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March 30, 2020

Mr. Steve Kahl, 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. Kahl:

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 end-use retail natural gas customers in some Traill County, North Dakota communities. 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) 209-2110 and my email address is kanderson@greatermngas.com.

Sincerely,

DAKOTA NATURAL GAS, LLC

A handwritten signature in black ink, appearing to read "Kristine A. Anderson", is written over a circular stamp or seal.

Kristine A. Anderson
Corporate Attorney (Minnesota) & Regulatory Affairs

Enclosure

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

Brian Kroshus
Julie Fedorchak
Randy Christmann

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**

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 some residents in Traill County, North Dakota and an end-use retail natural gas customer.

OVERVIEW

Representatives of Traill County and the cities of Hillsboro and Mayville, North Dakota reached out to DNG inquiring about whether DNG could provide natural gas service to those currently unserved communities. As part of its effort to develop an economically viable option to provide retail natural gas service to the area, DNG negotiated with potential anchor customers; and, DNG secured an agreement that, subject to regulatory approval, will make it feasible to service Traill County residents with natural gas. DNG will initially deliver the benefits of natural gas service to the communities of Hillsboro and Mayville; and, DNG is hopeful that additional Traill County communities may be added in the future if there is sufficient pipeline capacity available and extending service is economically viable.¹ 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

¹ DNG's request for a jurisdictional determination is predicated on the assumption that natural gas service will initially be run to the Hillsboro and Mayville communities and to a large retail customer.

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 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) near Beltrami, Minnesota where the pressure will be reduced to 270 psig at a DNG owned regulator station for transport to DNG's distribution line and where odorant will be placed in the line.² The TBS lies approximately 25 feet from the Viking tap. While both Viking and DNG will have some pipe between the Viking tap and the TBS, such that Viking will own the pipe running to its meter station and DNG will own the pipe from the meter station to the regulator, DNG's portion of the pipeline will be classified as a distribution line, and it will operate at less than 20% of SMYS.
- DNG will run approximately 10.3 miles of 4" steel pipe in North Dakota from the border to a regulator station from which the Mayville community will be served. At that regulator station, part of the line will continue for approximately four miles to a regulator station from which the Hillsboro community will be served. From that point, a final stretch of the line may run for approximately one-half mile to a regulator station to serve DNG's large retail customer.
- At the Mayville and Hillsboro regulator stations, additional sections will be added to the line to serve the communities' retail customers. Those sections of the line will be constructed using 6", 4" and 2" HDPE pipe and will likely total approximately 35 miles, cumulatively.³ All HDPE pipe will be installed via plowing in or directional drilling. At the regulator stations, the pressure for those sections of the pipe will be further reduced to 125 psig MAOP, but will be operated at or below that level.
- DNG anticipates that the entirety of its proposed line in North Dakota will run in the public road right-of-way.

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

³ DNG estimates that approximately 12 miles of 6" HDPE will run from the Mayville regulator station to the Mayville city limits; approximately 3 miles of 4" HDPE will run from the Hillsboro regulator station to the Hillsboro city limits; and, the remaining 3 miles of 4" HDPE and 17 miles of 2" HDPE will be used to construct the end of the distributions systems within those communities.

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.

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 2018, the Commission determined that DNG's natural gas pipeline constructed under similar circumstances to serve the Drayton area was non-jurisdictional because it has many characteristics of a distribution line, being of shorter length, smaller diameter, is downstream from a transmission line, provides service to customers, and connects to a TBS that operates as a distribution centers; no large volume customer resells gas; and, it is functionally an equivalent to a distribution main downstream of a distribution center. Similarly, 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. Subsequently, 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 Traill County.

