

**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**

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

**January 11, 2023**

**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.

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 (Application) concerning the location of an approximately 2.62-miles of natural gas pipeline, located in McKenzie County, North Dakota.

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 in person. Exhibits 1 through 9 were admitted at the hearing.

On January 3, 2023, a Consent Agreement between Public Service Commission Advocacy Staff (Staff) and Caliber for resolution of concerns raised by Staff regarding the timing of construction and operation of the 2.62-mile pipeline in relation to North Dakota Century Code (NDCC) Section 49-22.1.

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 foreign limited liability company authorized to do business in North Dakota, as evidenced by the corporate papers filed with the Commission on October 18, 2021, in Case No. PU-21-405.

## 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 (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 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 bidirectionally 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 inches and a maximum operating pressure of 1,600 pounds per square inch gauge. The maximum operating temperature of the Project is 120 degrees Fahrenheit.
6. The Project has an average flow rate of 2-8 million standard cubic feet per day (MMSCFD) and a maximum 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.
8. The proposed corridor is 100-feet in width (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; (5) U.S. Department of Agriculture-Natural Resources of Conservation Service-Bismarck Office.
- b. State: (1) ND Attorney General; (2) ND Department of Career and Technical Education; (3) ND Department of Commerce; (4) ND Department of Environmental Quality; (5) ND Department of Human Services; (6) ND Department of Transportation-Williston District; (7) ND Department of Trust Lands; (8) ND Energy Infrastructure and Impact Office; (9) ND Game and Fish Department; (10) ND Indian Affairs Commission; (11) ND Industrial Commission-Pipeline Authority; (12) ND Labor Department; (13) ND Parks and Recreation Department; (14) ND Soil Conservation Committee; (15) ND State University Extension; (16) ND State Water Commission; (17) Job Service of ND; (18) ND State Historic Preservation Office; (19) ND Office of the Governor; (20) ND Geologic Survey; (21) ND Aeronautics Commission; and (22) USDA-ND 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, and a desktop analysis for wetlands, waterbodies, and other sensitive environmental resources, across a one-mile-wide area centered on the Project route (Study Area).

11. Caliber conducted several surveys across an approximately 100-foot-wide area centered on the Project route (Survey Area). Caliber conducted surveys for wetlands, waterbodies, threatened and endangered species, critical habitats, noxious weeds, and trees/saplings/shrubs.

12. Caliber conducted a Class III cultural resources inventory across the Survey Area. The Class III report and addendum was submitted to the SHPO. In responses dated October 5, 2021 and November 3, 2021, SHPO concurred with the finding of "no significant sites affected". However, SHPO's November 3, 2021 response noted that had they been consulted prior to construction of the Project, they would not have concurred with 'no significant sites'.

## Siting Criteria

13. 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.

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

15. 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 width unless there is no reasonable alternative. A transmission facility route must not be sited within an Exclusion Area.

16. Caliber's studies and surveys did not record any Exclusion Areas within the Survey Area.

17. 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.

18. Caliber's studies and surveys did not record any Avoidance Areas within the Survey Area.

19. 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.

20. Wetlands are a selection criteria. 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.

21. Woodlands are a selection criteria. 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.

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

23. Caliber analyzed the relevant Policy Criteria set forth in Section 69-06-08-02(4) of the North Dakota Administrative Code. There is no need for the Commission to give preference to the applicant in this proceeding.

24. Caliber constructed, owned and operated the Project prior to obtaining a certificate of corridor compatibility and route permit from the Commission.

#### Additional Measures to Minimize Impact

25. Caliber has agreed to a number of steps to mitigate the impact of the Project, as indicated by the executed Certification Relating to Order Provisions – Transmission Facility Siting, which is incorporated by reference and attached to this Order.

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

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

28. 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.

29. 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.

30. 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.

31. 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 NDCC.
2. Caliber is a utility as defined in NDCC section 49-22.1-01(13).
3. The Project is a gas or liquid transmission facility as defined in NDCC section 49-22.1-01(7).
4. The construction, 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, operation, and maintenance of the Project minimizes 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. Caliber shall construct, operate, and maintain the pipeline in accordance with the Commission's Findings of Fact.
2. Certificate of Corridor Compatibility No. 229 is issued to Caliber North Dakota LLC designating a corridor generally 100-feet-wide for the construction, operation, and maintenance of approximately 2.62 miles of 8-inch diameter natural gas pipeline and associated facilities in McKenzie County, North Dakota, as identified in Appendix A of the Application and identified precisely by the associated GIS map data.
3. Route Permit No. 239 is issued to Caliber North Dakota LLC designating a route for the construction, operation, and maintenance of approximately 2.62 miles of 8-inch

diameter natural gas pipeline and associated facilities in McKenzie County, North Dakota, as identified in Appendix A of the Application and identified precisely by the associated GIS map data.

