



# MONTANA-DAKOTA

UTILITIES CO.

A Division of MDU Resources Group, Inc.

400 North Fourth Street  
Bismarck, ND 58501  
(701) 222-7900

# ORIGINAL

RECEIVED

May 26, 2011

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Executive Secretary  
North Dakota Public Service Commission  
State Capitol Building  
Bismarck, ND 58505

**PUBLIC SERVICE COMMISSION**

Re: Case No. PU-10-164

Montana-Dakota Utilities Co. (Montana-Dakota), a Division of MDU Resources Group, Inc. herewith submits its Proposed Findings of Fact, Conclusions of Law and Order in the above referenced case.

The original and seven (7) copies of have been provided to the Commission.

Please acknowledge receipt by stamping or initialing the duplicate copy of this letter attached hereto and returning the same in the enclosed self-addressed stamped envelope.

Sincerely,

Tamie A. Aberle  
Regulatory Affairs Manager

Attachment

## **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

**May \_\_, 2011**

### **Appearances**

Commissioners Tony Clark and Kevin Cramer.

Paul R. Sanderson, Attorney at Law, PO Box 1695, Bismarck, ND 58502, on behalf of Montana-Dakota Utilities Co.

Mitchell D. Armstrong, Attorney at Law, PO Box 460, Bismarck, 58502, on behalf of the Public Service Commission.

Al Wahl, Administrative Law Judge, Office of Administrative Hearings, 2911 N. 14<sup>th</sup> St-Suite 303, Bismarck, North Dakota 58503, as Procedural Hearing Officer.

### **Preliminary Statement**

On May 20, 2010, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (Montana-Dakota), filed a Letter of Intent (LOI) with the Public Service Commission notifying the Commission of Montana-Dakota's intent to construct approximately 30 miles of 230 kV transmission line from its existing Ellendale Substation to the proposed Merricourt Interconnect Substation. Montana-Dakota also requested the Commission shorten the one-year waiting period between filing a Letter of Intent and the filing of an Application for a Certificate of Corridor Compatibility and Route Permit.

On June 2, 2010, the Commission acknowledged the LOI, shortened the one-year waiting period between filing a Letter of Intent and a Siting Application to one day, and assessed a filing fee of \$72,500. On April 6, 2011, the Commission amended the filing fee from \$72,500 to \$92,500.

On February 7, 2011, Montana-Dakota filed its combined Applications for a Waiver of Procedures and Time Schedules, Certificate of Corridor Compatibility, and a Route Permit for construction of the Merricourt Wind Farm to Ellendale Project (Application).

On March 9, 2011, the Public Service Commission issued a Notice of Filing and Notice of Hearing on Montana-Dakota's Application and found the Application to be complete.

On March 18, 2011, the Public Service Commission issued a Corrected Notice of Filing and Notice of Hearing on Montana-Dakota's Application.

On April 15, 2011, the Public Service Commission issued a Notice of Rescheduled Hearing on Montana-Dakota's Application due to inclement weather.

The Notice of Rescheduled Hearing identified the following issues to be considered:

1. Will the location, construction, and operation of the proposed facilities 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 the proposed facility 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?
4. Is it appropriate for the Commission to waive procedures and time schedules as requested, including the request for a single consolidated application for corridor certificate and route permit?

On May 12, 2011, at 2:00 p.m. CDT, a public hearing was held as scheduled in Ellendale, North Dakota. Montana-Dakota presented 3 witnesses, and no members of the public offered comment.

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

#### **Findings of Fact**

1. Montana-Dakota is headquartered in Bismarck, North Dakota, and provides retail electric service to parts of North Dakota, Montana, South Dakota, and Wyoming. In North Dakota, Montana-Dakota provides service to approximately 73,350 electric customers in about 114 communities. Montana-Dakota proposes to upgrade the existing Ellendale Junction Substation, construct approximately 30 miles of 230 kV transmission line and construct a new 230 kV Merricourt Interconnect Substation pursuant to its obligations under Generator Interconnection Agreement G359 with enXco Development Corporation and the Midwest Independent System Operator dated April 27, 2010.
2. Approximately 17.4 miles of the 30 mile transmission line will double circuit the existing Montana-Dakota Ashley to Ellendale 41.6 kV transmission line. The existing 41.6 kV structures will be removed and be replaced with proposed 230 kV H-frame structures. Approximately 12.6 miles of the proposed transmission line will be constructed in new right-of-way. Transmission line construction is anticipated to begin in the summer of 2011.
3. Montana-Dakota is proposing to upgrade the existing Ellendale Junction Substation. The upgrade would include the addition of one 230 kV circuit breaker, one 230 kV line termination structure, one 230 kV disconnect switch, associated arresters, Coupling Capacitor Voltage Transformer (CCVTs), buswork, and protective relaying and controls required to support the circuit breaker and the system protection function.
4. The upgrades to the Ellendale Junction Substation will occur within the existing fenced area of the substation.

