

166 FERC ¶ 62,015  
 UNITED STATES OF AMERICA  
 FEDERAL ENERGY REGULATORY COMMISSION

Dakota Natural Gas, LLC

Docket No. CP18-511-000

ORDER GRANTING SERVICE AREA DETERMINATION

(Issued January 10, 2019)

On June 28, 2018, Dakota Natural Gas, LLC (DNG), a company created to provide local distribution service in and around the City of Drayton, North Dakota, filed an application requesting designation of a service area under section 7(f) of the Natural Gas Act (NGA).<sup>1</sup> DNG seeks a section 7(f) determination in order to provide natural gas distribution service from certain facilities in Minnesota across the state line into North Dakota. DNG also requests: (1) a finding that DNG qualifies as a local distribution company (LDC) for purposes of section 311 of the Natural Gas Policy Act of 1978 (NGPA);<sup>2</sup> and (2) a waiver of the Commission's accounting and reporting requirements and other regulatory requirements ordinarily applicable to natural gas companies under the NGA and NGPA.

DNG's requests are granted because the requested service area determination is consistent with the purpose of section 7(f) to permit an LDC to enlarge or expand its facilities to supply market requirements without further Commission approval. Further, the requested waivers are consistent with those previously granted in similar circumstances.<sup>3</sup>

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<sup>1</sup> 15 U.S.C. § 717f(f) (2012).

<sup>2</sup> 15 U.S.C. § 3301, *et seq.* (2012).

<sup>3</sup> See *e.g.*, *Source Gas Distribution LLC*, 145 FERC ¶ 62,114 (2013), *Liberty Energy (Midstates) Corp.*, 138 FERC ¶ 62,320 (2012), *Piedmont Natural Gas Company, Inc.*, 136 FERC ¶ 62,037 (2011); *Minnesota Energy Resources Corporation*, 134 FERC ¶ 62,296 (2011); *Corning Natural Gas Company*, 133 FERC ¶ 62,029 (2010); and *Michigan Gas Utilities Corporation*, 117 FERC ¶ 62,045 (2006).

## Background and Proposal

DNG is a limited liability company organized and existing under the laws of the State of North Dakota and is subject to regulation by the North Dakota Public Service Commission (NDPSC). DNG has been authorized by the NDPSC to provide natural gas distribution service in and around the City of Drayton, North Dakota, immediately adjacent to the North Dakota-Minnesota border in the northeast corner of North Dakota.<sup>4</sup> DNG is a recently created LDC and anticipates providing natural gas services to commercial and residential customers in and around the City of Drayton, North Dakota upon construction of future planned facilities.

DNG was formed within the corporate structure of Greater Minnesota Synergy, Inc. (GMS), an energy holding company based in Le Sueur, Minnesota, in order to provide natural gas distribution service within the City of Drayton, North Dakota. On October 10, 2018, the NDPSC formally granted DNG a Certificate of Public Convenience and Necessity to construct and operate a natural gas distribution system to serve the City of Drayton, North Dakota. In light of the NDPSC's granting of this certificate, DNG plans to construct approximately 17.3 miles of new pipeline facilities, 9.3 miles of which would be located in Minnesota, running west from an interconnect with Viking Gas Transmission Company (Viking) to the North Dakota-Minnesota border. This pipeline in Minnesota is planned to be primarily located in township right-of-way; however, DNG plans to obtain two easements from landowners. From the state border, DNG plans to construct 1.5 miles of pipeline running south from the North Dakota-Minnesota border to a regulator station located north of the City of Drayton, North Dakota. DNG states that the pipeline in North Dakota, including the regulator station, will either be located on public rights-of-way, or potentially on the commercial private property of American Crystal Sugar Company. The 10.8-miles of pipeline from the Viking interconnect in Minnesota to the regulator station north of Drayton would be 4-inch-diameter steel pipeline operated at 270 pounds per square inch, gage (psig). The remaining 6.5 miles of pipeline would run south from the regulator station to the City of Drayton, and would be 4-inch-diameter and 2-inch-diameter high-density polyethylene pipeline, operating at 80 psig. These facilities will either be located on public right-of-way or American Crystal Sugar Company's property.

American Crystal Sugar Company, who owns a processing plant in northeastern

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<sup>4</sup> See, *Application of Dakota Natural Gas, L.L.C. for Certificate of Public Convenience and Necessity*, NDPSC Case No. PU-18-224, approved October 10, 2018.

North Dakota near the North Dakota-Minnesota border, is interested in converting from its primary fuel source of coal to natural gas, and approached DNG about providing natural gas services to its plant. To accommodate this requested service, DNG may also construct approximately 1 mile of 4-inch-diameter steel pipeline to connect the sugar processing plant to the regulator station.

DNG anticipates beginning the construction of these facilities in early 2019, with service anticipated to begin in late fall of 2019. DNG states that it has no intention of servicing Minnesota customers with these facilities.

To authorize its operation of the proposed future facilities and transportation of natural gas, DNG requests a section 7(f) service area determination for these proposed facilities.

### **Interventions**

DNG's application was noticed by publication in the *Federal Register* on July 16, 2018 with comments, protests, and interventions due on or before July 31, 2018 (83 Fed. Reg. 32,853). No in-time motions to intervene, protests, or comments were filed. Both American Crystal Sugar Company and Montana-Dakota Utilities Company filed motions to intervene out-of-time. On October 30, 2018, the Commission denied these late interventions as they are not in compliance with Rule 214(d) of the Commission's Rules of Practice and Procedure, as well as the Commission's current policy governing late interventions.<sup>5</sup>

### **Environmental**

The determination of whether to grant DNG's request for a service area determination and to waive certain regulatory requirements is an administrative decision. Any facilities planned for construction by DNG within its service area would be regulated by state and local government agencies. Therefore, no environmental analysis was required.

