

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Dakota Gasification Company
Carbon Dioxide Gas Pipeline – Mercer County
Siting Application**

Case No. PU-21-150

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

July 28, 2021

Appearances

Commissioners Julie Fedorchak, Randy Christmann, and Brian Kroshus.

Casey Jacobson, Senior Staff Counsel, Basin Electric Power Cooperative, 1717 East Interstate Avenue, Bismarck, North Dakota 58501, on behalf of Dakota Gasification Company.

Zachary Pelham, as Special Assistant Attorney General, Counsel for the North Dakota Public Service Commission, 600 E. Boulevard Avenue, Dept. 408, Bismarck, North Dakota 58505.

Hope Hogan, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street, Suite 303, Bismarck, North Dakota 58503, as Procedural Hearing Officer.

Preliminary Statement

On April 23, 2021, Dakota Gasification Company (DGC), filed with the North Dakota Public Service Commission (Commission) a combined application for a certificate of corridor compatibility and a route permit (Application) concerning the location of approximately 2.9 miles of 12-inch and 3.9 miles of 6-inch carbon dioxide gas pipeline; located in Mercer County, North Dakota (Project).

On June 9, 2021, the Commission deemed the Application complete and issued a Notice of Filing and Public Hearing (Notice) scheduling a public hearing for July 12, 2021, at 8:30 a.m. Central Time at Energy Wellness Center, 1900 Central Avenue North, Beulah, ND.

The Notice identified the following issues to be considered with respect to the Application:

1. Will construction, operation, and maintenance of the facilities at the proposed locations produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?
3. Will construction, operation, and maintenance of the facilities at the proposed locations minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

On June 10, 2021, the Commission provided notification of the Application to Mercer County.

On July 6, 2021, DGC filed documents with the Commission to supplement the Application.

On July 12, 2021, the hearing was held as scheduled allowing any interested parties to present testimony in person. Exhibits 1 through 12 were admitted at the hearing.

Having allowed all interested persons an opportunity to be heard, and having heard, reviewed, and considered all testimony and evidence presented, the Commission makes its:

Findings of Fact

1. Dakota Gasification Company is a North Dakota corporation and a wholly owned subsidiary of Basin Electric Power Cooperative, a North Dakota cooperative corporation as evidenced by the corporate papers filed with the Commission on June 11, 2021, in Case No. PU-08-113.

Size, Type, and Preferred Location of Facility

2. DGC intends to construct approximately 2.9-miles of 12-inch and 3.9-miles of 6-inch steel carbon dioxide gas transmission line in Mercer County, North Dakota (Project). The purpose of the Project is to transport carbon dioxide (CO₂) to geologic storage. The Project originates at DGC's Great Plains Synfuels Plant, in Mercer County and terminates at six CO₂ injection well locations north of the Great Plains Synfuels Plant. The proposed facility corridor and pipeline route is identified in Hearing Exhibit 8.

3. The Project will be 6-inch diameter steel pipe with a wall thickness of 0.280 inches (0.432 inches in bored locations) and 12-inch diameter steel pipe with a wall thickness of 0.375 inches (0.500 inches in bored locations) and a maximum operating pressure of

2,700 pounds per square inch gauge. The maximum operating temperature of the Project will be 120 degrees Fahrenheit.

4. The Project will have a flow rate capacity of up to 200 million standard cubic feet per day.

5. Eight (8) aboveground facilities will be associated with the project. One (1) aboveground location is on DGC property and is associated with flow control, metering, and pig launching for the 12-inch mainline. One (1) aboveground location is adjacent to Well Site 3 and is associated with pig receiving for the 12-inch mainline and for metering and communications equipment at the CO₂ custody transfer point to Well Site 3. Five (5) of the aboveground facilities are for metering and communications equipment at each of the five other injection well sites. One additional aboveground site is necessary to accommodate the lateral line from the mainline to Well Site 1. A chain link fence and a building to house the control and communications equipment will also be installed at each site.

