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August 30, 2023

**ORIGINAL VIA FEDERAL EXPRESS**

Mr. Steve Kahl, Executive Secretary  
North Dakota Public Service Commission  
600 E. Boulevard Ave., Dept. 480  
Bismarck, ND 58505-0480

RE: Application for Certificate of Public Convenience and Necessity  
for Larimore, North Dakota and Arvilla, North Dakota

Dear Mr. Kahl:

Enclosed herewith, please find a collection of documents related to Dakota Natural Gas, LLC's (DNG's) Application for a Certificate of Public Convenience and Necessity, submitted pursuant to N.D. Admin. Code § 49-03.1-01. The Application seeks such a Certificate to allow DNG to construct and operate the facilities described therein to provide natural gas service to the Larimore, North Dakota and Arvilla, North Dakota areas. Specifically, the following documents are filed herewith:

1. Request for Jurisdictional Determination;
2. Application for Trade Secret Protection;
3. Application for a Certificate of Public Convenience and Necessity (both trade secret and public versions); and,
4. Application for Tariff Revision.

Please note that there are two versions of the Application for a Certificate of Public Convenience and Necessity; namely, one that is redacted for public viewing and one that includes a non-public attachment containing trade secret information. The trade secret version is so marked. Ergo, DNG's Application for Trade Secret Protection, also enclosed, seeks protection for certain information appended to the Request as Attachment C. The trade secret version of the document is being sent via Federal Express along with a sealed envelope containing the protected Attachment.

In order to mitigate the impacts of continuing increases in material costs and to allow for construction to begin promptly, DNG respectfully requests expedited treatment of its requests. DNG is hopeful that a jurisdictional determination can be made quickly. Additionally, DNG is both cognizant and respectful of the Commission's time and, in order to maximize efficiency, DNG respectfully requests that the Commission consolidate the matters into one docket and allow the timeline for notice and an opportunity to be heard to run contemporaneously, such that the Commission give notice of an opportunity to request a hearing to interested parties and, if no



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Mr. S. Kahl

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hearing is requested within twenty days, that it waive the hearing in accordance with N.D.C.C. § 49-03.1-05; and, that it enter an Order approving DNG's Applications and issue a Certificate of Public Convenience and Necessity authorizing DNG to construct and operate the natural gas distribution facilities at issue in the Application and that it approve the associated tariff provisions.

Finally, DNG respectfully requests that the Commission reduce the requisite filing fees to one combined filing fee of \$10,000 on the basis that \$10,000 is sufficient for cases requiring publication of notices and, accordingly, DNG submits a check herewith for that amount, including in its Federal Express package.

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

/s/

Kristine A. Anderson

Corporate Attorney (Minnesota) & Regulatory Affairs

Enclosures

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

Randy Christmann  
Julie Fedorchak  
Sheri Haugen-Hoffart

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**

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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 the communities of Larimore, North Dakota and Arvilla, North Dakota and their environs.

**OVERVIEW**

As part of its commitment to expand natural gas service in North Dakota, DNG continues to assess unserved areas to identify those where a viable and feasible project might be possible. DNG determined that it might be able to develop such a project to serve the broader communities of Larimore and Arvilla, both of which are currently unserved communities. DNG reached out to those communities and, based on their interest and the commitments of some potential customers that would likely use substantial amounts of gas, as well as DNG reaching an agreement to secure capacity from Xcel Energy, DNG developed a project plan. DNG will initially deliver the benefits of natural gas service to the communities of Larimore and Arvilla; and, DNG is hopeful that additional communities may be added in the future if there is sufficient interest, pipeline capacity, and extending service is economically viable; and that, potentially, the line at issue in this request may be connected to existing DNG facilities to provide a looped system.<sup>1</sup> 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. Additionally, no distribution centers will be located downstream of the custody transfer point between DNG and Xcel.

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<sup>1</sup> DNG’s request for a jurisdictional determination is predicated on the assumption that natural gas service will initially be run to the Larimore and Arvilla communities.

