

February 2, 2012

Executive Secretary  
North Dakota Public Service Commission  
State Capitol Building  
600 East Boulevard Avenue  
Bismarck, ND 58505-0480

Re: Request for Jurisdictional Determination  
for Natural Gas Pipelines

Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (“Montana-Dakota”), requests the Public Service Commission (“Commission”) pursuant to N.D. Admin. Code Chapter 69-06-02.1, for a jurisdictional determination regarding the applicability of N.D.C.C. Chapter 49-22 to four gas pipeline segments described herein that Montana-Dakota proposes to construct to serve an end-use retail natural gas customer.

Montana-Dakota has been requested to provide natural gas services to a retail customer at the service locations described below in northwest North Dakota. The requested service will require Montana-Dakota to build pipeline segments from points along the transmission pipeline of Williston Basin Interstate Pipeline Company (“WBIP”) to the customer’s designated service locations. Montana-Dakota will file applications with the Commission requesting authority under N.D.C.C. § 49-03.1 to construct the

pipeline facilities and provide the requested service. By this application, Montana-Dakota requests a jurisdictional determination that a route permit is not required under N.D.C.C. Chapter 49-22 for Montana-Dakota's construction of the pipeline segments described as follows:

- Approximately 3 miles of 6-inch plastic pipe from a new town border station to be located near WBIP's transmission line serving the Garden Creek Processing plant east of Watford City, North Dakota (Identified as the Watford City Fill Station).
- Approximately 1 mile of 6-inch plastic pipe from a new town border station to be located near WBIP's transmission line near Alexander, North Dakota (identified as the Alexander Fill Station).
- Approximately 7 miles of 6-inch plastic pipe beginning from a 12-inch distribution loop line Montana-Dakota will be installing in 2012 located near the junction of Highway 2/85 and County Road 6 to a location where Highway 2 North of Williston curves to the East (identified as the 13 Mile Corner Fill Station).
- Approximately 1 to 3 mile(s) of 4 or 6-inch plastic pipe from a new town border station located near WBIP's transmission line near Ray, North Dakota (identified as the R & T Fill Station).

The pipe to be installed will be plastic PolyPipe® or other manufacturers' equivalent pipe material. The pipe data and pressure ratings for the 4-inch and 6-inch

pipe sizes are as shown on the attached pipe specification sheet marked as Attachment A. A map depicting the locations of the required delivery points in relation to Williston Basin's transmission system described above is provided as Attachment B.

Because the natural gas pipeline segments will be constructed to serve a retail customer, the lines are distribution lines functionally equivalent to a farm tap. Based upon prior Commission interpretation and precedent of the jurisdictional applicability of N.D.C.C. Chapter 49-22, the pipeline segments are not transmission lines for siting purposes.

N.D.C.C. § 49-22-07 provides that a transmission facility cannot be constructed without the operator obtaining a route permit from the Commission. A transmission facility is defined at N.D.C.C. § 49-22-03(12) to include: "[a] gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or carbon dioxide." In 1985, the Commission adopted a policy that natural gas distribution systems and farm tap pipelines are not transmission facilities, and therefore, non-jurisdictional under N.D.C.C. Chapter 49-22. See Attachment C. The policy explains that the ultimate purpose of transmission lines is to deliver gas "from gas sources such as gas fields and gas processing plants.... to pipelines and systems which are not transmission lines, but rather are pipelines and systems which provide the means for final gas delivery for consumption by the end user." Adopting a functional use test, the policy states the

following types of pipelines to be constructed in North Dakota are non-jurisdictional under N.D.C.C. Chapter 49-22:

1. Distribution systems
2. Farm tap pipelines
3. Return fuel lines used in devices and equipment for producing oil and gas.

In adopting a functional use test, the policy concluded that although the above types of pipes transport gas, "... they are used for shorter distances at lower pressures and lesser volumes" and "... generally receive gas from transmission lines for consumption by the end user."

