

STATE OF NORTH DAKOTA
BEFORE THE PUBLIC SERVICE COMMISSION

Randy Christmann
Julie Fedorchak
Brian Kroshus

Chairman
Commissioner
Commissioner

Case No. PU-18-345

**In the Matter of
Dakota Natural Gas, LLC's
Request for Approval of
its Tariff and Rates**

**REQUEST FOR APPROVAL OF
A FIRM GAS TRANSPORTATION
AGREEMENT WITH AMERICAN
CRYSTAL SUGAR COMPANY**

**PUBLIC DOCUMENT—
TRADE SECRET DATA EXCISED**

OVERVIEW

Dakota Natural Gas, LLC (“DNG”) submits this filing to the North Dakota Public Service Commission (“Commission”) to request that the Commission approve a Firm Gas Transportation Agreement (“the Agreement”) between DNG and American Crystal Sugar Company (“ACSC”) pursuant to DNG’s obligation to obtain Commission approval of any contractual transportation service rate. A copy of the Agreement is appended hereto as Attachment A and is incorporated herein by reference. DNG respectfully requests that the Commission grant approval of the Agreement at issue. As the totality of the circumstances demonstrates, the benefit to the community of Drayton, North Dakota and its environs is significant.

DNG intends to construct a new 8 mile distribution line to serve ACSC in the Drayton, North Dakota area. The project will also make it economically feasible for DNG to provide natural gas service to the City of Drayton and its environs, which area is not currently served by any natural gas provider.

DNG respectfully requests that the content identified herein as Trade Secret be treated as protected because the information was supplied by DNG; the information is not publicly available; DNG and ACSC have taken reasonable efforts to maintain its secrecy by redacting it from public view and protecting private financial from non-organization individuals; and, DNG derives independent economic value from its private information not being known by competitors, suppliers, and/or other members of the public who could obtain economic value from its use and whose use of the information could deleteriously impact DNG, both in terms of financial and competitive impacts, if the information is misappropriated.

DISCUSSION AND ANALYSIS

Pursuant to the terms of DNG's proposed tariff governing its contractual transportation service rates and the provisions of North Dakota Century Code Chapter 49-04-07 requiring approval of customer agreements, DNG must obtain the Commission's approval of any contract establishing the rates, terms, and conditions of service and facilities being provided in order for such a contract to be lawful and effective.

DNG recognizes that its Agreement with ACSC must be just and reasonable and that it is prohibited from providing natural gas services in a manner that unreasonably discriminates among customers receiving like or contemporaneous services pursuant to the requirements of North Dakota Century Code Chapter 49-04-01. DNG respects the requirement of North Dakota Century Code Chapter 49-04-02 that its rates be just and reasonable. Generally, rates are considered just and reasonable when they are not unreasonably preferential, unreasonably prejudicial, or discriminatory; and, when they are sufficient, equitable and consistent in application. *See*, N.D.C.C. § 49-04-07.

The Agreement between DNG and ACSC at issue herein will facilitate the use of natural gas by an economic cornerstone in a rural area where natural gas has never before been available. DNG will construct a mainline to transport gas from its Town Border Station near Donaldson, Minnesota to an agreed-upon interconnection point with ACSC. DNG will also operate a distribution system to provide service to the Drayton community and its environs. Currently, residents and business in that community are unable to avail themselves of the benefits of natural gas service and are forced to rely on alternate heating sources such as propane, electricity, and wood.

The agreement contemplates accepting delivery of ACSC's gas at the Town Border Station receipt point and redelivering the gas to ACSC at an agreed-upon receipt point. It is the result of a cooperative effort by DNG and ACSC to create a natural gas solution for ACSC and to reach the unserved community of Drayton. The Agreement is the result of an arm's length negotiated transaction between DNG and ACSC; and, DNG is willing to negotiate similar terms with similarly situated entities. The financial terms of the Agreement reflect pricing based on the estimated cost to complete the new construction necessary to support the project to transport gas to the new interconnect with ACSC, with such costs being recovered through both demand charges and commodity charges. The anticipated capital budget for the project is reflected in Attachment B, attached hereto and submitted under trade secret protection.

