corridor granted in this proceeding.
7. One year after the Project is placed in service, Caliber shall file with the Commission a summary of the status of restoration activities related to the Project, including any restoration-related issues raised by landowners or identified by Caliber.
8. If a spill by Caliber requires notification to any other state or federal agency, Caliber will also inform the Commission of such spill within 24 hours of occurrence by leaving a message at the Commission's Toll Free Number, with a follow-up email to the Commission's Executive Secretary.

Dated at Bismarck, North Dakota this 24th day of October, 2016.



Patrick J. Ward
Administrative Law Judge
Office of Administrative Hearings

Ellen Sores

Subscribed and sworn to before me, today, October 24, 2016.

Betty H. Mertz
NOTARY PUBLIC

BETTY H. MERTZ
Notary Public
State of North Dakota
My Commission Expires November 7, 2020