



Public Service Commission State of North Dakota

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NOTICE OF NONCOMPLIANCE

**Re: Project: 12.75-inch Crude Oil Pipeline – McKenzie County
Case No.: PU-16-420**

The Commission's November 2, 2016 Order on Recommended Findings of Fact, Conclusions of Law and Order issued Certificate of Corridor Compatibility No. 195 and Route Permit No. 206 to Caliber Bear Den Interconnect LLC for the location of a 12.75-inch crude oil pipeline in McKenzie County North Dakota.

The Tree and Shrub Mitigation Specifications (Specifications) attached to and made part of the Order required that two trees be planted for every one tree removed, and that two shrubs be planted for one shrub removed. The Specifications required that, 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. The Specifications required that tree and shrub replacements be inspected annually, in September, for three years, with the first annual inspection at least one year from the anniversary date of the original plantings. The Specifications further required that a report of each annual report 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.

The Commission has no record of documentation identifying the number and variety of trees and shrubs removed, no record of a mitigation plan for replacement plantings filed with the Commission for approval, and no record of the three annual inspections documenting the condition/survival of plantings. Caliber is in noncompliance with the Commission's November 2, 2016 Order by failing to provide these documents and failing to conduct a tree and shrub mitigation plan.

Staff requests that the documents noted above be filed with the Public Service Commission by 30 days after the receipt of this Notice of Noncompliance to avoid further action due to noncompliance.

Caliber may wish to consider complying instead with the Commission's March 13, 2019, simplified version of the Tree and Shrub Mitigation Specifications. I have enclosed with this letter a copy of the March 13 version and a copy of the version the company is currently under. Should Caliber choose that option, please notify the Commission in writing so that the Commission can amend the November 2, 2016 Order to incorporate the March 13 version of the Commission's Tree and Shrub Mitigation Specifications.

N.D.C.C. 49-22.1-20(3) states:

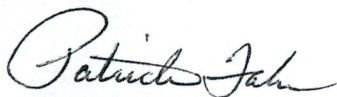
3. Any person who willfully engages in any of the following conduct is subject to a civil penalty of not to exceed ten thousand dollars for each such violation for each day the violations persist, except that the maximum penalty may not exceed two hundred thousand dollars for any related series of violations:
 - a. Begins construction of an electric energy conversion facility or an electric transmission facility without having been issued a certificate or permit pursuant to this chapter.
 - b. Constructs, operates, or maintains an electric energy conversion facility or an electric transmission facility other than in compliance with the certificate or permit and any terms, conditions, or modifications contained therein.
 - c. Violates any provision of this chapter or any rule adopted by the commission pursuant to this chapter.
 - d. Falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained pursuant to a certificate or permit issued pursuant to this chapter.

The civil penalty provided for in this subsection may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise must be deposited in the general fund and, if not paid, may be recovered in a civil action in the courts of the state.

In addition to the civil penalty the Commission may impose, the Site Certificate for the Project could be suspended or revoked for operation in violation of N.D.A.C.

Please feel free to contact me with any questions.

Best regards,



Patrick Fahn
Director, Public Utilities Division

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

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).

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Company
Description
Siting Application**

Case No. PU-??-???

Tree and Shrub Mitigation Specifications

Inventory

Prior to cutting or clearing trees or shrubs for construction:

- All trees one-inch or greater in diameter at breast height must be inventoried to record the location, number, and species.
- All shrubs and all coniferous trees of any diameter must be inventoried to record the location, number, and species.

Clearing

The maximum width of tree and shrub removal is 50 feet, unless otherwise approved by the Commission.

Replacement

1. Landowners must be given the option to have trees and shrubs that are removed from their property replaced on their property. The landowner may waive this option in writing. If the landowner waives this option, the company shall plant replacement trees and shrubs in an alternate location in the same region, if practical.
2. Trees and shrubs must be replaced on a minimum two-to-one basis. The company shall develop a Tree and Shrub Mitigation Plan (Plan) in consultation with landowners who are seeking replacement trees and shrubs and in accordance with USDA-NRCS-North Dakota Field Office Technical Guide: Windbreak and Woodland Tree Care and Management. The guidelines outlined in the Technical Guide shall be followed until filing of the Plan summary outlined in number 5 below.
3. The purpose of the company's Tree and Shrub Mitigation Plan is to create sustainable plantings, appropriate for the local soil and growing conditions that will provide long-term benefit to landowners, farmers and ranchers, the community, wildlife and the environment.
4. The Plan, including the proposed number, variety, type, location, and approximate date for plantings, shall be filed with and approved by the Commission.
5. Two years after completion of the plan, the company must file a summary documenting how the plan achieved the purpose outlined in number 3 above. The summary must also report the number of surviving replacement trees and shrubs.
6. The Commission will consider, on a limited basis as conditions warrant, mitigation plans that provide long-term wildlife habitat and conservation benefits but do not involve the replanting of trees and shrubs.