In order to provide the service, DNG will need to construct a pipeline from a point near Emerado, North Dakota to the communities of Larimore and Arvilla. DNG has simultaneously filed 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 Xcel Energy pipeline line near Emerado, North Dakota. The line, constructed of 6" HDPE and 4" HDPE pipe, will pick up odorized gas from the custody transfer point with Xcel where DNG will reduce the pressure for its distribution system which will have at a system MAOP of 125 psig but which will be operated at or below that level
- DNG will run 6" HDPE pipe from the custody transfer point, transitioning to 4" HDPE pipe as it approaches Arvilla. A line constructed of 4" HDPE pipe will continue to Larimore. Cumulatively, the distribution main will likely total approximately 13.25 miles.
- In both the Arvilla and Larimore communities, additional sections will be added to the line to serve the communities' retail customers. Those sections of the line will be constructed using 4" and 2" HDPE pipe and will likely total approximately 10.8 miles, cumulatively.<sup>2</sup>
- All HDPE pipe will be installed via plowing in or directional drilling.
- DNG anticipates that the entirety of its proposed line will run in the public road right-of-way.

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 natural gas transmission facility. N.D.C.C. § 49-22.1-04. 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. § 49-22.1-01(7)(a). The definition of transmission facility specifically excludes natural gas distribution systems. N.D.C.C. § 49-22.1-01(7)(a)(2). Although 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

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<sup>2</sup> DNG estimates that, combined, approximately 1.3 miles of 4" HDPE and approximately 9.5 miles of 2" HDPE will be used to construct the distributions systems within those communities.

distribution line for route permitting purposes, the statutory definition of a natural gas transmission line applies to the relevant sections of the Act.

Pursuant to the Commission's policy formally adopted nearly four 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 and 2020, the Commission determined that DNG's natural gas pipelines constructed to serve the Drayton and Hillsboro and Mayville areas were non-jurisdictional because they have many characteristics of distribution lines, being of shorter length, smaller diameter, downstream from transmission lines, provide service to customers and connect to distribution centers; no large volume customers resell gas; and, are functionally an equivalent to distribution mains 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 or connected series of pipelines, other than a gathering line, that:  
(1) [t]ransports gas from a gathering pipeline or storage facility to a distribution center, storage facility, or large volume customer that is not

down-stream from a distribution center; (2) [h]as an MAOP of 20 percent or more of SMYS; (3) [t]ransports gas within a storage field; or (4) [i]s voluntarily designated by the operator as a transmission pipeline. NOTE 1 to *transmission line*. 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 (2023). Additionally, the Code of Federal Regulations explicitly defines a distribution center as

the initial 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, for example:

- (1) At a metering location;
- (2) A pressure reduction location; or
- (3) Where there is a reduction in the volume of gas, such as a lateral off a transmission line.

*Id.*

Moreover, 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 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/FactSheets/FSDistributionPipelines.htm?nocache=4081>.

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/NaturalGasPipelineSystems.htm>.

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; has an MAOP of less than 20% 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.

**REQUEST 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 interested customers in Larimore, Arvilla, and their environs.

Dated: August 30, 2023

Respectfully submitted,

/s/

Kristine A. Anderson  
Dakota Natural Gas, LLC  
1900 Cardinal Lane  
P.O. Box 798  
Faribault, MN 55021  
507-209-2110

