

# Dakota Natural Gas, LLC

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June 1, 2018

Mr. Darrell Nitschke, Executive Secretary  
North Dakota Public Service Commission  
600 E. Boulevard Ave., Dept. 480  
Bismarck, ND 58505-0480

RE: Request for Jurisdictional Determination  
Dakota Natural Gas, LLC

Dear Mr. Nitschke:

Enclosed herewith, please find a request from Dakota Natural Gas, LLC (DNG) for a jurisdictional determination pursuant to N.D. Admin. Code § 69-06-02.1 regarding the applicability of N.D.C.C. Ch. 49-22 (the "Siting Act") to a natural gas distribution pipeline described herein that DNG proposes to construct to serve an end-use retail natural gas customer and the Drayton, North Dakota community. DNG respectfully requests a jurisdictional determination that a route permit is not required under N.D.C.C. Ch. 49-22 for DNG's construction of the proposed distribution pipeline described in the attached Request.

Thank you for your assistance. Please do not hesitate to contact me should you have any questions or concerns or if you require additional information. My direct dial number is (507) 665-8657 and my email address is kanderson@greatermngas.com.

Sincerely,

DAKOTA NATURAL GAS, LLC

Kristine A. Anderson  
Corporate Attorney & Regulatory Affairs

Enclosure

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

Randy Christmann  
Julie Fedorchak  
Brian Kroshus

Chair  
Commissioner  
Commissioner

Case No. \_\_\_\_\_

**In the Matter of the Request of  
Dakota Natural Gas, LLC for a  
Determination of Jurisdiction  
Regarding the Applicability of  
N.D.C.C. Ch. 49-22**

**REQUEST FOR  
JURISDICTIONAL DETERMINATION**

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Dakota Natural Gas, LLC (DNG), respectfully requests that the North Dakota Public Service Commission (Commission) make a jurisdictional determination pursuant to N.D. Admin. Code § 69-06-02.1 regarding the applicability of N.D.C.C. Ch. 49-22 (the “Siting Act”) to a natural gas distribution pipeline described herein that DNG proposes to construct to serve an end-use retail natural gas customer and the Drayton, North Dakota community.

**OVERVIEW**

A retail customer requested that DNG provide natural gas service to it at its facility near Drayton, North Dakota, located in northeastern North Dakota just west of the Minnesota border. DNG believes that, as a result of that customer’s request, DNG will also be able to deliver the benefits of natural gas service to the currently unserved community of Drayton, North Dakota, should that community decide that it wants natural gas service.<sup>1</sup> DNG plans to market retail natural gas service to residential and commercial customers located on the line and does not intend to transport gas within North Dakota for resale purposes.

In order to provide the requested service, DNG will need to construct a pipeline from a point at the North Dakota – Minnesota border to the customer’s designated service location. DNG will file an application with the Commission requesting authority under N.D.C.C. § 49-03.1 to construct the pipeline facilities and provide the requested service. DNG hereby respectfully

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<sup>1</sup> DNG’s request for a jurisdictional determination is predicated on the assumption that natural gas service will be run to both its large retail customer and to the Drayton community as, although formal discussions with community officials have not occurred, anecdotal information suggests that there is significant interest in the area.

requests a jurisdictional determination that a route permit is not required under N.D.C.C. Ch. 49-22 for DNG's construction of the pipeline, described as follows:

- The distribution line will be fed from an interconnect point with the Viking pipeline line in Minnesota. The line, constructed of 4" steel pipe, will pick up gas from the Viking pipeline at a Town Border Station (TBS) just north and west of Donaldson, Minnesota where the pressure will be reduced to 270 psig for transport to DNG's distribution line and where odorant will be placed in the line.<sup>2</sup>
- DNG will run approximately 1.5 miles of 4" steel pipe in North Dakota from the border to a regulator station, all of which will be located on property owned by the large retail customer that will grant an easement to DNG. At the regulator station, part of the line will continue for approximately one mile to serve the large retail customer.
- At the regulator station, an additional section will be added to the line to serve the Drayton community retail customers. That section of the line will be constructed using 4" and 2" HDPE pipe and will likely total approximately 6½ miles. All HDPE pipe will be installed via plowing in or directional drilling. At the regulator station, the pressure for that section of the pipe will be further reduced to 100 psig MAOP, but will be operated at 80 psig.
- The entirety of DNG's proposed line in North Dakota will run in the public road right-of-way with the exception of that part of the line and facilities that will be located on the large customer's privately held property.

A map depicting the location of the anticipated line is provided as Attachment A. Since DNG's natural gas pipeline will be constructed to serve retail customers, the line is a distribution line. Based upon prior Commission interpretation and precedent of the jurisdictional applicability of N.D.C.C. Chapter 49-22, the pipeline is not a transmission line for siting purposes.