### **Findings**

Section 7(f)(1) of the NGA provides:

The Commission, after a hearing had upon its own motion or upon application, may determine the service area to which each authorization

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<sup>5</sup> See *Tennessee Gas Pipeline Company, L.L.C.*, 162 FERC ¶ 61,167 (2018).

under this section is to be limited. Within such service area as determined by the Commission a natural-gas company may enlarge or extend its facilities for the purpose of supplying increased market demands in such service area without further authorization.<sup>6</sup>

The Commission has consistently recognized that a service area determination under NGA section 7(f) is appropriate for a company primarily engaged in the business of local distribution of natural gas, but subject to the Commission's NGA jurisdiction because its facilities cross state lines.<sup>7</sup> The purpose of section 7(f) is to enable a company to enlarge or extend its facilities to supply market demand without prior Commission approval.<sup>8</sup> Factors considered in determining whether a company qualifies for a service area determination are whether:

- (1) state or local agencies regulate the company's rates;
- (2) the company has an extensive transmission system;
- (3) authorizing the service area will have a significant effect on neighboring distribution companies; and
- (4) the company makes sales of natural gas for resale in the designated service area.

In regard to the first factor, following DNG's franchise approval by the NDPSC and subsequent construction and operation of facilities, DNG's operations, rates, and service will be regulated by the NDPSC, who will exercise regulatory oversight over DNG. DNG states that it does not intend to offer any services from the subject facilities to customers in Minnesota. Second, DNG's facilities are distribution facilities which do not constitute an "extensive gas transmission system." Third, DNG's requested authorization will have no effect on other local distribution companies, as there are no companies currently providing natural gas service in the requested service area. DNG is not authorized and has no intention to provide utility service to any customers in Minnesota. Therefore, there will be no impact on any Minnesota area utilities or their

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<sup>6</sup> 15 U.S.C. § 717f(f)(1) (2012).

<sup>7</sup> See, e.g., *City of Clarksville, Tennessee* 146 FERC ¶ 61,074 (2014), *reh'g denied*, 155 FERC ¶ 61,184 (2016); *City of Toccoa*, 125 FERC ¶ 61,048 (2008); *Kinder Morgan Interstate Gas Transmission LLC*, 94 FERC ¶ 61,078 (2001); and *Northern Lights, Inc.*, 84 FERC ¶ 61,117 (1998).

<sup>8</sup> See, e.g., *Piedmont Natural Gas Company, Inc.*, 136 FERC ¶ 62,037 at 64,085 (2011); *Atmos Energy Corporation*, 127 FERC ¶ 62,139 at 64,391 (2009); *Avista Corporation*, 126 FERC ¶ 62,138 at 64,326 (2009); *City of Toccoa, Georgia*, 125 FERC ¶ 61,048 at P 4 (2008).

customers. Finally, DNG does not anticipate making sales for resale within its service area. DNG's primary business purpose is to provide local distribution service and engage in retail sales within its NDPSC-approved service area to commercial and residential end-users of natural gas. Additionally, DNG may provide transportation service to American Crystal Sugar, which will use the gas in its process, but DNG will not make sales for resale to American Crystal Sugar.

For the reasons stated above, DNG is granted approval of a section 7(f) service area in Minnesota to authorize DNG's operation of proposed future facilities located in that state to receive supplies from the Viking interconnect. The section 7(f) service area determination will relieve DNG of Commission regulation that would otherwise be applicable due to DNG's operation of pipeline facilities that cross the North Dakota-Minnesota state line.

DNG requests to be treated as an LDC for the purposes of section 311 of the NGPA. The Commission has previously held that section 7(f) companies should be treated as such.<sup>9</sup> Although DNG would construct, own, and operate facilities that cross the North Dakota-Minnesota border, it will operate as an LDC within its service area.

DNG also requests a waiver of the Commission's accounting and reporting requirements and other regulatory requirements ordinarily applicable to natural gas companies under the NGA and NGPA. No regulatory gap will exist because DNG will remain subject to the accounting, reporting, and other rules and regulations of the NDPSC. There is no need to duplicate on the federal level requirements already imposed on DNG by its state regulatory agency. Further, the construction of any facilities will be regulated by the relevant state and local government agencies. The requested waivers are consistent with those previously granted in similar circumstances and are granted in this proceeding.<sup>10</sup>

Pursuant to 18 CFR 375.308, it is ordered that:

- (A) DNG is granted a service area determination under section 7(f) of the NGA, as described herein.
- (B) DNG is determined to be an LDC for purposes of section 311 of the NGPA.

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<sup>9</sup> See, e.g., *City of Clarksville, Tennessee*, 146 FERC ¶ 61,074, at P 22.

<sup>10</sup> See, e.g., *id.* at P 23; *City of Toccoa*, 125 FERC ¶ 61,048 (2008); and *Kinder Morgan Interstate Gas Transmission LLC*, 94 FERC ¶ 61,078 (2001).

- (C) DNG is granted a waiver of reporting and accounting requirements, as well as other rules and regulations under the NGA and NGPA that are ordinarily applicable to natural gas companies, with respect to actions taken pursuant to the authorizations issued herein.
  
- (D) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order pursuant to 18 C.F.R. § 385.713.

Pamela J. Boudreau  
Acting Director  
Division of Pipeline Certificates  
Office of Energy Projects

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