DNG proposes contracting to provide transport capacity to ACSC and has submitted an offer to transport up to [TRADE SECRET DATA BEGINS] [TRADE SECRET DATA ENDS] capacity for a fifteen (15) year term at a negotiated rate of [TRADE SECRET DATA BEGINS] [TRADE SECRET DATA ENDS.] Defining a project rate based on a cost-recovery mechanism is a reasonable means to determine that the rates are appropriate and just under the circumstances.

Since both DNG and ACSC agreed to the terms of Agreement as reflected in Attachment A, it is a foregone conclusion that both companies determined that each company will benefit from the Agreement being instituted. In addition, given the mutual development and assent to the terms of the Agreement, a reasonable inference can be made that the rates identified therein are both reasonable and borne of market-based negotiation. Additionally, since DNG would willingly enter into negotiations with other similarly situated entities to discuss similar cooperative arrangements that would serve the public interest in other respective communities, there is no discriminatory element to the Agreement, as DNG is willing to offer its terms on an open-access basis.

DNG's anticipated retail distribution customers would not sustain any adverse impact as a result of the proposal; and, in fact, they benefit from the proposal by obtaining the option of natural gas service. Moreover, DNG will benefit from the Agreement by increasing its gross revenue and making the Drayton area service economically feasible. Given the unique opportunity and long-term nature of the Transport Agreement, DNG seeks Commission approval of its proposal so that it may ensure recovery of all reasonable and prudent costs associated with the project while assisting ACSC in benefitting from adding natural gas service to its facility and bringing natural gas to the Drayton community.

The proposal is the result of a collaborative effort of the City of Drayton, ACSC, and DNG to develop a natural gas service option for the area. Drayton and its environs have agricultural operations, businesses, and local residents that will benefit from access to safe, reliable, and affordable natural gas.

In light of energy supply and cost concerns, DNG believes it is necessary and in the public interest to expand the provision of natural gas in rural North Dakota in a manner that is not cost-prohibitive. The opportunity afforded by this project allows agricultural and other local businesses to incorporate natural gas and to position the local community for substantial positive economic impact. The opportunity for DNG and ACSC to partner in bringing natural gas access to the Drayton, North Dakota area should be seized.

The Agreement reflects a positive partnership between companies working together to serve the public interest. It benefits ACSC and, in turn, ACSC's customers, the Drayton community, and the local economy. It benefits DNG and, likewise, DNG's customers, by contributing to DNG's economic viability and ability to aid in serving historically unserved and underserved populations.

REQUEST FOR COMMISSION ACTION

DNG is confident that the proposed Agreement serves the public interest and is soundly planned. As the discussion and analysis demonstrates, DNG and ACSC carefully contemplated and negotiated a reasonable, fair, and market-based agreement that will allow unserved North Dakotans in the Drayton area to obtain natural gas without adverse effects. Therefore, DNG respectfully requests that the Commission approve the Firm Gas Transportation Agreement between DNG and ACSC.

Dated: September 26, 2018

Respectfully submitted,



Kristine A. Anderson
Regulatory Affairs
Dakota Natural Gas, LLC
202 S. Main Street
Le Sueur, MN 56068

**FIRM TRANSPORTATION AGREEMENT BETWEEN
DAKOTA NATURAL GAS, L.L.C.
AND
AMERICAN CRYSTAL SUGAR COMPANY**

THIS FIRM TRANSPORTATION AGREEMENT (“Transportation Agreement”) is made this ____ day of _____, 2018 by and between Dakota Natural Gas, L.L.C., (“Company”), and American Crystal Sugar Company (“Customer”) and shall be effective upon the signature of the last party to sign this Transportation Agreement (“Effective Date”). Customer has made or will make the necessary contractual arrangements to purchase natural gas and have the natural gas delivered to Company’s newly constructed Donaldson Minnesota Town Border Station. Customer and Company desire to enter into this Transportation Agreement whereby Company agrees to (a) construct facilities to allow the transportation of natural gas to facilities owned by Customer in the community of Drayton, North Dakota; and, (b) provide Firm Transportation natural gas service for benefit of Customer.