### **DISCUSSION AND ANALYSIS**

A utility must obtain a certificate of site compatibility from the Commission prior to beginning construction of a transmission facility. N.D.C.C. § 49-22-02. A "transmission facility" is defined as "[a] gas or liquid transmission line and associated facilities designed for or capable of transporting . . . . gas . . . ." N.D.C.C. § 49-22-03(12)(b). The Siting Act does not expressly clarify what constitutes a transmission facility within the meaning of the Siting Act versus what constitutes a non-jurisdictional distribution line for route permitting purposes.

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<sup>2</sup> DNG meets the "Hinshaw" exemption under the Natural Gas Act. 15 U.S.C. § 717(c). As such, it will file applications with the Federal Energy Regulatory Commission seeking (i) a blanket certificate under 18 C.F.R. § 284.224 and (ii) a "service area determination" under Natural Gas Act section 7(f), for authority to operate across the state line.

Pursuant to the Commission's policy formally adopted more than three decades ago, natural gas distribution system pipelines are not considered to be transmission facilities within the meaning of the Siting Act. *Minutes of the Public Service Commission*, 6 (June 4, 1985). A copy of the Minutes reflecting the policy adoption is provided as Attachment B. The policy was adopted because, while transmission lines are generally operated at high pressures and transport large volumes of gas, distribution systems are used for shorter distances at lower pressures and lesser volumes. *Id.* Generally, such lines receive gas from transmission lines for consumption by end users. *Id.* Given the substantial differences between traditional transmission lines and distribution and other smaller lines, the Commission determined that the legislature did not intend to include distribution lines in the Siting Act mandates and determined that such lines are non-jurisdictional under the Siting Act. *Id.*

The Commission has consistently interpreted and applied the Siting Act based on the functional use test implicitly endorsed in the Commission's adopted policy, finding that gas pipelines serving retail customers are non-jurisdictional distribution lines rather than transmission lines requiring siting. While DNG recognizes that jurisdictional decisions are made on a case-by-case basis and do not provide precedential value, such decisions are instructive from the standpoint of averting arbitrary and capricious determinations; and, the rationale applied in them has continued to focus on a proposed line's functional use. For example, in 1994, the Commission determined that a natural gas pipeline constructed by Prairielands Energy Marketing from WBIP's pipeline to serve a canola processing plant near Velva was non-jurisdictional because it was a distribution facility. Similarly, 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 2012, the Commission determined that a four-segment natural gas pipeline proposed by Montana-Dakota Utilities Co. to serve a retail customer at multiple locations was non-jurisdictional. (Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.; Case No. PU-12-65.). Likewise, in 2017, the Commission determined that the Montana-Dakota pipeline built to serve Clark Equipment Company near Gwinner, North Dakota was non-jurisdictional. (Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.; Case No. PU-17-240.).

While not dispositive, guidance can also be found in federal materials. The Code of Federal Regulations defines a transmission line as

a pipeline, other than a gathering line, that: (1) [t]ransports 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 field. NOTE: A large volume customer may receive similar volumes of gas as a distribution center, and includes factories, power plants, and institutional users of gas.

49 CFR § 192.3 (2018). A TBS is generally considered a distribution center because it is "a point where gas enters piping used primarily to deliver gas to customers who purchase it for consumption as opposed to customers who purchase it for resale." PHMSA Interpretation,

#PI-09-0019 (March 22, 2010) (Response. Nos. 3-6), *available at* <https://www.phmsa.dot.gov/regulations/title49/interp/PI-09-0019>. The federal Pipeline & Hazardous Materials Safety Administration (PHMSA) explains that distribution system lines that serve residential and commercial entities are typically smaller in diameter than transmission pipelines, many (but not all) of which are constructed out of plastic, where pressure is lowered for distribution and odorant is added to the gas to help users detect leaks. U.S. Department of Transportation, PHMSA, About Pipelines: Local Distribution Systems, *available at* <https://primis.phmsa.dot.gov/comm/NGDistribution.htm>. PHMSA also explains that natural gas distribution pipeline systems, constructed from materials including both steel and plastic, among others, distribute natural gas to homes and businesses through mains and service lines. U.S. Department of Transportation, PHMSA, About Pipelines: Natural Gas Pipeline Systems, *avail. at* <https://primis.phmsa.dot.gov/comm/NaturalGasPipermeSystems.htm?nocache=65227>.

In this case, both state and federal guidance overwhelmingly support the determination that the proposed line is a distribution line and, therefore, non-jurisdictional for siting purposes. First, the functional use test militates in favor of such a finding because the line will only be used to provide gas to retail DNG's customers rather than transporting gas to another entity for resale by it. The distribution line classification is buttressed by federal rationale because the proposed line is downstream from a distribution center; will not meet or exceed a hoop stress of 20 percent of SMYS and will remain below 20% SMYS; is smaller than traditional transmission lines; will have odorant in the line; and, will operate at a significantly lower pressure than historically sited transmission lines. *See, e.g.*, Hiland 8 inch Natural Gas Main and Lateral Pipeline, Case No. PU-10-555, 8" steel pipe, MAOP of 1440 psig; Whiting Oil and Gas Corporation 6 inch Natural Gas Line, Case No. PU-08-843, 6 inch steel pipe, MAOP of 720 psig. Hence, the Commission can reasonably determine that the proposed line is non-jurisdictional for purposes of the Siting Act because it is a distribution line.

