

June 23, 2025

VIA ELECTRONIC MAIL TO: tbrickhouse@bepc.com

Todd Brickhouse
President & CEO
Dakota Gasification Company
1717 East Interstate Avenue
Bismarck, ND 58503

CPF No. 3-2024-036-NOPV

Dear Mr. Brickhouse:

Enclosed please find a Consent Order incorporating the terms of the Consent Agreement between the Pipeline and Hazardous Materials Safety Administration (PHMSA) and Dakota Gasification Company, which was executed on June 12, 2025. Service of the Consent Order and Consent Agreement by electronic mail is deemed effective upon the date of transmission and acknowledgement of receipt, or as otherwise provided under 49 CFR § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Linda Daugherty
Acting Associate Administrator
for Pipeline Safety

Enclosure: Consent Order and Consent Agreement

cc: Christopher Breiner, Compliance Supervisor, Dakota Gasification Company
cbreiner@bepc.com
Dale Johnson, Sr. VP & Plant Manager, Dakota Gasification Company, dalej@bepc.com
Maggie Olson, Senior Staff Counsel, Basin Electric Power Cooperative,

molson@bepc.com
James Martin, Outside Counsel, Beatty & Wozniak, PC, jmartin@bwenergylaw.com

CONFIRMATION OF RECEIPT REQUESTED

Date

I. General Provisions

1. Respondent acknowledges that as the operator of the pipeline facilities subject to the Notice, Respondent and its referenced pipeline facilities are subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and administrative orders issued thereunder. For purposes of this Consent Agreement (Agreement), Respondent acknowledges that it received proper notice of PHMSA's action in this proceeding and that the Notice states claims upon which relief may be granted pursuant to 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder.

2. After Respondent returns this signed Agreement to PHMSA, the Agency's representative will present it to the Associate Administrator for Pipeline Safety, recommending that the Associate Administrator adopt the terms of this Agreement by issuing an administrative order (Consent Order) incorporating the terms of this Agreement. The terms of this Agreement constitute an offer of settlement until accepted by the Associate Administrator. Once accepted, the Associate Administrator will issue a Consent Order incorporating the terms of this Agreement.

3. Respondent consents to the issuance of the Consent Order, and hereby waives any further procedural requirements with respect to its issuance. Respondent waives all rights to contest the adequacy of notice, or the validity of the Consent Order or this Agreement, including all rights to administrative or judicial hearings or appeals, except for the Dispute Resolution provisions set forth herein. Respondent agrees to withdraw its request for an administrative hearing regarding the Notice.

4. This Agreement shall apply to and be binding upon PHMSA and Respondent, its officers, directors, and employees, and its successors, assigns, or other entities or persons otherwise bound by law. Respondent agrees to provide a copy of this Agreement and any incorporated work plans and schedules to all of Respondent's officers, employees, and agents whose duties might reasonably include compliance with this Agreement.

5. This Agreement constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to settlement other than those expressly contained in this Agreement, except that the terms of this Agreement may be construed by reference to the Notice.

6. Nothing in this Agreement affects or relieves Respondent of its responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder. Nothing in this Agreement alters PHMSA's right of access, entry, inspection, and information gathering or PHMSA's authority to bring enforcement actions against Respondent pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law.

7. For all transfers of ownership or operating responsibility of Respondent's pipeline system referenced herein, Respondent will provide a copy of this Agreement to the prospective

transferee at least 30 days prior to such transfer. Respondent will provide written notice of the transfer to the Director no later than 60 days after the transfer occurs.

8. This Agreement does not waive or modify any Federal, State, or local laws or regulations that are applicable to Respondent's pipeline systems. This Agreement is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. Respondent remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.

9. This Agreement does not create rights in, or grant any cause of action to, any third party not party to this Agreement. The U.S. Department of Transportation is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, or agents carrying out the work required by this Agreement. Respondent agrees to hold harmless the U.S. Department of Transportation, its officers, employees, agents, and representatives from any and all causes of action arising from any acts or omissions of Respondent or its contractors in carrying out any work required by this Agreement.

10. Except as set forth herein, this Agreement does not constitute a finding of violation of any other federal law or regulation and may not be used in any civil proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of a violation of any law, rule, regulation, or requirement, except in a proceeding to enforce the provisions of this Agreement or in future PHMSA enforcement actions.

II. Findings of Violation:

11. ***Item 1- 49 CFR § 195.54(a):*** The Notice alleged DGC failed to report three reportable accidents within the 30-day time frame required by § 195.54(a). Respondent does not contest the allegation of violation as alleged in the Notice. As such, PHMSA finds a violation of 49 CFR § 195.54(a).

