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VIA U. S. AND ELECTRONIC MAIL

John M. Schuh
Special Assistant Attorney General
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

RE: GAS CAPACITY EXPANSION PROJECTS
REQUEST FOR JURISDICTIONAL DETERMINATION
CASE NO. PU-21-_____

Dear Mr. Schuh:

Northern States Power Company, doing business as Xcel Energy (Xcel Energy or the Company), submits this Request for Determination of Jurisdiction to the North Dakota Public Service Commission (Commission) regarding the Company's plans to undertake a significant natural gas project in its North Dakota service territory (Proposed Project).

Introduction and Background

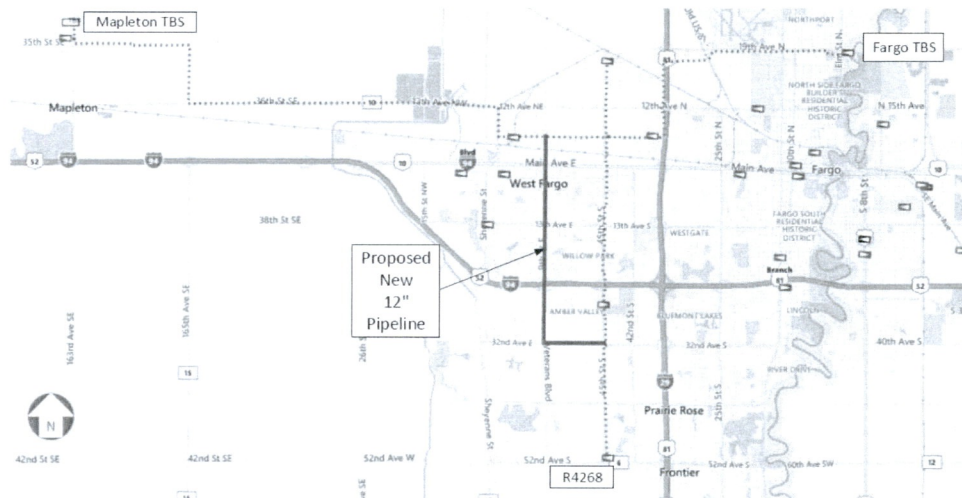
Annually, the Company reevaluates its system to incorporate customer growth, weather, and how the system performs during the prior winter season. As a result of that analysis, the Company plans to develop perhaps the most significant distribution capacity expansion project in our North Dakota service territory. The Proposed Project is a \$28 million, 4.5 mile extension in the southwest Fargo/West Fargo metro area. A brief description of the Proposed Project follows:

Fargo/West Fargo Capacity Expansion - \$28.0 million

The proposed pipeline will augment the existing 8-inch high pressure (HP) pipeline along 45th street in Fargo. The existing pipe serves the southwestern portion of the Company's natural gas distribution system in Fargo/West Fargo and is at capacity due to robust natural gas customer growth in recent years. The current system capacity is sufficient to reliably serve firm customers at temperatures down to -33° F, which occurs once every ten years. However, the proposed capacity upgrade will position the system to serve firm customers at -37° F, which occurs once every thirty years. (One in thirty year low temperatures is also referred to as the Company's "design day.") The distribution capacity expansion involves

the installation of 24,000 feet of 12 inch, HP pipe generally south along 9th Street East in West Fargo and east along 32nd Ave South to 45th Street in Fargo.

Figure 1 – Fargo/West Fargo Gas Capacity Expansion



Request for Jurisdictional Determination

The Company has identified N.D.C.C. § 49-22.1-04 and the related definition of “Gas or liquid transmission facility” found in N.D.C.C. § 49-22.1-01(7) (together, the Certificate Requirement) as a statutory construct to be evaluated when considering the Proposed Project described above. N.D.C.C. § 49-22.1-04 provides in relevant part that the Company “may not begin construction of a . . . gas or liquid transmission facility in the state without first having obtained a . . . route permit from the commission pursuant to this chapter.” Under N.D.C.C. § 49-22.1-01(7), a

“[G]as or liquid transmission facility” means any of the following:

- a. 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. This subdivision does not apply to:*
 - (1) An oil or gas pipeline gathering system;*
 - (2) A pipeline with an outside diameter of four and one-half inches [11.43 centimeters] or less which will not be trenched and will be plowed in with a power mechanism having a vertical knife or horizontally directionally drilled, and its associated facilities; or*
 - (3) A pipeline that is less than one mile [1.61 kilometers] long. For purposes of this chapter, a gathering system includes the pipelines and associated facilities used to collect oil from the lease site to the first pipeline storage site where pressure is increased for further transport, or*

pipelines and associated facilities used to collect gas from the well to the gas processing facility at which end-use consumer-quality gas is produced, with or without the addition of odorant.

The Company believes that, based on the statute's language and using the related definitions under federal law as guidance, the Certificate Requirement should not be applicable to the Proposed Project. As a result, Xcel Energy requests a determination that the Certificate Requirement is not applicable to the Fargo/West Fargo project, and that the Company should instead pursue local permitting of the project. We provide below our analysis in support of a determination that the project is not subject to Commission jurisdiction pursuant to the Certificate Requirement.

As stated above, N.D.C.C. § 49-22.1-01(7) defines a "Gas or liquid transmission facility" as "[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." When the Commission has considered previous similar requests for jurisdictional determinations, it has looked to guidance from Title 49 Code of Federal Regulations Part 192, which applies to the transportation of natural gas by pipeline and includes each of the recognized stages of gas pipeline transportation: gathering, transmission, and distribution. Under 49 Code of Federal Regulations § 192.3, the term "transmission line" is defined as follows:

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 SMYS [i.e., specified minimum yield strength]; or (3) transports gas within a storage field.

The proposed project described above is not transporting gas to a distribution center, storage facility, large customers not down-stream from a distribution center, or within a storage field. Moreover, the Proposed Project will operate at a hoop stress below 20 percent of SMYS, and thus does not satisfy the federal definition of a transmission line. Therefore, the Proposed Project is not a transmission line as that term is defined under federal law. Instead, the project has the characteristics of a distribution line. Commission staff made a similar conclusion when responding to a request for a jurisdictional determination from Montana-Dakota Utilities Company in 2017, but also made clear that its conclusion did not set precedent. See the July 12, 2017 letter from Special Assistant Attorney General John M. Schuh in response to Montana-Dakota Utilities Company's Request for Jurisdictional Determination in Case No. PU-17-240.

On June 4, 1985 the Commission approved a motion that established Commission policy regarding the applicability of the North Dakota pipeline siting statute. The motion was as follows:

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 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, NDCC:

- 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.

While this Commission policy relates to N.D.C.C Chapter 49-22, the Energy Conservation and Transmission Facility Siting Act, we believe that the same policy can be applied to the more recently enacted N.D.C.C. Chapter 49-22.1 since the natural gas related provisions were moved to Chapter 49-22.1.

Conclusion

The Company believes that the proposed Fargo/West Fargo capacity expansion is not a “transmission line” as intended in N.D.C.C. Ch. 49-22.1 or defined under federal law, and therefore the Certificate Requirement should not apply. Based on this, the Company respectfully requests a jurisdictional determination that the Certificate Requirement does not apply to our proposed Fargo/West Fargo project.

Sincerely,

/s/

Matt Harris
Lead Assistant General Counsel