6. The estimated cost of the Project is \$25 million.

Study of Preferred Location

7. DGC initiated correspondence seeking comments from following federal, state and local agencies regarding the Project:

a. Federal: (1) Federal Aviation Administration; (2) U.S. Army Corps of Engineers; (3) U.S. Department of Defense; (4) U.S. Fish and Wildlife Service.

b. State: (1) ND Attorney General; (2) ND Department of Agriculture; (3) ND Department of Career and Technical Education; (4) ND Department of Commerce; (5) ND Department of Environmental Quality; (6) ND Aeronautics Commission; (7) ND Department of Human Services; (8) ND Department of Transportation; (9) North Dakota Department of Trust Lands; (10) ND Energy Development Impact Office; (11) ND Game and Fish Department; (12) ND Indian Affairs Commission; (13) ND Industrial Commission; (14) ND Labor Department; (15) ND Parks and Recreation Department; (16) ND Soil Conservation Committee; (17) ND State Water Commission; (18) Job Service of North Dakota; (19) ND State Historic Preservation Office; (20) ND Office of the Governor; (21) ND Transmission Authority; (22) ND Pipeline Authority; and (23) ND Department of Health.

c. Local: (1) Mercer County Commission.

8. DGC conducted a Class I cultural resource literature review, and a desktop analysis for wetlands, waterbodies, and other sensitive environmental resources, across a one-mile-wide area centered on the Project route (Study Area).

9. DGC conducted several surveys across a generally 200-foot-wide area centered on the Project route as approximated on Hearing Exhibit 8 and identified precisely by the associated GIS map data (Survey Area). DGC conducted surveys for threatened and endangered species, critical habitats, wetlands, waterbodies, and trees/saplings/shrubs.

10. DGC conducted a Class III cultural resources inventory across the Survey Area. The Class III report was submitted to the North Dakota State Historic Preservation Office (SHPO). In a response dated May 20, 2021, SHPO concurred with a determination of "No Significant Sites Affected" for the Project, provided it takes place in the location and in the manner described in the documentation.

Siting Criteria

11. The Commission has established criteria pursuant to North Dakota Century Code Section 49-22.1-03 to guide the site, corridor, and route suitability evaluation and designation process. The criteria, as set forth in North Dakota Administrative Code Section 69-06-08-02, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

12. DGC evaluated the Project for the Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria of the Commission.

13. An Exclusion Area is a geographic area that must be excluded in the consideration of a route for a transmission facility. An Exclusion Area may be located within a corridor, but at no given point may such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative. A transmission facility route must not be sited within an Exclusion Area.

14. DGC's studies and surveys did not record any Exclusion Areas within the Survey Area.

15. An Avoidance Area is a geographic area that may not be considered in the routing of a transmission facility unless the applicant shows that, under the circumstances, there is no reasonable alternative. In determining whether an Avoidance Area should be designated for a transmission facility, the Commission may consider, among other things, the proposed management of adverse impacts, the orderly siting of facilities, system reliability and integrity, the efficient use of resources, and alternative routes.

16. Historical resources which are not specifically designated as exclusion or avoidance areas are designated avoidance areas under NDAC section 69-06-08-02(2)(c). DGC's studies and surveys recorded one historical resource within the Survey Area. Recorded site 32ME220 is located within and adjacent to the Corridor. 32ME220 was mitigated in 1989 as part of surface mine development. No avoidance was

recommended by Metcalf Archaeological Consultants (MAC). North Dakota State Historic Preservation Office concurred with MAC's Recommendation.

17. Areas within five hundred feet [152.4 meters] of a residence, school, or place of business are designated avoidance areas under NDAC section 69-06-08-02(2)(c). The DGC plant site and Coteau Properties Office and shop complex are within 500 feet of the Route. No impacts are anticipated to these industrial facilities and no buffer is proposed. DGC entered Exhibits 9 and 10, which are waivers from DGC and Coteau.

