

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Caliber North Dakota LLC
2.62-Mile Natural Gas Pipeline- McKenzie County
Siting Application

Case No. PU-21-441

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

May __, 2022

Appearances

Commissioners Julie Fedorchak, Randy Christmann, and Sheri Haugen-Hoffart.

Casey A. Furey, Attorney at Law, Crowley Fleck PLLP, 100 West Broadway, Suite 250, Bismarck, North Dakota 58501, on behalf of Caliber North Dakota LLC.

Brian Johnson, Special Assistant Attorney General, as Counsel for the North Dakota Public Service Commission, 600 E. Boulevard Avenue, Dept. 408, Bismarck, North Dakota 58505.

Victor Schock, Director of Public Utilities for the North Dakota Public Service Commission, 600 E. Boulevard Avenue, Dept. 408, Bismarck, North Dakota 58505.

Timothy Dawson, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street, Suite 303, Bismarck, North Dakota 58503, as Procedural Hearing Officer.

Preliminary Statement

Caliber North Dakota LLC (“Caliber”), owns and operates an existing 2.62-mile long, 8-inch diameter natural gas pipeline in McKenzie County, North Dakota. On October 15, 2021, in Case No. PU-21-406, Caliber submitted a request to the Commission seeking temporary approval under North Dakota Century Code Section 49-22.1-23 to continue beneficial operation of the pipeline, and to make certain minor modifications to facilitate bi-directional flows while the pipeline underwent siting in compliance with Chapter 49-22.1.

On November 3, 2021, the Commission issued an Order, as subsequently amended on November 17, 2021, granting Caliber temporary authorization for continued pipeline operation and pipeline modification. The Commission ordered Caliber to submit a siting application by November 30, 2021.

On November 30, 2021, Caliber, filed with the Commission a combined application for a certificate of corridor compatibility and route permit concerning the location of an approximately 2.62-mile long natural gas pipeline, located in McKenzie County, North Dakota (the “Application”).

On February 23, 2022, the Commission deemed the Application complete and issued a Notice of Filing and Public Hearing (“Notice”) scheduling a public hearing for April 6, 2022, at 10:00 a.m. Central Time, at Teddy’s Residential Suites, 113 9th Avenue SE, Watford City, North Dakota 58854.

The Notice identified the following issues to be considered with respect to the Application:

1. Will construction, operation, and maintenance of the facilities at the proposed locations 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 construction, operation, and maintenance of the facilities at the proposed 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?

On April 6, 2022, the hearing was held as scheduled allowing any interested parties to present testimony. Exhibit Nos. 1 through 9 were admitted at the hearing. On May 23, 2022, Late-Filed Exhibit Nos. 10-12 were filed with the Commission.

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

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 October 18, 2021, in Case No. PU-21-405, Docket No. 1.

Size, Type, and Preferred Location of Facility

2. Caliber owns and operates an existing 2.62-mile long, 8-inch diameter natural gas pipeline and associated facilities in McKenzie County, North Dakota, referred to herein as

(the “Project”). The Project was constructed in 2014 and originates at the tailgate of Caliber’s mechanical refrigeration natural gas processing plant (“Hay Butte Plant”). Caliber owns and operates a gas gathering system in McKenzie County that delivers raw natural gas from various Bakken producers to Caliber’s Hay Butte Plant for processing. The Project provides a connection to deliver the residue gas from the Hay Butte Plant to the Northern Border Pipeline for further transport to markets across the United States.

3. An existing compressed natural gas (“CNG”) truck fueling facility is located adjacent to Caliber’s Hay Butte Plant. In addition to supplying Northern Border, residue gas from the Hay Butte Plant also flows directly to the truck fueling facility via a separate non-jurisdictional facility piping connection. Caliber requested temporary approval authorizing the Project’s continued operation, and to make minor modifications to the Project at the existing interconnection with Northern Border, to allow gas to flow bi-directionally from Northern Border to the Project. Bidirectional flow capability enhances the Project by allowing it to transport gas received from Northern Border for delivery to the CNG trucking facility. Upon delivery to the trucking facility, gas from the Project is loaded into trucks and CNG is delivered to production facilities for use as fuel in hydraulic fracturing and other oil and gas production operations within McKenzie County to support stranded assets that do not have pipeline gas gathering available.

4. Aboveground facilities to facilitate the Project modifications included installation of 10-20 feet of above-ground piping and the installation of a regulator, tee, and valving to the Northern Border connection. The Project modifications tied into existing aboveground facilities/block valves located at each terminus of the Project. No new aboveground facilities were constructed for the Project modifications and the tie-ins occurred within the existing facility fence lines.

