

**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

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by and between Caliber North Dakota LLC (“Caliber”) and North Dakota Public Service Commission (“Commission”) Advocacy Staff (“Staff”) (collectively referred to herein, the “Parties”).

Discussion

Caliber owns and operates an existing 2.62-mile long, 8-inch diameter natural gas pipeline in McKenzie County, North Dakota (“Pipeline”). In October 2021, Caliber contacted Commission counsel and staff to discuss the Pipeline and its historic and planned operations. Subsequently, 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 North Dakota Century Code Chapter 49-22.1.

On November 3, 2021, the Commission issued an Order, as corrected on November 17, 2021, granting Caliber temporary authorization for continued Pipeline operation and 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 for the Pipeline. On April 6, 2022, a public hearing was held on Caliber's application.

Caliber owns and operates a gas gathering system in McKenzie County that delivers raw natural gas from various Bakken producers to Caliber's mechanical refrigeration natural gas processing plant (known as the Hay Butte Plant) for processing. The gathering system and the Hay Butte Plant¹ are both non-jurisdictional facilities under the Commission's regulations. The Pipeline was constructed in 2014 and originates at the tailgate of the Hay Butte Plant. The Pipeline provides a connection for transportation of residue gas from the Hay Butte Plant to the Northern Border Pipeline, a non-jurisdictional interstate natural gas pipeline. Subsequent minor improvements to the Pipeline, as more specifically detailed in Caliber's variance request filed in Case No. PU-21-406, allow natural gas to flow bi-directionally from Northern Border to the Pipeline for delivery to a compressed natural gas truck fueling facility located adjacent to the Hay Butte Plant by utilizing Caliber's existing pipeline infrastructure and connections.

Having investigated the operations of the Pipeline, Staff expressed concerns with respect to the timing of the Pipeline's construction and operations in relation to definitions under North Dakota Century Code Ch. 49-22.1. Specifically, Staff alleged operations prior to Caliber's October 15, 2021 filing raised concerns regarding the Pipeline's operations in a transmission capacity in advance of the Commission's issuance of a certificate and permit (the "Allegations").

¹ The Hay Butte Plant falls below the capacity threshold for "gas energy conversion facilities" subject to Commission regulation under N.D.C.C. §49-22.1-01(6).

Terms

The Parties engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of this proceeding will avoid further administrative proceedings and/or litigation, and that entry of this Consent Agreement is the most appropriate means of resolving this administrative action, the Parties hereby agree to settle the Allegations on the terms as follows:

- a. Nothing in this Consent Agreement shall be considered as an admission of any wrongdoing, violation, omission, or fault with respect to the Allegations.
- b. Caliber agrees to make payable to the Commission, an assessment of \$10,000.00, within 14 business days of service of an Order approving the Consent Agreement ("Order").
- c. The terms of this Consent Agreement are the most appropriate means of resolving the matter and are supported by the particular facts unique to this case. Staff agrees no other proceeding will be initiated against Caliber based on the Allegations and no other remedy will be sought based on the Allegations or upon the Commission's subsequent adoption of the Order.
- d. If the Consent Agreement is approved by the Commission, Caliber agrees not to contest the Allegations, and Caliber expressly waives any further procedural requirements with respect to the adoption of the Order approving the Consent Agreement. Provided the Commission approves this Consent Agreement and adopts an Order consistent with it, Caliber waives its right to contest the validity of this Consent Agreement and the Order, and waives all rights to administrative or judicial hearings or appeals of the Allegations.

- e. If the Commission's Order modifies or conditions approval of this Consent Agreement, it shall be deemed terminated if any settling party files a letter with the Commission within 14 business days of notice of such Order stating that a condition or modification to the Consent Agreement is unacceptable to such party.
- f. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement.
- g. This Consent Agreement may be executed in counterparts and duplicate copies, each which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.
- h. The undersigned on behalf of Caliber, is authorized to act on behalf of, and bind Caliber for the purposes of this Consent Agreement, and knows and fully understands this Consent Agreement's content and effect.

[Remainder of page intentionally left blank.]

Dated this 3rd day of January, 2022. ~~2023~~

By: 
Public Service Commission
Advocacy Staff
Name:
Title:

Dated this 30 day of December, 2022.

By: Bill Kent
Bill Kent
Chief Executive Officer
Caliber North Dakota LLC