12. ***Item 2 – 49 CFR § 195.452(f)(3):*** The Notice alleged that DGC failed to provide in its Carbon Dioxide Pipeline Integrity Management Plan (IMP), revised July 2023, adequate guidance for assessing risk on its pipeline. DGC does not contest the allegation of violation as alleged in the Notice. As such, PHMSA finds a violation of 49 CFR § 195.452(f)(3).

13. ***Item 3 – 49 CFR § 195.452(g)(4):*** The Notice alleged that DGC failed to perform information analysis relevant to pipeline integrity and risk by the October 1, 2022 deadline required by § 195.452(g). DGC does not contest the allegation of violation as alleged in the Notice. As such, PHMSA finds a violation of 49 CFR § 195.452(g)(4).

14. ***Item 4 – 49 CFR § 195.557(a):*** The Notice alleged that DGC failed to protect its pipeline which was exposed to stay currents by not having an effective program to minimize the detrimental effects of such currents. DGC does not contest the allegation of violation as alleged in the Notice. As such, PHMSA finds a violation of 49 CFR § 195.557(a).

15. Items 1 – 4 will be considered by PHMSA as prior offenses in any future PHMSA enforcement action taken against Respondent.

V. Civil Penalty:

16. **Item 1:** The Notice proposed assessing a civil penalty in the amount of \$19,100 for Item 1. Respondent did not contest the proposed civil penalties for this Item. As such, Respondent shall pay a civil penalty in the amount of **\$19,100** for Item 1.

17. **Item 4:** The Notice proposed assessing a civil penalty in the amount of \$59,500 for Item 4. Respondent requested a reduction of the proposed civil penalty. During the Parties' informal discussions, DGC provided evidence showing that a change to the gravity factor selected in the Violation Report was appropriate. PHMSA agrees that a reduction to the proposed civil penalty is appropriate based on reconsideration of the gravity factor as supported by the additional information provided by Respondent. Respondent agrees to pay a reduced civil penalty in the amount of **\$29,700** for the violation in Item 4.

18. Respondent will pay a total reduced civil penalty in the amount of **\$48,800**, pursuant to the payment instructions at 49 CFR § 190.227(a), to be paid in full no later than **20** days from the Effective Date of this Agreement.

VI. Compliance Order:

19. **Item 1:** The Notice did not propose any compliance order actions to address the non-compliance alleged for Item 1. As such, no compliance action is required. During the informal discussion between the parties, DGC explained to the satisfaction of the Director that it had completed measures to prevent the actions described in Item 1 from reoccurring.

20. **Item 2:** The Notice proposed certain compliance order actions to address the non-compliance alleged in the Notice. Respondent initially contested the Proposed Compliance Order. Following informal discussion with PHMSA, Respondent agrees to undertake the corrective measures proposed in the Notice for Item 2:

- a. DGC must revise and amend its Carbon Dioxide Pipeline Integrity Management Plan and any relevant associated procedures in order to comply with the requirements of § 195.452, and provide the revisions to the Director for review and approval within **90** days of receipt of the Consent Order. Specifically, the procedures must be revised to provide adequate guidance for performing a valid risk analysis of sufficient sophistication to address all relevant risk factors, including but not limited to those in § 195.452(i)(2).

21. **Item 3:** The Notice proposed certain compliance order actions to address the non-compliance alleged in the Notice. Respondent initially contested the Proposed Compliance Order. Following informal discussion with PHMSA, Respondent agrees to undertake the corrective measures for Item 3:

- a. DGC must develop a risk model, in accordance with the updated procedures required by Paragraph 20 of this Consent Agreement, which incorporates all available information and considers all threats and consequences, and provide it to

the Director for review and approval within **90** days of receipt of the Consent Order.

- b. DGC must apply the risk model within **90** days of the Director's approval of it and use the new risk analysis to review its assessment methods, assessment intervals, and preventative and mitigative measures. Results of the review must be submitted to the Director for review no later than **90** days after DGC's review is completed.

22. **Item 4:** The Notice proposed certain compliance order actions to address the non-compliance alleged in the Notice. Respondent initially contested the Proposed Compliance Order. Following informal discussion with PHMSA, Respondent agrees to undertake the corrective measures for Item 4:

- a. DGC must conduct an AC interference study and consider and prioritize the need for AC mitigation in the areas identified as having an elevated AC risk within **9** months from receipt of the Consent Order;
- b. Having identified areas having an elevated AC risk, if any, DGC must develop a schedule for mitigation work in the location(s) having the highest priority, and submit the plans to the Director for review within **90** days of receipt of the results of the interference study referenced above in provision a.
- c. After Director approval of the plan, DGC must implement the applicable AC mitigation measures in accordance with the schedule and submit documentation to the Director within **30** days of completion of the mitigation work at each location.