5. The Project is an 8-inch diameter steel pipe with a wall thickness of 0.219-inch. The Project has maximum design operating pressure of 1,600 pounds per square inch gauge and a maximum design operating temperature of 120 degrees Fahrenheit.

6. The Project has an average flow rate of 2-8 MMSCFD and a maximum design capacity of up to 80 MMSCFD.

7. The estimated cost for the Project when it was constructed was approximately \$5.6 million. The Project was further modified at the cost of under \$100,000.00.

8. The proposed pipeline corridor is generally 100-feet in width (“Project Corridor”).

Study of Preferred Location

9. Caliber initiated correspondence seeking comments from following federal, state and local agencies regarding the Project:

- a. Federal: (1) Federal Aviation Administration; (2) U.S. Army Corps of Engineers; (3) U.S. Department of Defense-Cable Affairs; (4) U.S. Fish and Wildlife Service; and, (5) U.S. Department of Agriculture-Natural Resources Conservation Service-Bismarck Office.
- b. State: (1) North Dakota Attorney General; (2) North Dakota Department of Career and Technical Education; (3) North Dakota Department of Commerce; (4) North Dakota Department of Environmental Quality; (5) North Dakota Department of Human Services; (6) North Dakota Department of Transportation-Williston District; (7) North Dakota Department of Trust Lands; (8) North Dakota Energy Infrastructure and Impact Office; (9) North Dakota Game and Fish Department; (10) North Dakota Indian Affairs Commission; (11) North Dakota Industrial Commission-Pipeline Authority; (12) North Dakota Labor Department; (13) North Dakota Parks and Recreation Department; (14) North Dakota Soil Conservation Committee-North Dakota State University Extension; (15) North Dakota State Water Commission; (16) Job Service of North Dakota; (17) North Dakota State Historic Preservation Office; (18) North Dakota Office of the Governor; (19) North Dakota Geologic Survey; (20) North Dakota Aeronautics Commission; and (21) USDA- North Dakota Farm Service Agency.
- c. Local: (1) McKenzie County Commission; (2) McKenzie County Planning and Zoning Department; (3) McKenzie County Water Resource District; (4) McKenzie County Weed Board; and, (5) Western Area Water Supply.

10. Caliber conducted a Class I cultural resource literature review a one-mile-wide area centered on the Project route. A Class III cultural resources inventory was conducted across the approximately 100-foot Project Corridor. During the Class III survey, a single lithic scatter was observed in a cultivated field within the Project Corridor. Caliber testified the Project area was subject to yearly agricultural use and cultivation before the Project was constructed. The isolated find was recommended as “not eligible” for listing on the National Register of Historic Places. The Class III report was submitted to the North Dakota State Historic Preservation Office (SHPO). SHPO provided concurrence to the finding of “no significant sites affected.”

11. The Project is not anticipated to impact any waterways or wetlands. Caliber conducted desktop analysis of aerial photography, National Hydrography Data set and National Wetland Inventory (“NWI”) maps across the Project Corridor. Caliber testified that there are three NWI mapped waterways within the Project Corridor. One waterway classified as a riverine is currently being cultivated for agricultural use and no longer functions as drainage. Field surveys confirmed the presence of two seasonal streams with adjacent emergent wetlands within the Project Corridor. Caliber testified The Project was constructed with horizontal drilling to avoid impacting these waterways and wetlands.

12. A wildlife and habitat desktop analysis and field surveys were conducted across the Project Corridor. No sensitive, threatened, or endangered plant species and no threatened or endangered species were impacted in the Study Area. No designated critical habitat is located within Project Corridor and no threatened or endangered species were observed during the field survey.

13. In correspondence from the North Dakota Game and Fish dated November 15, 2021, the agency commented the Project was reviewed for wildlife concerns and the Game and Fish “do[es] not believe it will have significant adverse effects on wildlife or wildlife habitat.”

14. Desktop analysis revealed no raptor nests in the area generally centered on the pipeline route. No occupied nests were observed during the raptor survey. Future occupancy is not anticipated, and no raptor species of concern were observed during the survey.

15. Historic landslide data from the North Dakota Geological Survey was analyzed across the Study Area. This analysis identified no areas with historic data points near or within the Project Corridor. According to the review of the United States Geological Survey (“USGS”) abandoned mine data, no mining activities are located in the Project Corridor.

Siting Criteria

16. The Commission has established criteria pursuant to North Dakota Century Code Section 49-22.1-03 to guide the site, corridor, and route suitability evaluation and designation process. 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.

17. Caliber evaluated the Project Corridor for the Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria of the Commission.

18. An Exclusion Area is a geographic area that must be excluded in the consideration of a route for a transmission facility. An Exclusion Area may be located within a corridor, but at no given point may such an area or areas encompass more than fifty percent of the corridor unless there is no reasonable alternative. A transmission facility route must not be sited within an Exclusion Area.