4. The Certification Relating to Order Provisions – Transmission Facility Siting (Certification), executed May 23, 2022, is incorporated by reference and attached to this Order.

5. To the extent there are any conflicts or inconsistencies between Caliber's Application and the Certification, the Certification provisions control.

6. 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.

7. Caliber is required to comply with all applicable laws, rules, and/or regulations in the event it desires to construct another or a different transmission facility than was specified in the Application within the corridor designated in this proceeding.

8. The Consent Agreement between Staff and Caliber filed with the Commission on January 3, 2023, is approved. A copy of the Consent Agreement is attached to and made a part of this Order.

9. Caliber is assessed a civil penalty of \$10,000 for operating a transmission facility in advance of the Commission's issuance of a certificate of corridor compatibility and route permit.

10. Caliber shall remit the \$10,000 penalty, payable to the North Dakota Public Service Commission within ten business days of service of this Order.

11. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Paragraph 4(C) is restitution, remediation, or required to come into compliance with law. Additionally, Caliber shall provide the Commission with a Form W-9 for this purpose.

#### PUBLIC SERVICE COMMISSION

  
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**Sheri Haugen-Hoffart**  
Commissioner

  
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**Randy Christmann**  
Chair

  
\_\_\_\_\_  
**Julie Fedorchak**  
Commissioner

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

**Certificate of Corridor Compatibility Number 229**

*This is to certify that the Commission has designated a transmission facility corridor for Caliber North Dakota LLC designating a corridor 100-feet-wide for the construction, operation, and maintenance of approximately 2.62 miles of 8-inch diameter natural gas pipeline and associated facilities in McKenzie County, North Dakota.*

*This certificate is issued in accordance with the Order of the Commission dated January 11, 2023, in Case No. PU-21-441 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, January 11, 2023.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
\_\_\_\_\_  
**Executive Secretary**

  
\_\_\_\_\_  
**Commissioner**

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

**Route Permit Number 239**

*This is to certify that the Commission has designated a transmission facility route for Caliber North Dakota LLC for the construction, operation, and maintenance of approximately 2.62 miles of 8-inch diameter natural gas pipeline and associated facilities in McKenzie County, North Dakota.*

*This permit is issued in accordance with the Order of this Commission dated January 11, 2023, in Case No. PU-21-441 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, January 11, 2023.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
\_\_\_\_\_  
**Executive Secretary**

  
\_\_\_\_\_  
**Commissioner**

**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**

**CERTIFICATION RELATING TO ORDER PROVISIONS  
TRANSMISSION FACILITY SITING  
GATHERING LINE CONVERSION TO TRANSMISSION LINE**

I am WILLIAM D. KENT, a representative of Caliber North Dakota LLC ("Company") with authority to bind Company to requirements to be set forth by the Commission in its Order and I certify the following:

1. Company understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission will be subject to the conditions and criteria set forth in Chapter 49-22.1 of the North Dakota Century Code and Chapter 69-06-08 of the North Dakota Administrative Code, and that Company shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. Company agrees to comply with the rules and regulations of all other agencies having jurisdiction over any phase of the transmission facility including all city, township, and county zoning regulations.
3. Company understands and agrees that it shall obtain all necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission prior to initiating operation of the transmission facility that requires said license or permit.
4. Company understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission is subject to suspension or revocation and may, in an appropriate and proper case, be suspended or revoked for failure to comply with the Commission's order, the conditions and criteria of the certificate or subsequent modification, or failure to comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies.
5. Company agrees to maintain records that will demonstrate that it has complied with the requirements of the Commission's order issuing a Certificate of Corridor Compatibility or Route Permit, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.
6. Company understands and agrees that the authorizations granted by any Certificate of Corridor Compatibility or Route Permit issued by the Commission for the

transmission facility are subject to modification by order of the Commission if deemed necessary to protect further the public or the environment.

**Construction:**

Provision Nos. 7 – 15 apply to new construction within the corridor.

7. Company agrees to hold a construction conference prior to initiating operation of the facility as a transmission facility, which must include a Company representative, its construction supervisor, and a representative of Commission Staff, to ensure that Company fully understands the conditions set forth in the Commission's order.
8. Company understands and agrees that all cultural resource mitigation plans must be submitted to the North Dakota State Historic Preservation Office and approved prior initiating operation of the facility as a transmission facility.
9. Company agrees to inform the Commission and the Commission's third-party construction inspector immediately prior to the Company initiating operation of the facility as a transmission facility.
10. Company certifies that the pipeline has been buried to a minimum depth from the ground surface to the top of the pipe of 48 inches in range land, 48 inches for cultivated land, 48 inches at the bottom of the ditch for road crossings, and 72 inches across undeveloped section lines.
11. Company certifies that all topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas where cuts were made, was stripped and segregated from the subsoil. Any area on which excavated subsoil was placed was also be stripped of topsoil. After backfilling was completed, any excess subsoil was placed over the excavation area, blending the grade into existing topography. Topsoil was replaced over areas from which it was stripped only after the subsoil was replaced.
12. Company certifies that all buried facility crossings of graded roads were bored unless the responsible governing agency permitted Company to open cut the road.
13. Company certifies that staging areas or equipment were not located on land owned by a person other than Company unless otherwise negotiated with landowners.
14. Company understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site discovered during construction, was marked, preserved and protected from further disturbances until a professional examination could be made and a report of such examination was filed with the