18. DGC's studies and surveys did not record any other Avoidance Areas within the Survey Area.

19. In accordance with the Commission's Selection Criteria set forth in North Dakota Administrative Code section 69-06-08-02(3), a transmission facility corridor or route shall be approved only if it is demonstrated that any significant adverse effects that will result from the location, construction, and maintenance of the transmission facility will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. DGC has analyzed the impacts of the Project in relation to all relevant Selection Criteria.

20. Wetlands are a selection criteria. While National Wetlands Inventory wetlands and National Hydrography Dataset waterbodies were identified in the Survey Area, analysis of aerial photography and field surveys shows these areas as appearing to be previously disturbed by surface mining activities. Of eleven potential wetlands identified intersecting the Survey Area, there were nine areas where no obvious signs of wetland vegetation or wetland hydrology were present. Many wetlands that were initially identified during desktop efforts were found to no longer be a wetland likely due to past mining and reclamation activities. One identified wetland intersects the 200-foot wide Survey Area boundary but will not be impacted by the 75-foot wide construction ROW. A second wetland crosses the entire Survey Area and will be avoided using the horizontal drilling technique.

21. The Project will have no significant adverse effects on the Commission's Selection Criteria.

22. DGC analyzed the relevant Policy Criteria set forth in Section 69-06-08-02(4) of the North Dakota Administrative Code. There is no need for the Commission to give preference to the applicant in this proceeding.

Additional Measures to Minimize Impact

23. DGC has agreed to a number of steps to mitigate the impact of the Project, as indicated by the executed Certification Relating to Order Provisions – Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications, which is incorporated by reference and attached to this Order.

24. DGC has developed an Unanticipated Discovery Plan which is included with the Application. DGC will develop a Storm Water Pollution Prevention Plan which must be approved by the North Dakota Department of Environmental Quality and will file a copy of the permit with the Commission once obtained.

25. The Project will be designed, constructed, and operated in accordance with U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations utilizing industry standards.

26. DGC testified that it will follow a written manual of procedures for conducting normal operations and maintenance activities and for handling abnormal operations and emergencies in accordance with 49 CFR Part 195. In the event that the pipeline's pressure exceeds operating tolerance, Great Plains Synfuels Plant is equipped with pressure release systems. Furthermore, once constructed, a leak detection and monitoring system will be employed and testimony showed that DGC will monitor the Project 24 hours a day, 7 days a week by trained personnel.

27. DGC testified that they conduct outreach meetings with local emergency response officials to educate them on the steps DGC takes during pipeline emergencies.

28. DGC will require its contractors to remove soil and debris capable of spreading noxious weeds, prior to the beginning of construction. Furthermore, DGC will ensure that seed mixes are certified weed free from approved certified sources as recommended by the county weed agencies.

29. DGC will participate in the North Dakota One-Call notification system.

30. DGC will comply with all applicable safety laws and standards.

From the foregoing Findings of Fact, the Commission now makes its:

Conclusions of Law

1. The Commission has jurisdiction over the applicant, Dakota Gasification Company, and the subject matter of the Application under Chapter 49-22.1 of the North Dakota Century Code (NDCC).

2. DGC is a utility as defined in NDCC section 49-22.1-01(13).

3. The Project is a gas or liquid transmission facility as defined in NDCC section 49-22.1-01(7).

4. The construction, operation, and maintenance of the Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.

5. The Project is compatible with environmental preservation and the efficient use of resources.

6. The construction, operation, and maintenance of the Project minimizes adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

From the foregoing Findings of Fact and Conclusions of Law, the Commission makes the following order:

Order

1. DGC shall construct, operate, and maintain the pipeline in accordance with the Commission's Findings of Fact.

2. Certificate of Corridor Compatibility No. 223 is issued to Dakota Gasification Company designating a corridor generally 200-foot-wide for the construction, operation, and maintenance of approximately 2.9 miles of 12-inch and 3.9 miles of 6-inch diameter carbon dioxide gas pipeline and associated facilities in Mercer County, North Dakota, as approximated on Hearing Exhibit 8 and identified precisely by the associated GIS map data.