WITNESSETH: The parties hereto, each in consideration of the agreement of the other, agree as follows:

1.0 TERM. This Transportation Agreement shall be effective as of the effective date, subject to any required jurisdictional regulatory approvals. Company shall begin providing firm natural gas transportation service hereunder and shall continue providing such service to Customer for a term of 15 years (the “Initial Term”) beginning the later of August 1, 2020 or the in-service date of the pipeline (the “Commencement Date”). Customer shall have the option to extend the Transportation Agreement for an additional 15 year term from the end of the Initial Term (the “Extended Term”). Customer shall notify Company in writing six months prior to the expiration of the Initial Term if it wishes to extend this Transportation Agreement for the Extended Term. The Initial Term and the Extended Term shall be collectively referred to herein as the “Term”.

2.0 DELIVERY PIPELINE CONSTRUCTION.

2.1 CONSTRUCTION. Company agrees to construct the pipeline and related facilities necessary to transport natural gas from the Receipt Point to the Point of Delivery set forth in Section 3.2 below (“The Delivery Pipeline”). The Delivery Pipeline shall be capable of delivering up to _____ dekatherms of natural gas per day (the “Daily Demand Volume”) from the to be constructed Donaldson Town Border Station to the Point of Delivery, at the operating pressure designated in Section 3.2 therein. Company is responsible for permitting, design and right-of-way acquisition required for construction of The Delivery Pipeline. Company will use its best efforts to complete construction and make The Delivery Pipeline and related facilities operational prior to August 1, 2020. Company will report to Customer on a monthly basis concerning the progress of constructing, and the anticipated in-service date for, The Delivery Pipeline.

[TRADE
SECRET
DATA
APPEARS
IN BLUE]

2.2 **TERMINATION DURING CONSTRUCTION.** Customer may terminate this Transportation Agreement during the construction of The Delivery Pipeline upon written notice to Company. Upon termination of this Agreement as provided in this Section 2.2, Customer shall pay to Company all amounts reasonably expended by Company (with reasonable supporting documentation provided to Customer by Company) to construct The Delivery Pipeline, together with reasonable demobilization costs. Upon receiving written notice of termination, Company shall immediately cease all activities associated with the permitting, design, and construction of The Delivery Pipeline.

3.0 **DELIVERY OBLIGATIONS.**

3.1 **LIMITATION ON OBLIGATION TO DELIVER.** Company's obligation to deliver natural gas to Customer is expressly contingent upon Customer (or Customer's Agent) providing for the delivery of adequate quantities of natural gas at a pressure no less than [REDACTED] psig to the Receipt Point such that Company can fulfill its obligations to satisfy the natural gas delivery requirements and specifications at the Point of Delivery as provided in this Agreement. Company shall take no action that in any way limits its ability to satisfy Customer's natural gas supply requirements and specifications. If Customer fails to deliver natural gas to Company at the Receipt Point, Customer shall not be entitled to take delivery of natural gas hereunder. Company is not obligated to provide backup sales service to Customer if Customer's natural gas supply is interrupted.

3.2 **REQUIREMENTS AND DELIVERIES: POINT OF DELIVERY.** Company agrees to accept delivery of Customer's natural gas at the inlet of the Receipt Point, which shall be the inlet of the meter installation at the Company's interconnect with Viking Pipeline at the Donaldson Town Border Station, Donaldson, Minnesota (the "Receipt Point") and to transport and to re-deliver the Daily Demand Volume to Customer on a firm and non-interruptible basis, at a minimum operating pressure of [REDACTED] psig, or such other volumes and pressure as mutually agreed by the parties.

3.3 **NOMINATIONS.** Customer (or Customer's Agent) shall be responsible for nominations and scheduling of Customer-owned natural gas on the Viking Gas Transmission Company (Viking") pipeline. Customer shall be responsible for any penalties or charges resulting from a failure by Customer to provide natural gas equal to its usage pursuant to the tariff(s) in effect on upstream transportation systems.

3.4 **RATE OF FLOW.** The Daily Demand Volume shall be transported to Customer at a rate of flow from [REDACTED] dekatherms per hour at the Point of Delivery, as specified from time to time by Customer. Natural gas shall be delivered at such pressures and temperatures as may exist under operating conditions at Point of Delivery. Operating pressures at this location shall not be less than [REDACTED] psig.