19. Caliber’s studies and surveys did not record any Exclusion Areas within the Project Corridor.

20. An Avoidance Area is a geographic area that may not be considered in the routing of a transmission facility unless the applicant shows that, under the circumstances, there

is no reasonable alternative. In determining whether an Avoidance Area should be designated for a transmission 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.

21. Caliber studies and surveys did not record any Avoidance Areas within the Project Corridor.

22. In accordance with the Commission's Selection Criteria set forth in North Dakota Administrative Code section 69-06-08-02(3), a transmission facility corridor or route shall be approved only if it is demonstrated that any significant adverse effects that will result from the location, construction, and maintenance of the transmission facility will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. Caliber has analyzed the impacts of the Project in relation to all relevant Selection Criteria.

23. Caliber testified that trees and woody areas are sparsely located in the general Project area. The Project Corridor is largely comprised of cultivated crop land. Review of historic aerial imagery confirmed impacts to trees and shrubs did not occur as a result of the Project's construction. Trees and woody areas are not anticipated to be impacted by the continued operation and maintenance of the Project.

24. The Project will have no significant adverse effects on the Commission's Selection Criteria.

25. Caliber testified that they have attained all right of ways required for the Project's construction and operation.

26. Caliber analyzed all of the relevant Policy Criteria set forth in Section 69-06-08-02(4) of the North Dakota Administrative Code and has maximized the benefits set forth therein. The Project utilizes existing infrastructure and rights-of-way and its location and design provide for maximum efficiency of Caliber's interconnected facilities.

Additional Measures to Minimize Impact

27. The Project is co-located with existing infrastructure and utility corridors.

28. Caliber has executed a Weed Management Plan with McKenzie County for controlling noxious weeds.

29. The Project is to be designed, constructed, and operated in accordance with U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations utilizing industry standards.

30. Caliber will conduct regular pipeline monitoring, periodic inspection, internal inspections, and foot patrol inspections as required by the Department of Transportation regulations. The Project is incorporated in Caliber's Spill Response Control Plan which has been approved by PHMSA.

31. The Project utilizes a leak detection system comprised of a pressure indication and pressure alarms via a local HMI and clear Supervisory Control and Data Acquisition ("SCADA") system that allows Caliber to monitor the Project 24 hours a day, 7 days a week, and 365 days a year by control systems that alert trained personnel. The system will monitor the flow and pressure of the system, and the system will allow Caliber to identify and respond to situations outside normal operating conditions.

32. Caliber testified the Project has had no reportable releases since its 2014 construction.

33. Caliber testified it participated in the North Dakota One-Call notification system during construction of the Project and will continue to participate in North Dakota One-Call as applicable.

34. Caliber will comply with all applicable safety laws and standards.

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

Conclusions of Law

1. The Commission has jurisdiction over the applicant, Caliber, and the subject matter of the Application under Chapter 49-22.1 of the North Dakota Century Code.

2. Caliber is a utility as defined in Section 49-22.1-01(13) of the North Dakota Century Code.

3. The Project is a natural gas transmission facility as defined in North Dakota Century Code Section 49-22.1-01(7).

4. The construction and continued operation and maintenance of the Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.

5. The Project is compatible with environmental preservation and the efficient use of resources.

6. The construction, and continued operation and maintenance of 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.

From the foregoing Findings of Fact and Conclusions of Law, the Commission makes the following order:

Order

1. Certificate of Corridor Compatibility No. ___ is issued to Caliber North Dakota LLC, d/b/a Caliber Midstream North Dakota LLC, designating a generally 100-foot-wide corridor for the operation and maintenance of approximately 2.62 miles of 8-inch diameter natural gas pipeline and associated facilities in McKenzie County, North Dakota, as approximated on Appendix A of the Application.
2. Route Permit No. ___ is issued to Caliber North Dakota LLC designating a route for the operation and maintenance of approximately 2.62- miles of 8-inch diameter natural gas pipeline and associated facilities in McKenzie County, North Dakota, as approximated on Appendix A of the Application.
3. The Certification Relating to Order Provisions – Transmission Facility Siting (“Certification”), with accompanying Tree and Shrub Mitigation Specifications, executed May 23, 2022, is incorporated by reference and attached to this Order.
4. To the extent there are any conflicts or inconsistencies between Caliber’s Application and the Certification, the Certification provisions control.
5. Caliber is required to comply will all applicable laws, rules, and/or regulations in the event it desires to construct another or a different transmission facility than was specificized in the Application within the corridor designated in this proceeding.

PUBLIC SERVICE COMMISSION

Randy Christmann
Commissioner

Julie Fedorchak
Chair

Sheri Haugen-Hoffart
Commissioner