3. Route Permit No. 233 is issued to Dakota Gasification Company designating a route for the construction, operation, and maintenance of approximately 2.9 miles of 12-inch and 3.9 miles of 6-inch diameter carbon dioxide gas pipeline and associated facilities in Mercer County, North Dakota, as approximated on Hearing Exhibit 8 and identified precisely by the associated GIS map data. The designated route includes a route construction buffer of 20 feet on each side of the designated route, contingent upon not impacting an avoidance area unless DGC receives written authorization, from the Commission before conducting any associated construction activities, that DGC may impact the avoidance area. Construction activities must not impact an exclusion area.

3. The Certification Relating to Order Provisions – Transmission Facility Siting (Certification), with accompanying Tree and Shrub Mitigation Specifications, executed July 6, 2021, is incorporated by reference and attached to this Order.

4. To the extent there are any conflicts or inconsistencies between DGC's Application and the Certification, the Certification provisions control.

5. DGC shall obtain all other necessary licenses and permits prior to commencing construction on such portion of the Project for which the license and/or permit is required and shall provide copies of such licenses and permits to the Commission prior to construction.

6. If a spill by DGC requires notification to any other state or federal agency, DGC will also inform the Commission of such spill within 24 hours of occurrence by leaving a message at the Commission's Toll Free Number, with a follow-up email to the Commission's Executive Secretary.

7. DGC is required to comply with all applicable laws, rules, and/or regulations in the event it desires to construct another or a different transmission facility than was specified in the Application within the corridor designated in this proceeding.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner



Julie Fedorchak
Chair



Brian Kroshus
Commissioner

**PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA**

Certificate of Corridor Compatibility Number 223

This is to certify that the Commission has designated a transmission facility corridor for Dakota Gasification Company designating a corridor generally 200-feet-wide for the construction, operation, and maintenance of approximately 2.9 miles of 12-inch diameter and 3.9 miles of 6-inch diameter carbon dioxide gas pipeline and associated facilities in Mercer County, North Dakota.

This certificate is issued in accordance with the Order of the Commission dated July 28, 2021, in Case No. PU-21-150 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, July 28, 2021.

ATTEST:

PUBLIC SERVICE COMMISSION



Executive Secretary



Commissioner

PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA

Route Permit Number 233

This is to certify that the Commission has designated a transmission facility route for Dakota Gasification Company for the construction, operation, and maintenance of approximately 2.9 miles of 12-inch diameter and 3.9 miles of 6-inch diameter carbon dioxide pipeline and associated facilities in Mercer County, North Dakota.

This permit is issued in accordance with the Order of this Commission dated July 28, 2021, in Case No. PU-21-150 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, July 28, 2021.

ATTEST:

PUBLIC SERVICE COMMISSION



Executive Secretary



Commissioner

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Dakota Gasification Company
Carbon Dioxide Gas Pipeline – Mercer County
Siting Application**

Case No. PU-21-150

**CERTIFICATION RELATING TO ORDER PROVISIONS
TRANSMISSION FACILITY SITING**

I am DALE JOHNSON, a representative of Dakota Gasification Company ("Company") with authority to bind the Company to requirements to be set forth by the Commission in its Order and I certify the following:

1. Company understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission will be subject to the conditions and criteria set forth in Chapter 49-22.1 of the North Dakota Century Code and Chapter 69-06-08 of the North Dakota Administrative Code, and that Company shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. Company agrees to comply with the rules and regulations of all other agencies having jurisdiction over any phase of the transmission facility including all city, township, and county zoning regulations.
3. Company understands and agrees that it shall obtain all other necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission prior to construction activity associated with the transmission facility that requires said license or permit.
4. Company understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission is subject to suspension or revocation and may, in an appropriate and proper case, be suspended or revoked for failure to comply with the Commission's order, the conditions and criteria of the certificate or subsequent modification, or failure to comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies.
5. Company agrees to maintain records that will demonstrate that it has complied with the requirements of the Commission's order issuing a Certificate of Corridor Compatibility or Route Permit, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.
6. Company understands and agrees that the authorizations granted by any Certificate of Corridor Compatibility or Route Permit issued by the Commission for the

transmission facility are subject to modification by order of the Commission if deemed necessary to protect further the public or the environment.