- 3.5 **BALANCING.** Customer is responsible for any balancing cost or charges on the Viking Pipeline caused by Customer actions.
- 3.6 **END-USER ALLOCATION.** It is understood that Customer and Company shall work together to minimize the administrative burden of administering this Transportation Agreement. Company shall work with Customer in good faith to enter into end-user allocation agreements or other agreements necessary to facilitate this transaction so long as such agreement does not impose additional costs or burdens upon Company.
- 3.7 **QUALITY.** Customer shall cause to be delivered to the Receipt Point natural gas, which meets the natural gas quality specifications set forth in Viking's Tariff in effect as the Commencement Date, or under any successor tariff. Company shall not add any constituents or otherwise alter the quality of the natural gas so delivered by Customer and shall redeliver to Customer at the Point of Delivery hereunder natural gas which meets the same natural gas quality specifications as set forth in Viking's Tariff then in effect.
- 3.8 **TITLE.** Unless otherwise mutually agreed, Customer shall retain title to its natural gas while it is being transported by Company.
- 3.9 **THIRD PARTY CAPACITY.** The parties will meet and confer concerning the most economical methods for meeting the needs of any third party desiring firm capacity on The Delivery Pipeline, which method includes, but is not limited to, Customer releasing a portion of firm capacity on The Delivery Pipeline in exchange for a reduction in the charges to Customer provided herein.

4.0 **PAYMENT PROVISIONS.**

- 4.1 **CHARGES.** Effective on the Commencement Date, the charges for the transportation service shall be billed on a monthly basis and shall consist of the following:

- 4.1.1 **MONTHLY CHARGE.** \$ [REDACTED].

- 4.1.2 **MONTHLY DEMAND CHARGE.** A Monthly Demand Charge of \$ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- 4.1.3 **VOLUME CHARGE.** A volume charge equal to \$ [REDACTED] per dekatherm of natural gas actually delivered by the Company to the Customer during the month. The volume metered by Company will be considered to be the actual volume delivered by Company to Customer at the Point of Delivery, unless a measurement error is identified. The volume charge is subject to those adjustments provided in Section 4.1.4.

4.1.4 [REDACTED]

4.1.5 **DAILY VARIANCE PENALTY.** Customer will be subject to a daily variance charge determined in accordance with the Daily Variance provisions of Viking’s Tariff, as such provisions are in effect at the time the variance occurs. The tolerance level for variances shall be the same as the then effective tolerance level established in the applicable provisions of Viking’s Tariff. In the event of a change to the applicable provisions of Viking’s Tariff that, as determined by Customer or Company, would have a materially adverse effect on Customer or Company, the adversely affected party may, by written notice to the other party within thirty (30) days of the effectiveness of such change, initiate good faith renegotiations of this Section 4.1.4 to restore the parties to their respective economic positions prior to such change.

4.1.6 **MONTHLY CASHOUT MECHANISM.** Customer’s monthly imbalance, if any, shall be determined, and resolved, in accordance with the Monthly Imbalances provisions of Viking’s Tariff as such provisions are in effect at the time the monthly imbalance occurs. In the event of a change to the applicable provisions of Viking’s Tariff that, as determined by Customer or Company, would have a materially adverse effect on Customer or Company, the adversely affected party may, by written notice to the other party within thirty (30) days of the effectiveness of such change, initiate good faith renegotiations of this Section 4.1.5 to restore the parties to their respective economic positions prior to such change.

4.1.7 **ADDITIONAL CHARGE FOR UNAUTHORIZED USE OF NATURAL GAS DURING SERVICE CURTAILMENT, INTERRUPTION, OR RESTRICTION.** If Customer fails to interrupt, or otherwise restrict (partially or totally) Customer’s use of natural gas hereunder when requested to do so by Company due to interruption of Customer’s natural gas supply upstream from Company’s pipeline system, Customer shall, in addition to the appropriate above rates, reimburse Company for any penalties incurred by Company as a result of continuing service to Customer after Customer fails to interrupt or restrict its use of natural gas. Company agrees to work with Customer to minimize the administrative burden of managing natural gas supply to avoid unauthorized natural gas charges.