Dated: March 30, 2020

Respectfully submitted,

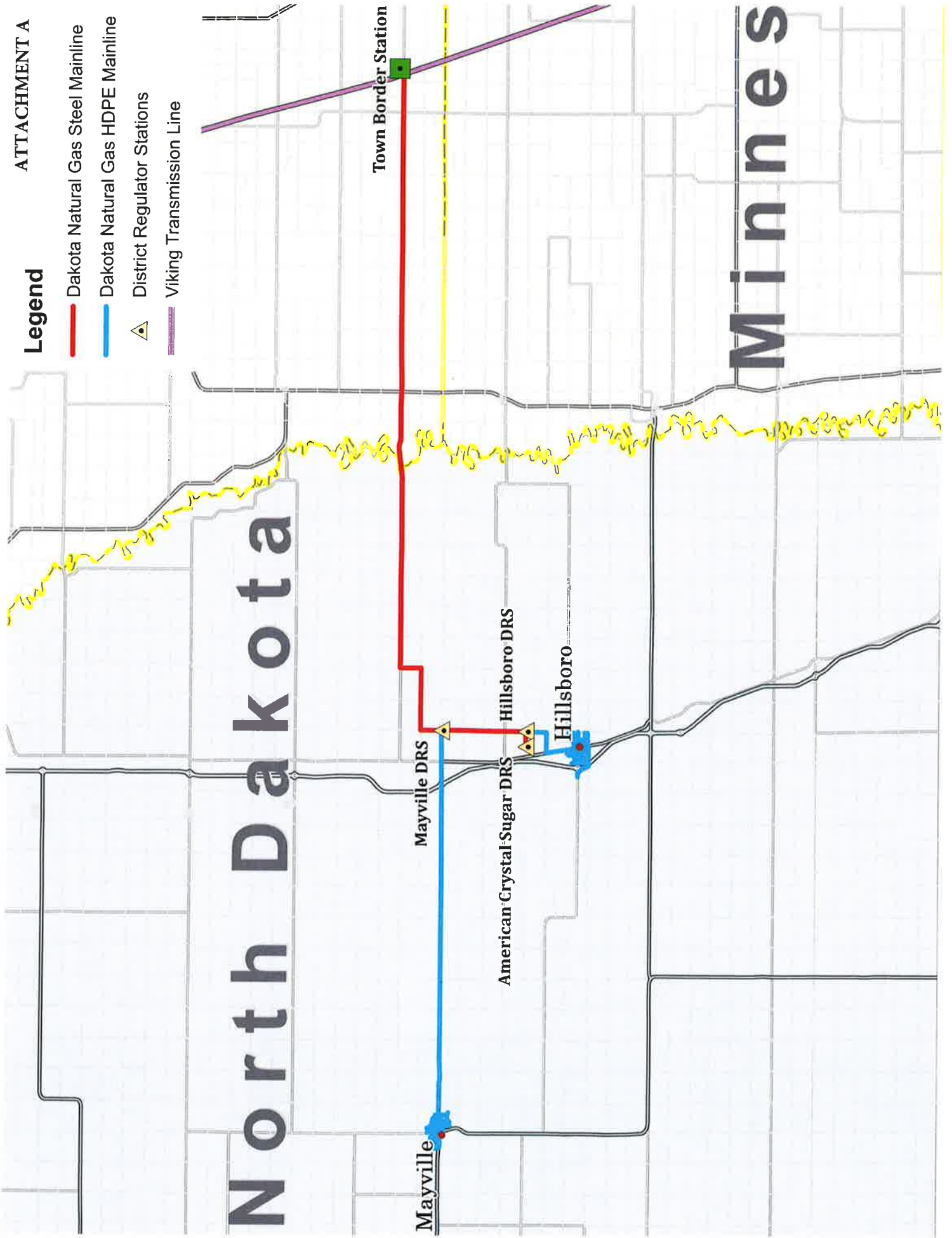


Kristine A. Anderson
Dakota Natural Gas, LLC
1900 Cardinal Lane
P.O. Box 798
Faribault, MN 55021

ATTACHMENT A

Legend

- Dakota Natural Gas Steel Mainline
- Dakota Natural Gas HDPE Mainline
- District Regulator Stations
- Viking Transmission Line



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 B405, 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".