Construction:

7. Company agrees to hold a preconstruction conference prior to commencement of any construction, which must include a Company representative, its construction supervisor, and a representative of Commission Staff, to ensure that Company fully understands the conditions set forth in the Commission's order.
8. Company understands and agrees that all cultural resource mitigation plans must be submitted to the North Dakota State Historic Preservation Office and approved prior to the start of any fieldwork and construction activity in the affected area.
9. Company understands and agrees that topsoil removal will begin when the Commission's third-party construction inspector is present at the Project site to observe that topsoil is properly removed and kept segregated from subsoil until replacement occurs. Company shall establish the date and time for the Commission's third-party construction inspector's topsoil removal oversight in the preconstruction conference.
10. Company agrees to inform the Commission and the Commission's third-party construction inspector of its intent to start construction on the transmission facility prior to the commencement of construction. Once construction has started, Company shall keep the Commission and the Commission's third-party construction inspector updated on construction activities on a monthly basis.
11. Company understands and agrees that the pipeline will be buried to a minimum depth from the ground surface to the top of the pipe of 48 inches in range land, 48 inches for cultivated land, 48 inches at the bottom of the ditch for road crossings, and 72 inches across undeveloped section lines.
12. Company understands and agrees that all topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas where cuts will be made, must be carefully stripped and segregated from the subsoil. Any area on which excavated subsoil will be placed must also be stripped of topsoil. The stripped topsoil must not be stockpiled in natural drainages, and must be protected from water erosion. Care must be taken to protect topsoil from unnecessary compaction by heavy machinery. Unless otherwise approved by the Commission, topsoil must be removed before topsoil freezes in the late fall/ early winter to the point that frost inhibits proper soil segregation. After backfilling with subsoil is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must be replaced over areas from which it was stripped only after the subsoil is replaced.

13. Company understands and agrees that all buried facility crossings of graded roads must be bored unless the responsible governing agency specifically permits Company to open cut the road.
14. Company understands and agrees that staging areas or equipment shall not be located on land owned by a person other than Company unless otherwise negotiated with landowners.
15. Company understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made and a report of such examination is filed with the Commission and the State Historical Society.
16. Company understands and agrees that construction must be suspended when weather conditions are such that construction activities will cause irreparable damage to roads or land, unless adequate protection measures are taken by Company.
17. Company understands and agrees that the Commission has authority to stop Project construction activities in the event of a probable violation of the siting laws, siting rules, or applicable Commission Orders if, in the opinion of the Commission, construction activities are likely to result in irreparable or significant harm.

Restoration and Maintenance:

18. Company understands and agrees that it shall, as soon as practicable upon the completion of the construction of the transmission facility, restore the area affected by the activities to as near as is practicable to the condition as it existed prior to the beginning of construction.
19. Company understands and agrees that all pre-existing township and county roads and lanes used during construction must be repaired or restored to a condition that is equal to or better than the condition prior to the construction of the transmission facility and that will accommodate their previous use, and that areas used as temporary roads or working areas during construction must be restored to their original condition.
20. Company understands and agrees that reclamation, fertilization, and reseedling is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.

21. Company will fulfill its obligation for reclamation and maintenance of the approved transmission facility right-of-way, transmission facility, and associated facilities continuing throughout the life of the transmission facility.
22. Company will repair all fences and gates removed or damaged during all phases of construction and operation of the transmission facility.
23. Company will repair or replace all drainage tile broken or damaged as a result of construction and operation of the transmission facility.
24. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
25. Company understands and agrees that it shall remove all waste that is a product of construction and operation, restoration, and maintenance of the site, and properly dispose of it on a regular basis.
26. Company understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the transmission facility.