- 4.1.8 TAXES. In addition to the rates specified above, Company shall collect any sales, use, excise, or other such taxes and city fees that are legally effective and applicable to the service provided hereunder.
- 4.2 METER TESTING. Company will meter the quantity of natural gas delivered to Customer at the Point of Delivery. Company shall test the meter at the Receipt Point and/or the Point of Delivery upon request by Customer, but not less than once per year, at the cost of Company. Company will notify Customer in writing of a test no less than 30 days prior to the scheduled test. Customer may witness the test upon return notification to Company. In the event the meter test shows the meter to be in error by more than +/- 2 percent, the bill adjustment provisions of N.D. Admin. Code 69-09-01-23 shall be applied to the Volume Charge
- 4.3 BILLING AND PAYMENT. Company will bill Customer for service on a calendar month basis, and will normally render Customer's bill on or before the 20th day of the month for service during the previous calendar month. All invoices will include reasonable supporting documentation. Invoices are due and payable at the Company's office ten (10) days following receipt by Customer. Should Customer fail to remit the full amount when due, Customer shall pay a late Payment Fee Charge of 1.5%.
- 4.4 DISPUTED BILLS. If Customer in good faith disputes the amount of any monthly billing or part thereof, Customer shall pay Company the amount Customer believes to be correct and notify Company in writing of the basis for disputing the bill. Company shall promptly investigate the matter and submit a corrected bill to Customer. If Customer has underpaid the amount actually due, Customer shall within five (5) days remit the additional amount due. If Customer has overpaid the amount actually due, Company shall refund the overpayment through a credit that shall be applied against the Customer's next bill. The Company agrees to waive the late payment charge for the disputed portion of any bill if Customer disputed the bill in good faith.
- 4.5 FINANCIAL ASSURANCES. Customer shall provide Company's lender(s) with copies of its financial statements to support Company's financing of the construction of The Delivery Pipeline.
- 5.0 BILLING ADDRESSES, CURTAILMENT NOTICES, OTHER NOTICES. The applicable addresses and/or telephone numbers for billing, and bill payment curtailment notices and other notices under this Transportation Agreement are provided in the Exhibit A to this Transportation Agreement.
- 6.0 WAIVER OF LIABILITY. Customer waives all claims against Company resulting from termination of natural gas service caused by failure of Customer, Customer's natural gas supplier(s), or Customer's third party transporting pipeline(s) to deliver natural gas to the Receipt Point. Neither party shall be liable to the other for any special, incidental, exemplary, punitive, indirect or consequential damages and Company and Customer each waives the right to collect any such damages.

- 7.0 REGULATORY AUTHORITY AND APPLICABLE LAW. This Transportation Agreement is subject to all valid laws, orders, rules and regulations of any and all duly constituted authorities having jurisdiction over the subject matter herein and is subject to the receipt of any necessary authorization for the transportation service contemplated herein. This Transportation Agreement shall be governed by and constructed in accordance with the laws of the State of Minnesota. Each party hereby irrevocably submits to the exclusive jurisdiction of state courts of Clay County in Minnesota in any action, suit or proceeding relating to the Transportation Agreement, and to the respective courts to which an appeal of the decisions of any such court may be taken, and each party agrees not to commence, or cooperate in or encourage the commencement of, any such action, suit, or proceeding, except in a Minnesota court. Each party hereby irrevocably waives, to the fullest extent it may do so, the defense of an inconvenient forum for such an action, suit, or proceeding. Each party waives to the extent permitted by law their respective rights to trial by jury for any claim whatsoever in any way connected with the Transportation Agreement.
- 8.0 REPORTING REQUIREMENTS. Each party shall furnish to the other party all information as may be required or appropriate to comply with reporting requirements of duly constituted authorities having jurisdiction over the subject matter herein.
- 9.0 CONFIDENTIALITY. The terms of this Transportation Agreement, including but not limited to the Monthly Demand Charge, Company's Volume Charge, the volumes of natural gas transported, and all other material terms of this Transportation Agreement shall be kept confidential by Company and Customer, except to the extent that any information is required to be included in reports submitted to the appropriate regulatory authority or that must be disclosed to a third party as required by regulatory authority, court order, applicable law, or for the purpose of effectuating transportation of the subject natural gas pursuant to this Transportation Agreement. However, confidential information may be disclosed to affiliates and agents who have a need to know such terms and who agree to maintain the confidentiality of such terms.
- 10.0 SUCCESSION, ASSIGNMENT. This Transportation Agreement shall inure to and be equally binding on the respective parties, their successors and permitted assigns. Neither party shall assign this Transportation Agreement and rights hereunder without the written approval of the other party. Such approval shall not be unreasonably withheld. It is understood and agreed that any Customer may authorize a third party agent to act on behalf of Customer in fulfilling its responsibilities hereunder.
- 11.0 ENTIRE AGREEMENT; MODIFICATION AND WAIVER. This Transportation Agreement, together with Exhibit A and B, which shall by this reference be incorporated herein, and any other documents in addition to such Exhibit A and B attached hereto that the parties have signed or initialed intending to make them a part hereof, constitutes the entire agreement between the parties relating to the transaction described herein and supersedes any and all prior oral or written understandings. No addition to or modification of any provision hereof shall be binding upon either party, and either party shall not be deemed to have waived any provision hereof of any remedy available to it