Commission and the State Historical Society and clearance to proceed was given by the North Dakota State Historic Preservation Office.

15. Company certifies that construction was suspended when weather conditions were such that construction activities would cause irreparable damage to roads or land, unless adequate protection measures were taken by Company.

**Restoration and Maintenance:**

16. Company certifies that upon completion of the construction of the facility, Company restored the area affected by the activities to as near as was practicable to the condition as it existed prior to the beginning of construction.
17. Company certifies that all pre-existing township and county roads and lanes used during construction were, or are being, repaired to a condition that is equal to or better than the condition prior to the construction of the transmission facility and accommodates their previous use, and that areas used as temporary roads or working areas during construction were, or are being, restored to their original condition.
18. Company certifies that reclamation, fertilization, and reseeding was, or is being done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
19. Company understands and agrees that its obligation for reclamation and maintenance of the transmission facility right-of-way, transmission facility, associated facilities, fences and gates, drainage tile, and roadways will continue throughout the life of the transmission facility.
20. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
21. Company certifies that it has removed all waste that was a product of construction and has properly disposed of it. Company understands and agrees that it shall remove all waste that is a product of operation, restoration, and maintenance of the site, and properly dispose of it on a regular basis.
22. Company certifies that it provided any necessary safety measures for traffic control or to restrict public access to the transmission facility during construction.

**Communication with Landowners and PSC:**

23. Company understands and agrees that it shall send a letter to each landowner with whom an easement was executed for that location specifying the name and phone

number of the company representative who is responsible for receiving and resolving landowner issues for the life of the easement.


24. Company understands and agrees that it will file with the Commission the name and phone number of the current company representative who is responsible for receiving and resolving landowner issues for the transmission facility. The Company will update this information whenever there is a change to the current company representative for the life of all easements for the transmission facility.
25. Upon request, Company agrees to provide the Commission with engineering design drawings of the transmission facility prior initiating operation of the facility as a transmission facility.
26. Company understands and agrees that it shall advise the Commission as soon as reasonably possible of any extraordinary events which take place at the site of the transmission facility, including injuries to any person.
27. Company agrees to report to the Commission, as soon as reasonably possible, the presence in the permit area of any critical habitat or threatened or endangered species of which Company becomes aware and which were not previously reported to the Commission.
28. Company understands and agrees that it shall inform the Commission in writing of any plans to modify the transmission facility or of any plans to modify the site plan for the transmission facility.
29. Company agrees to provide the Commission with both an electronic and a paper copy of the corridor approved by the Commission and the facility design specifications for the construction of the transmission facility showing the location of the transmission facility as built, and will provide this information within 3 months of commencement of operation of the facility as a transmission facility. Company also agrees to provide an electronic version of the corridor approved by the Commission and the facility design specifications of the transmission facility showing the location of the transmission facility as built that can be imported into ESRI GIS mapping software within 3 months of commencement of operation of the facility as a transmission facility. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in the appropriate vertical datum for the coordinate system used. All submissions must specify the datum in which the data was developed.
30. Company shall notify the Commission as soon as reasonably possible if any damage, as defined by North Dakota Century Code Chapter 49-23, occurs to underground

facilities during activities conducted under the certificate or permit issued in this proceeding. In the event of any damage to underground facilities, Company shall suspend activities in the vicinity of the damage until compliance with One-Call Excavation Notice System requirements under North Dakota Century Code Chapter 49-23 has been determined.

31. When applicable, Company may submit the field studies from the original application for the corridor and route provided they cover the adjustment area.

Dated this 23 day of MAY, 2022.

CALIBER NORTH DAKOTA LLC

By   
WILLIAM D. KENT

Its CEO

**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 Plant<sup>1</sup> 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").

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<sup>1</sup> 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

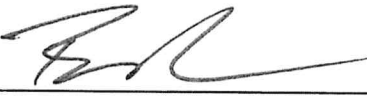
The Parties engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of this proceeding will avoid further administrative proceedings and/or litigation, and that entry of this Consent Agreement is the most appropriate means of resolving this administrative 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 3<sup>rd</sup> 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