Communication with Landowners and PSC:

27. Company understands and agrees that, prior to beginning construction of the transmission facility at a location, it shall send a letter to each landowner with whom an easement was executed for that location specifying the name and phone number of the company representative who is responsible for receiving and resolving landowner issues for the life of the easement.
28. Company understands and agrees that it will file with the commission the name and phone number of the current company representative who is responsible for receiving and resolving landowner issues for the transmission facility. The company will update this information whenever there is a change to the current company representative for the life of all easements for the transmission facility.
29. Upon request, Company agrees to provide the Commission with engineering design drawings of the transmission facility prior to construction.
30. Company understands and agrees that it shall advise the Commission as soon as reasonably possible of any extraordinary events which take place at the site of the transmission facility, including injuries to any person.
31. Company agrees to report to the Commission, as soon as reasonably possible, the presence in the permit area of any critical habitat or threatened or endangered species of which Company becomes aware and which were not previously reported to the Commission.

32. Company understands and agrees that it shall inform the Commission in writing of any plans to modify the transmission facility or of any plans to modify the site plan for the transmission facility.
33. Company agrees to provide the Commission with both an electronic and a paper copy of the corridor approved by the Commission and the facility design specifications for the construction of the transmission facility showing the location of the transmission facility as built, and will provide this information within 3 months of the completion of the construction. Company also agrees to provide an electronic version of the corridor approved by the Commission and the facility design specifications for the construction of the transmission facility showing the location of the transmission facility as built that can be imported into ESRI GIS mapping software within 3 months of the completion of the construction. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in the appropriate vertical datum for the coordinate system used. All submissions must specify the datum in which the data was developed.
34. Company shall notify the Commission as soon as reasonably possible if any damage, as defined by North Dakota Century Code Chapter 49-23, occurs to underground facilities during construction conducted under the certificate or permit issued in this proceeding. In the event of any damage to underground facilities, Company shall suspend construction in the vicinity of the damage until compliance with One-Call Excavation Notice System requirements under North Dakota Century Code Chapter 49-23 has been determined.

Route Adjustments Before or During Construction:

35. Company agrees to utilize the following procedures if Company seeks a route adjustment before or during construction of the pipeline, pursuant under N.D.C.C. §49-22.1-15.
36. Company will specifically identify which subsection of NDCC 49-22.1-15 it is requesting the adjustment under. Company will file the name and contact information for a key contact person for the purposes of notice and communication during the adjustment application.
37. **ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED:** Before conducting any construction activities for any adjustment to the designated route within the designated corridor under NDCC 49-22.1-15(1), the Company will file:

- a. Certification and supporting documentation affirming that construction activities will be within the designated corridor, will not affect any known exclusion or avoidance areas within the designated corridor;
- b. Certification and supporting documentation, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, route and the route adjustment;
- c. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

38. ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, AVOIDANCE AREA AFFECTED: Before adjusting the route of a gas or liquid transmission line under NDCC 49-22.1-15(2), within the designated corridor that may affect an avoidance area, and before conducting any construction activities for any adjustment to the designated route within the designated corridor, the Company will file:

- a. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying:
 - i. the designated corridor, route and the route adjustment;
 - ii. all exclusion and avoidance areas within the portion of the designated corridor containing the route adjustment
- b. Certification and supporting documentation affirming:
 - i. That construction activities will be within the designated corridor
 - ii. That construction activities will not affect any known exclusion area
- c. All field studies performed on the portion of the designated corridor containing the route adjustment;
- d. Specific information about any mitigation measures Company will take within the adjustment area;
- e. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment;
- f. Certification that unless the Commission previously authorized the impact to the same avoidance area, that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist;
- g. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

Company acknowledges and agrees that:

1. Written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity unless the Commission fails to act within ten working days of receipt of filing a complete adjustment application, in which case the adjustment is deemed approved.
2. The initiation of the ten working days begins upon receipt of a complete filing, to include Company's certifications, supporting documentation and maps. However, Commission may extend the ten working day provision if Company, in the person of the key contact referenced above, is informed of the reason additional time is necessary for extension and has no objection to an extension.