The 1985 policy statement has not been amended or rescinded in the 27 years since its adoption. The Commission has consistently interpreted and applied N.D.C.C. § 49-22-03 based upon the functional use test adopted by the policy such that pipelines serving end use retail customers have been considered distribution pipelines and not transmission pipelines. In 1994, the Commission determined a natural gas pipeline constructed by Prairielands Energy Marketing from WBIP's pipeline to serve a canola processing plant near Velva was a distribution facility. In 2001, the Commission determined a natural gas pipeline constructed by Fairmont Natural Gas Pipeline Company from the Alliance Pipeline to serve an ethanol processing facility near Rosholt, South Dakota was a distribution facility. In 2008, in response to a request for a jurisdictional determination by Montana-Dakota for a natural gas pipeline from Alliance Pipeline to an ethanol processing facility near Hankinson, ND, the Commission staff

recommended the Commission abandon the 1985 policy and the functional use test and instead adopt the following definition of a transmission pipeline from 1996 amendments of 49 C.F.R. § 192.3:

*Transmission line* means a pipeline, other than a gathering line, that: (1) Transports gas from a gathering line or storage facility to a distribution center, storage facility, or large volume customer that is not down-stream from a distribution center; (2) operates at a hoop stress of 20 percent or more of SMYS; or (3) transports gas within a storage facility.

The Commission declined to adopt the staff's recommendation and determined the line to the Hankinson ethanol facility was not a transmission line. In each of the above instances, the Commission declined to exercise jurisdiction based upon the functional use test because the pipeline was constructed to provide service to a retail customer notwithstanding that the customer was a relatively large volume customer or that the pipeline would be operated at a hoop stress of more than 20 percent of SMYS.

The Commission's longstanding adoption and application of the functional use test has been acquiesced in by the North Dakota Legislature because the Legislature is presumed to know the construction of a statute by the Commission and the failure to amend the statute indicates Legislative acquiescence. Capital Electric Cooperative, Inc. v. Public Service Commission, 534 N.W.2d 587 (ND 1995). Despite a number of Legislative Sessions since the 1996 amendments of 49 C.F.R. 192.3, the Legislature has not chosen to adopt the definition of a transmission line at 49 C.F.R. § 192.3 for purposes of North Dakota siting law. Indeed, since the Commission's determination to

adhere to the functional use test in 2008, neither the 2009 nor the 2011 Legislative Sessions chose to adopt the 49 C.F.R. § 192.3 definition of a transmission line notwithstanding that other amendments were made to N.D.C.C. § 49-22-03 during those sessions. Nor has the Commission undertaken a rulemaking proceeding to adopt a policy or interpretation of N.D.C.C. § 49-22-03 different from the 1985 policy statement or the Commission's previous precedent of non-jurisdictional determinations.

Although appropriate for safety considerations, the 1996 amendment to 49 C.F.R. § 192.3 does not provide a proper jurisdictional framework for siting policy. While any jurisdictional definition may have some arbitrary aspects, a jurisdictional determination based upon whether a customer is upstream or downstream from a distribution center does not have a logical basis from a siting policy standpoint. Instead, the Commission should continue to apply the functional use test for determining siting jurisdiction. The functional use test has worked well within the construct of North Dakota's siting law since its adoption 27 years ago. In accordance with the functional use test, a pipeline owned and operated by a public utility, as defined at N.D.C.C. § 49-03.1-02, for the purpose of transporting gas to a retail customer is a distribution line and not a transmission line. Because the pipeline segments for which Montana-Dakota, a local distribution public utility, has requested a jurisdictional determination will be built to deliver gas to an end use retail customer, Montana-Dakota requests the Commission determine the pipeline segments are distribution pipeline and not transmission pipeline for siting purposes.

Montana-Dakota respectfully requests expeditious treatment of this request for a jurisdictional determination regarding the applicability of N.D.C.C. Chapter 49-22 to the gas pipeline segments described herein and required to meet the customer's requirements for service in a timely and cost effective manner.