### **REQEUST FOR COMMISSION ACTION**

All indicators support a finding that the proposed pipeline is a distribution line rather than a transmission line for Siting Act purposes. Therefore, DNG respectfully requests expeditious treatment of this request for a jurisdictional determination regarding the applicability of the Siting Act to its proposed pipeline described herein that will allow it to provide service to a large retail customer and other interested customers in the Drayton community.

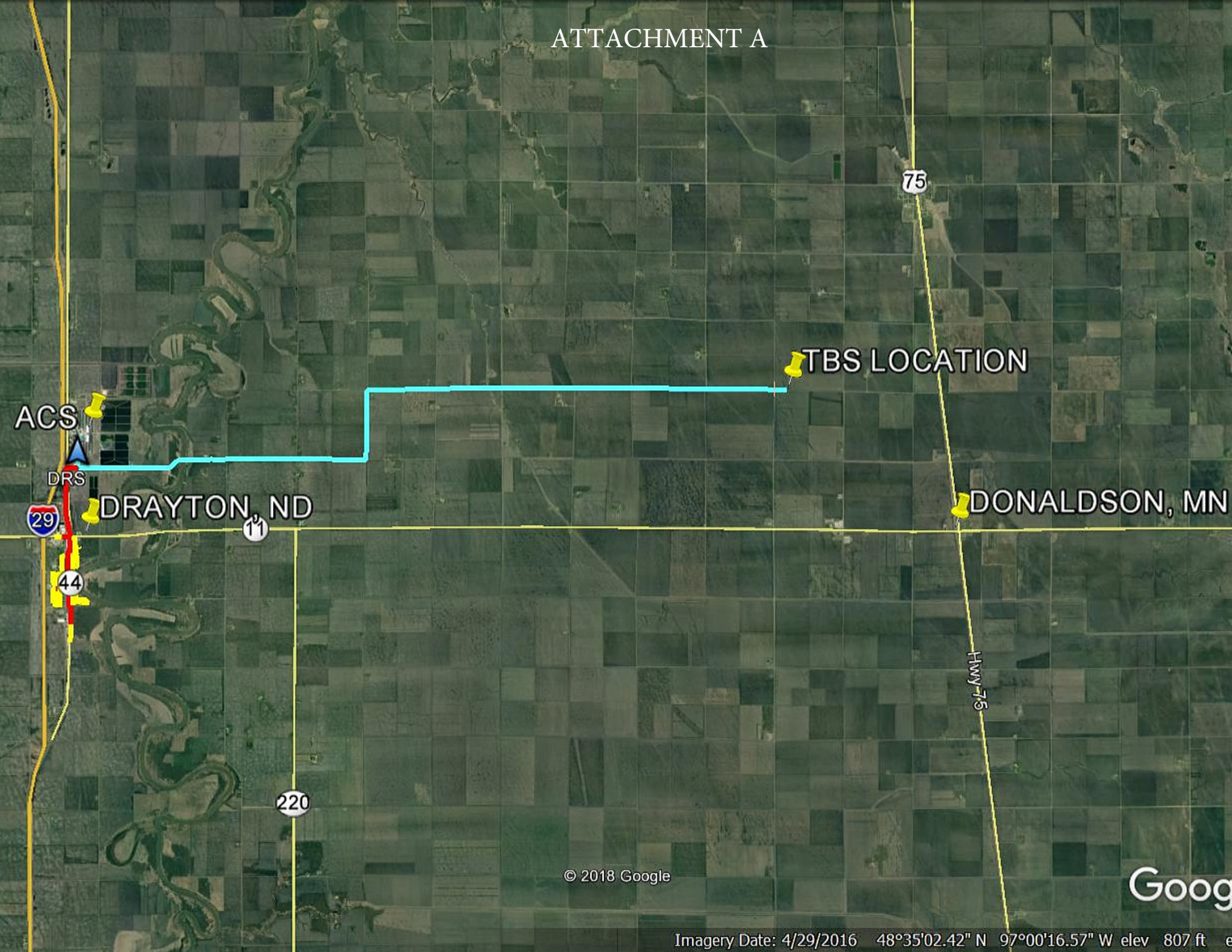
Dated: June 1, 2018

Respectfully submitted,

/s/

Kristine A. Anderson  
Dakota Natural Gas, LLC  
202 S. Main Street  
P.O. Box 68  
Le Sueur, MN 56068

ATTACHMENT A



ACS

DRS

DRAYTON, ND

TBS LOCATION

DONALDSON, MN

29

44

11

220

75

HWY-75

## ATTACHMENT B

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".