# Proposed Larimore & Arvilla Project

## Legend

- 2" HDPE
- 2" HPDE
- 4" HDPE
- 6" HDPE

ATTACHMENT A  
Project Maps



4 mi

17

Emerado

Grand Forks AFB

Arvilla

Larimore

U.S. Rte 2

11

2

2

4

4

11

18

4A

4A

4B

18

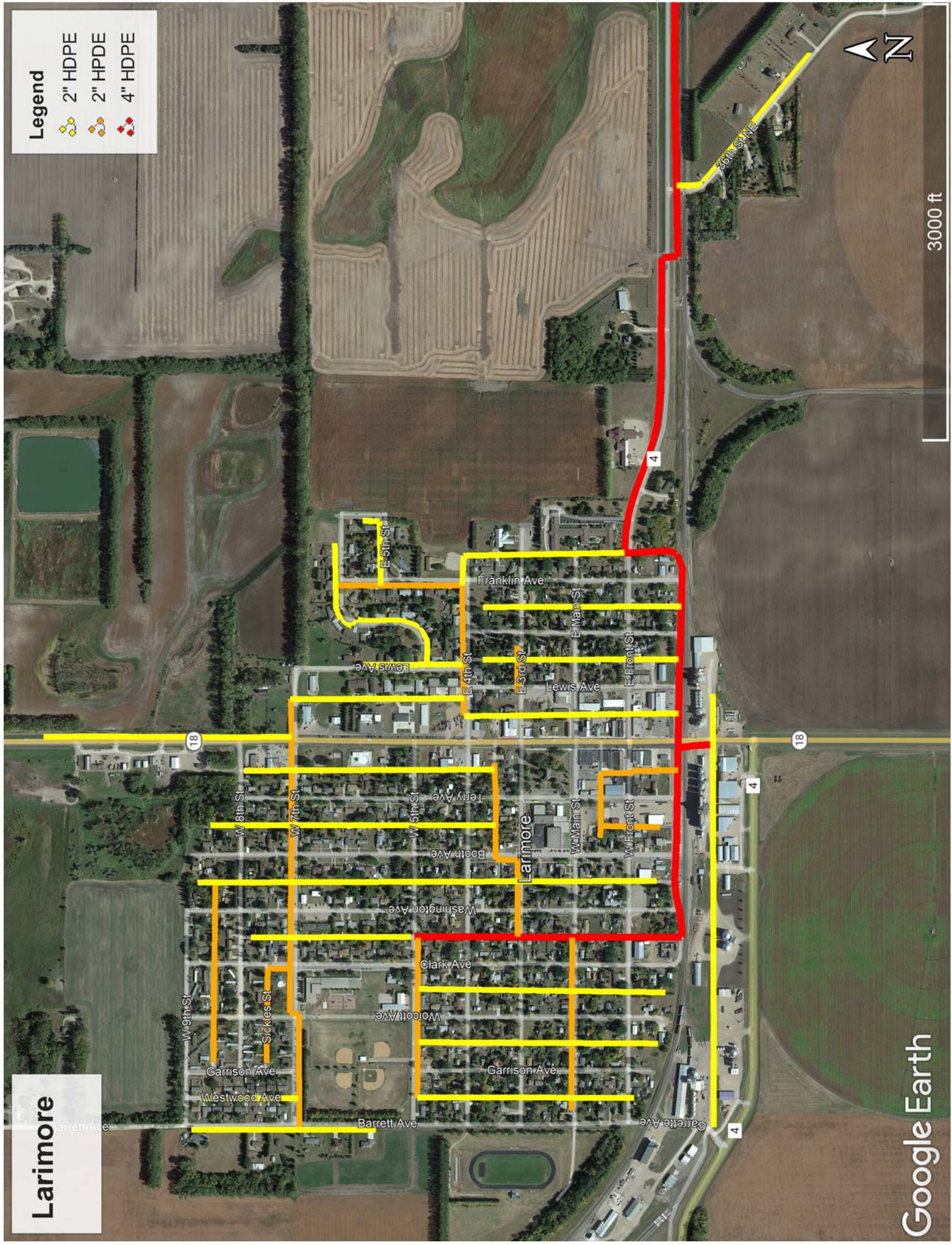
4

Google Earth