39. **ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22.1-15(3), outside the designated corridor and not affecting any exclusion and avoidance area, before conducting any construction activities for any adjustment to the designated route outside the designated corridor, the Company will file:

- a. Certification and supporting documentation affirming that construction activities will not affect any known exclusion or avoidance areas,
- b. Certification and supporting documents stating the length of the proposed route outside of the corridor and a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, corridor adjustment, designated route and the route adjustment;
- c. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment; and
- d. Detailed field studies indicating exclusion and avoidance areas for the proposed adjustment area; and
- e. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

40. **ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, AVOIDANCE AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22.1-15(4), outside the designated corridor that may affect an avoidance area, and before conducting any construction activities for any adjustment to the designated route outside the designated corridor, the Company will file:

- a. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying:
 - i. the designated corridor, corridor adjustment, route and the route adjustment;

- ii. all exclusion and avoidance areas within the adjustment area
- b. Certification that construction activities will not affect any known exclusion area;
- c. Certification that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist within the designated corridor and route;
- d. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment;
- e. Provide specific information about any mitigation measures Company will take within the adjustment area;
- f. Detailed field studies indicating exclusion and avoidance areas for the proposed adjustment area; and
- g. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.


Company acknowledges and agrees that:

- 1. Written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity unless the Commission fails to act within ten working days of receipt of filing a complete adjustment application, in which case the adjustment is deemed approved.
- 2. The initiation of the ten working days begins upon receipt of a complete filing, to include Company's certifications, supporting documentation and maps. However, Commission may extend the ten working day provision if Company, in the person of the key contact referenced above, is informed of the reason additional time is necessary for extension and has no objection to an extension.

- 41. When applicable, Company may submit the field studies from the original application for the corridor and route provided they cover the adjustment area.

Dated this 6 day of JULY, 2021.

DAKOTA GASIFICATION COMPANY

By 
VP AND PLANT MANAGER

Its _____

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Dakota Gasification Company
Carbon Dioxide Gas Pipeline – Mercer County
Siting Application**

Case No. PU-21-150

Tree and Shrub Mitigation Specifications

Inventory

Prior to cutting or clearing trees or shrubs for construction:

- All trees one-inch or greater in diameter at breast height must be inventoried to record the location, number, and species.
- All shrubs and all coniferous trees of any diameter must be inventoried to record the location, number, and species.

Clearing

The maximum width of tree and shrub removal is 50 feet, unless otherwise approved by the Commission.

Replacement

1. Landowners must be given the option to have trees and shrubs that are removed from their property replaced on their property. The landowner may waive this option in writing. If the landowner waives this option, the company shall plant replacement trees and shrubs in an alternate location in the same region, if practical.
2. Trees and shrubs must be replaced on a minimum two-to-one basis. The company shall develop a Tree and Shrub Mitigation Plan (Plan) in consultation with landowners who are seeking replacement trees and shrubs and in accordance with USDA-NRCS-North Dakota Field Office Technical Guide: Windbreak and Woodland Tree Care and Management. The guidelines outlined in the Technical Guide shall be followed until filing of the Plan summary outlined in number 5 below.
3. The purpose of the company's Tree and Shrub Mitigation Plan is to create sustainable plantings, appropriate for the local soil and growing conditions that will provide long-term benefit to landowners, farmers and ranchers, the community, wildlife and the environment.
4. The Plan, including the proposed number, variety, type, location, and approximate date for plantings, shall be filed with and approved by the Commission.
5. Two years after completion of the plan, the company must file a summary documenting how the plan achieved the purpose outlined in number 3 above. The summary must also report the number of surviving replacement trees and shrubs.
6. The Commission will consider, on a limited basis as conditions warrant, mitigation plans that provide long-term wildlife habitat and conservation benefits but do not involve the replanting of trees and shrubs.