VII. Enforcement:

23. This Agreement is subject to all enforcement authorities available to PHMSA under 49 U.S.C. § 60101, *et seq.*, and 49 CFR Part 190, including administrative civil penalties under 49 U.S.C. § 60122, of up to \$272,926 per violation for each day the violation continues and referral of the case to the Attorney General for judicial enforcement, if PHMSA determines that Respondent is not complying with the terms of this Agreement in accordance with the determinations made by the Director, or in accordance with decisions of the Associate Administrator if resolved pursuant to the Dispute Resolution process herein. The maximum civil penalty amounts are adjusted annually for inflation. *See* 49 CFR § 190.223. All work plans and associated schedules set forth or referenced in Section VI (Compliance Order) are automatically incorporated into this Agreement and are enforceable in the same manner.

VIII. Review and Approval Process:

24. With respect to any submission under Section VI (Compliance Order) of this Agreement that requires the approval of the Director, the Director may: (a) approve, in whole or in part, the submission; (b) approve the submission on specified, reasonable conditions; (c) disapprove, in whole or in part, the submission; or (d) any combination of the foregoing. If the Director approves, approves in part, or approves with conditions, Respondent will take all actions as approved by the Director, subject to Respondent's right to invoke the dispute resolution procedures with respect to any conditions the Director identifies. If the Director disapproves all or any portion of the submission, the Director will provide Respondent a written notice of the deficiencies with an explanation of those particulars wherein Respondent's actions

fail to satisfy the requirements of the Compliance Order in Section VI. Respondent will correct all deficiencies within the time specified by the Director and resubmit it for approval. PHMSA will promptly respond to any requests for clarification or submissions from DGC.

IX. Dispute Resolution:

25. The Director and Respondent will informally attempt to resolve any disputes arising under this Agreement, including any decision of the Director under the terms of Sections VI (Compliance Order) and VIII (Review and Approval Process). If Respondent and the Director are unable to informally resolve the dispute within 15 calendar days after the dispute is first raised, in writing, to the Director, Respondent may submit a written request for a determination resolving the dispute from the Associate Administrator. Such request must be made in writing and provided to the Director, counsel for the Central Region, and to the Associate Administrator, no later than 10 calendar days from the 15-day deadline for informal resolution referenced in this paragraph. Along with its request, Respondent must provide the Associate Administrator with all information Respondent believes is relevant to the dispute. Decisions of the Associate Administrator under this paragraph will constitute final agency action. The existence of a dispute and PHMSA's consideration of matters placed in dispute will not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Agreement during the pendency of the dispute resolution process.

X. Effective Date:

26. The term "Effective Date," as used herein, is the date on which the Consent Order is issued by the Associate Administrator incorporating the terms of this Agreement.

XI. Recordkeeping and Information Disclosure:

27. Unless otherwise required in this Agreement, Respondent agrees to maintain records demonstrating compliance with all requirements of this Agreement for a period of at least five (5) years following completion of all work to be performed, unless a longer period of time is required pursuant to 49 CFR parts 190-199. For any reports, plans, or other deliverables required to be submitted to PHMSA pursuant to this Agreement, Respondent may assert a claim of business confidentiality or other protections applicable to the release of information by PHMSA, covering part or all of the information required to be submitted to PHMSA pursuant to this Agreement in accordance with 49 CFR Part 7. Respondent must mark the claim of confidentiality in writing on each page, and include a statement specifying the grounds for each claim of confidentiality. PHMSA determines release of any information submitted pursuant to this Agreement in accordance with 49 CFR Part 7, the Freedom of Information Act, 5 U.S.C. § 552, DOT and PHMSA policies, and other applicable regulations and Executive Orders.

XII. Modification:

28. The terms of this Agreement may be modified by mutual agreement of the Parties. Such modifications must be in writing and signed by both parties.

XIII. Termination:

29. This Agreement will remain in effect until the Civil Penalty in Section V is paid in full and the Compliance Order in Section VI is satisfied, as determined by the Director. The Agreement shall not terminate until the Director confirms, in writing, that the Agreement is terminated in accordance with this paragraph. Nothing in this Agreement prevents Respondent from completing any of the obligations earlier than the deadlines provided for in this Agreement. The Respondent may petition in writing the Director to terminate the Agreement upon Respondent's determination that the terms of the Compliance Order have been satisfied. Disputes shall be resolved by reference to Dispute Resolution Section IX.

XIV. Ratification:

30. The Parties' undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document.

31. The Parties hereby agree to all findings, conditions, and terms of this Agreement.

[Signature Lines on Following Page]

For Dakota Gasification Company:

Date

For PHMSA:

Acting Director, PHMSA Central Region, Office of Pipeline Safety

Acting Associate Administrator
for Pipeline Safety