# Larimore

## Legend

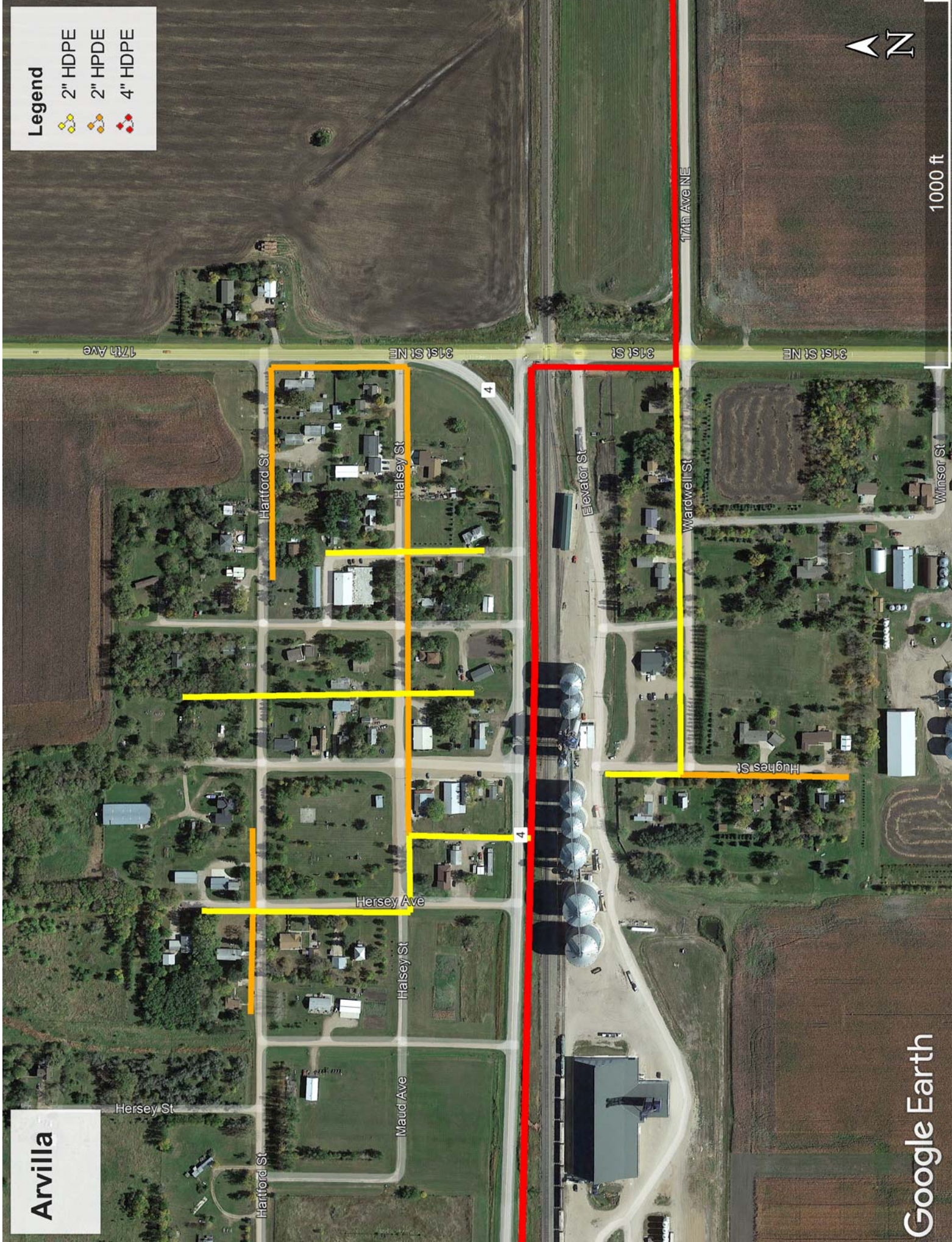
- 2" HDPE
- 2" HPDE
- 4" HDPE



# Arvilla

## Legend

- 2" HDPE
- 2" HPDE
- 4" HDPE



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 8405, 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 (N.D.C.C. 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".