Sincerely,



Tamie A. Aberle  
Regulatory Affairs Manager

Cc: Daniel S. Kuntz

## PolyPipe® GDB50 PE3408/PE4710

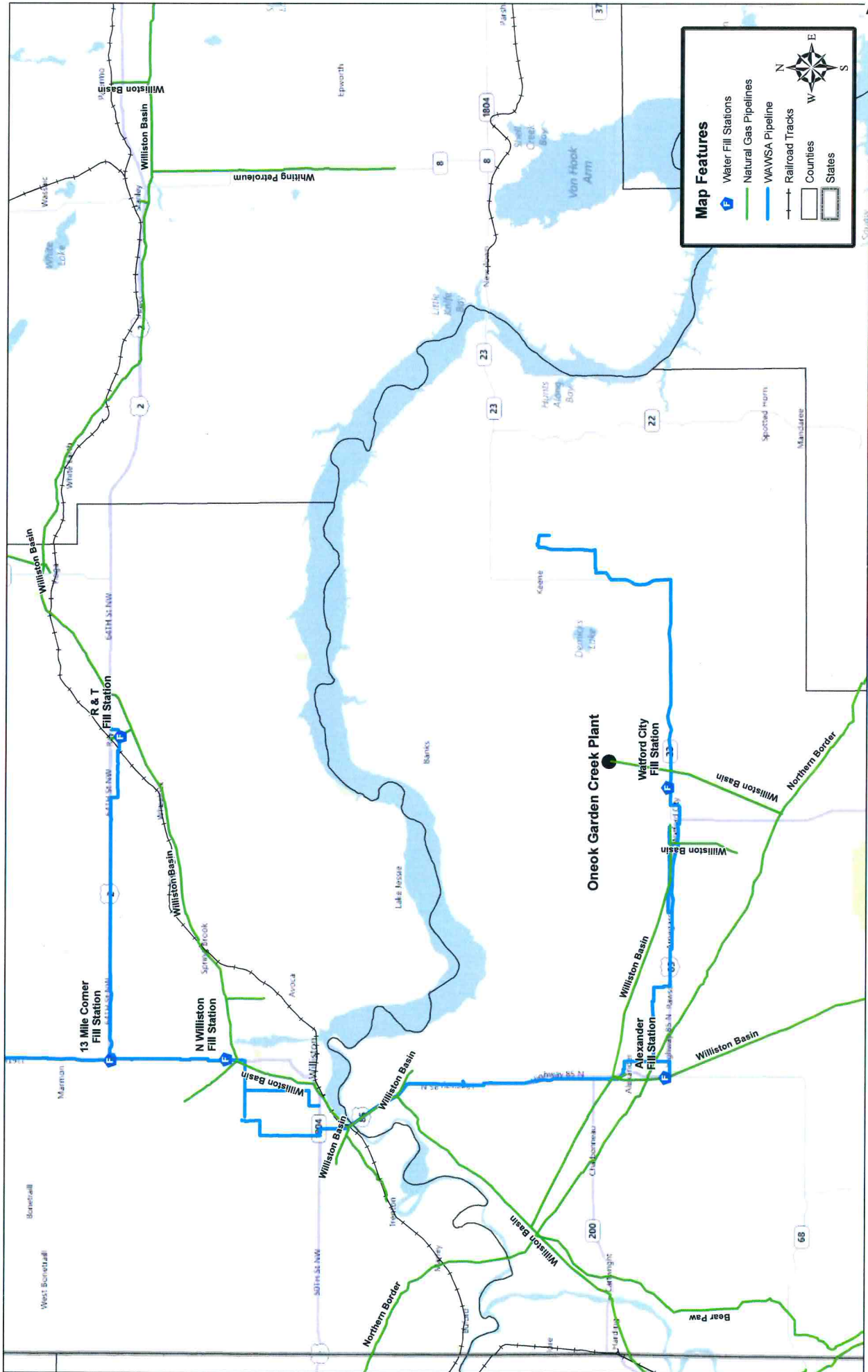
### Gas Pipe Data and Pressure Ratings – CTS & IPS