unless such addition, modification or waiver is in writing and signed by a duly authorized officer or representative of Company and Customer.

- 12.0 SEVERABILITY. If any provision hereof is held to be unenforceable by final order of any regulatory authority or court of competent jurisdiction, such provision; shall be severed from this Transportation Agreement and shall not affect the interpretation or enforceability of the remaining provisions hereof.
- 13.0 FORCE MAJEURE. If either party shall be unable to carry out any of its obligations under this Transportation Agreement due to circumstances beyond its reasonable control, including acts of God, governmental or judicial authority, insurrections, riots, labor disputes, labor or material shortages, fires, explosions, floods, third- party negligence, terrorist act, or other events beyond its reasonable control, the affected party may notify the other party that an event of force majeure has occurred, in which case this Transportation Agreement shall remain in effect but the obligations of each party under this Transportation Agreement, including but not limited to payment of charges under section 4.0, shall be suspended until the force majeure event is resolved. If the force majeure event is not resolved within 180 days following the commencement of the event, the party not claiming the event may terminate this Transportation Agreement by providing written notice to the other party.
- 14.0 INDEPENDENT CONTRACTORS. The parties shall be independent contractors in the performance of their obligations under this Transportation Agreement. Nothing in this Transportation Agreement shall be construed to constitute either party as a partner, joint venturer, joint employer, agent, representative or employee of the other party. Each party shall have discretion in the performance of the work under this Transportation Agreement and control and direct its own personnel performing such work.
- 15.0 NO PERSONAL LIABILITY. In no event shall any member, partner, shareholder, owner, officer, director, employee, or affiliate of a party be personally liable to the other party for any payments, obligations, or performance under this Transportation Agreement, or any breach or failure to perform any of their respective obligations under this Transportation Agreement.
- 16.0 INSURANCE. Company agrees to carry and maintain (and cause its contractors to carry and maintain) insurance as provided in Exhibit B, attached hereto and incorporated herein.
- 17.0 COUNTERPARTS; DELIVERY. This Transportation Agreement may be executed by the parties in separate counterparts; each of which when so executed and delivered shall be deemed an original, but all such counterparts shall together constitute one and the same agreement. All signatures need not be on the same counterpart. Duly executed counterparts may be delivered by facsimile transmission and by e- mail of an Adobe.pdf version of an executed counterpart with the same effect as delivery of an original duly executed counterparty by a party.

IN WITNESS WHEREOF, the parties have duly executed this Transportation Agreement on the date proved below.

DAKOTA NATURAL GAS, LLC

By: _____

Title: _____

Date: _____

AMERICAN CRYSTAL SUGAR COMPANY

By: _____

Title: _____

Date: _____

EXHIBIT A

Notices

If to Company:

Dakota Natural Gas, L.L.C.
202 South Main Street
Le Sueur, MN 56058
(888) 931-3411
gmg@greatermngas.com

If to Customer:

American Crystal Sugar Company
Attn: Purchasing Manager
101 North 3rd Street
Moorhead, MN 56560
(218) 236-4400

With a copy to:

Kinect Energy
605 Highway 169 N
Plymouth, MN 55441
(763) 543-4601

EXHIBIT B

Insurance Provisions

1. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

2. [Redacted]

3. [Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

ATTACHMENT B
Cost Model

**Entire Attachment is Submitted
Under Trade Secret Protection**