Nominal Pipe Size	DR	Design Pressure Rating* for Natural Gas, psig @ 73°F	Dimensions		Standard Length, ft	Weight, lbs/ft
			Average OD, inches	Min. Wall Thickness, inches		
<b>CTS</b>						
½"		100	0.625	0.090	1,000	0.066
1"		100	1.125	0.090	500	0.128
<b>IPS</b>						
½"	9.3	100	0.840	0.090	500	0.093
¾"	11	100	1.050	0.095	500	0.126
1"	11	100	1.315	0.120	500	0.197
1 ¼"	10	100	1.650	0.165	500	0.341
1 ½"	11	100	1.650	0.150	500	0.314
1 ¾"	11	100	1.900	0.173	500	0.411
2"	11	100	2.375	0.216	250	0.642
2"	11	100	2.375	0.216	500	0.642
2"	11	100	2.375	0.216	1,500	0.642
3"	11	100	3.500	0.318	500	1.395
3"	11	100	3.500	0.318	40	1.395
4"	11	100	4.500	0.409	40	2.306
6"	11	100	6.625	0.602	40	4.997
8"	11	100	8.625	0.784	40	8.470
10"	11	100	10.750	0.977	40	13.157
12"	11	100	12.750	1.159	40	18.508

\* Ratings are in accordance with DOT CFR 49, Part 192, §192.121 and §192.123.

\* Effective July 14, 2004, the maximum design pressure was amended to 125 psig (reference §192.123a) when designed in accordance with §192.121 for nominal pipe sizes up through 12"IPS (§192.123e.3).

- Notes:
- All products are manufactured in accordance with ASTM D2513.
  - Product is available with yellow stripes for service identification. Call for availability.
  - Some sizes are special order. Call for availability on sizes or DR's not shown.
  - The above weights are calculated per PPI TR-7, using a density of 0.960.



June 4, 1985

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Warehouseman's License to  
Evergreen Grain Co., Tower City,  
ND

Mr. Hagen: I move the Commission grant a Warehouseman's License to Evergreen Grain Company, Tower City, North Dakota; proper requirements having been filed.

Mr. Reinbold: I second the motion.

Roll Call: All voting "Aye".

Case No. 10,680 - Meyer Broad-  
casting Request for Informal  
Hearing on Mining Permit

Mr. Reinbold: I move the Commission reschedule the Informal Hearing requested by Meyer Broadcasting Company in Case No. 10,680, the issuance of Coal Mining Permit No. NAFK 8405, to July 2, 1985 at 2:00 PM in the Sakakawea Room, State Capitol.

Mr. Hagen: I second the motion.

Roll Call: All voting "Aye".

Jurisdictional Pipelines

Mr. Sandstrom: I move that it is the policy of the Commission that:

"The North Dakota Siting Act states that a "transmission facility" means .... "a gas transmission line and associated facilities designed for and capable of transporting gas ...." The Act (NDCC 49-22) also states that "gas pipeline gathering systems" are exempt and defines them as systems which include "pipelines and associated facilities used to collect gas from the well to the gas processing facility."

Since the Act refers to gas transmission lines in its basic statement of jurisdiction, it appears that the Act was intended to apply to such lines only. We must therefore determine what lines are included or embraced within that term.

Gas transmission lines are generally operated at high pressures and transport large volumes of gas. Such transmission lines are used to transport gas from gas sources such as gas fields and gas processing plants. They are also used to transport to and from gas transmission lines. Their ultimate purpose is to deliver gas to pipelines and systems which are not transmission lines, but rather are pipelines and systems which provide the means for final gas delivery for consumption by the end user.

It is therefore the policy of the Commission, unless specifically otherwise determined, that the following gas pipelines that have or will be constructed in North Dakota are non-jurisdictional under Chapter 49-22, N.D.C.C.:

1. distribution systems
2. farm tap pipelines
3. return fuel lines used in devices and equipment for producing oil and gas

These systems, farm tap pipelines, distribution systems and return fuel lines transport gas. However, they are used for shorter distances at lower pressures and lesser volumes. They generally receive gas from transmission lines for consumption by the end user.

Based on this distinction in function, the Commission is of the opinion that the mandate of the Legislature requiring the siting of transmission lines does not include these systems."

Mr. Hagen: I second the motion.

Roll Call: All voting "Aye".