5. Montana-Dakota proposes to construct a new Merricourt Interconnect Substation (adjacent to the enXco Merricourt Wind Energy Project) which will occupy approximately 5.5 acres of an eleven acre parcel. The substation would include four 230 kV circuit breakers, 230 kV bus and line switches, buswork, associated arresters, CCVTs and protective relaying devices. The site would also have a control house to contain the system protection devices, a System Control and Data Acquisition (SCADA) system and battery bank.
6. The total cost of the Project is estimated to be \$20,650,000. The proposed transmission line and associated facilities will be designed and constructed to meet or surpass all relevant state codes and standards, as well as the codes and standards of the National Electric Safety Code, the Institute of Electrical and Electronics Engineers, the American Society of Civil Engineers, the Montana-Dakota construction standards, and the Avian Power Line Interaction committee suggested practices for raptor-safe design. The transmission line will be constructed using wooden H-Frame structures. The typical structure height will be approximately 70-90 feet with span lengths of approximately 500 to 800 feet. Each pole will be directly embedded and will require excavating a hole that is approximately 9 to 12 feet deep and 3 feet in diameter.
7. The transmission line structures will support three-phase transmission circuits and two shield wires. The line will require approximately seven to ten structures per mile, depending on terrain and other design factors. The right-of-way will be 120 feet wide.
8. Montana-Dakota states the Project complies with all local land use and planning ordinances.
9. Montana-Dakota met with local governmental units to provide a project overview and receive comments in 2010.
10. Montana-Dakota contacted various local, state, and federal agencies (31) for early input into the Project. One Native American community was also contacted to solicit its input.
11. Montana-Dakota evaluated a three-mile-wide corridor.
12. Montana-Dakota submitted information in its Application and testimony at the May 12, 2011 hearing, concerning compliance with the Exclusion and Avoidance Area Criteria, set forth in NDAC §69-06-08-02(1) and §69-06-08-02(2) as applied to the proposed Corridor.
13. At no point within the proposed corridor does an Exclusion or Avoidance Area encompass more than 50 percent of the Corridor width.
14. The proposed route and corridor do not include any Exclusion Areas. No areas containing animal or plant species that are unique or rare to the state would be irreversibly damaged within the corridor.

15. No rare or unique resources have been identified along the route. It is not anticipated that the proposed transmission facility will impact rare and unique resources. Montana-Dakota has consulted with the United State Fish and Wildlife Service (USFWS) to develop a conservation measure and line marking plan. The line marking plan (MDU Exhibit 3) was approved by USFWS in a letter dated March 9, 2011. The line marking plan includes installation of bird flight diverters in areas that are considered suitable habitat for the whooping crane.
16. The proposed route does cross avoidance areas. There are eight residences located within 500 feet of the proposed route. Montana-Dakota has obtained waivers for the eight properties.
17. The proposed route crosses the LSB Waterfowl Protection Area (WPA) by the 230/41.6 kV double circuit segment with no reasonable alternative that would reduce environmental impacts. The portion of the route across the LSB WPA is located within the existing 41.6 kV transmission line easement. Montana-Dakota has consulted with the USFWS regarding the easement. The USFWS has indicated that they do not maintain easement authority over Montana-Dakota's existing 41.6 kV easement because Montana-Dakota's easement was acquired before USFWS acquired the LSB WPA (fee title land).
18. A Class I Cultural Resource file search was conducted on the 120 foot wide right-of-way, as well as a 1 1/2 mile buffer on either side of the route centerline. The results of the literature search indentified 64 archeological sites, 18 archeological site leads/isolated finds and two historic buildings. These sites have been avoided in the design of the final alignment.
19. A Class III Cultural Resource Survey was completed on the 30 miles of right-of-way.
20. A Class I literature search and Class III Cultural Resource Survey were completed by enXco Development Corporation at the new Merricourt Interconnect Substation site. The State Historical Society of North Dakota concurred with the findings that there would be no historic properties affected and no significant sites affected by the construction of the project.
21. A wetland delineation was conducted along the proposed route and the Merricourt Interconnect Substation. No permanent impacts to the wetlands are anticipated as a result of transmission line structure placement. Wetlands will be avoided by spanning and placing the poles in the upland areas. Two non-jurisdictional wetlands would be impacted by the Merricourt Interconnect Substation construction.
22. Montana-Dakota submitted information in its Application and through its testimony that any significant adverse effects from the location, construction and maintenance of the transmission facility as they relate to the Selection Criteria listed at N.D.A.C. §69-06-08-02(3) will be at an acceptable minimum or will be managed and maintained at an acceptable minimum.

23. Montana-Dakota submitted information in its Application and through its testimony to demonstrate its commitment to maximize the benefits of the proposed transmission facility to meet the Policy Criteria set forth in N.D.A.C. §69-06-08-02(4).

### **Conclusions of Law**

1. The Commission has jurisdiction over this proceeding under N.D.C.C. Chapter 49-22.
2. The 230 kV transmission line proposed by Montana-Dakota is a transmission facility as defined in N.D.C.C. §49-22-03(12).
3. N.D.C.C. §49-22-16.3 provides that an applicant for a route permit from the Commission shall obtain all permits that may be required to construct and operate the transmission facility.
4. N.D.A.C. Chapter 69-06-08 sets forth certain criteria to guide the Commission in evaluating the suitability of granting an application for a Certificate of Corridor Compatibility and a Route Permit for a transmission facility. The criteria as set forth in N.D.A.C. §69-06-08-02 are classified as Exclusion Areas, Avoidance Areas, Selection Criteria and Policy Criteria.
5. N.D.A.C. §69-06-08-02 provides that Exclusion and Avoidance Areas may be located within a corridor, but at no given point shall such an area encompass more than 50 percent of the corridor width, unless there is no reasonable alternative.
6. N.D.A.C., §69-06-08-02 provides that a transmission facility route must not be sited within an Exclusion Area. A transmission facility route must also not be sited within an Avoidance Area unless the Applicant shows under the circumstances there are no reasonable alternatives.
7. In accordance with the Commission's Selection Criteria, a corridor or route may be approved if it is demonstrated that any significant adverse impacts that will result from the location, construction, and maintenance of the transmission facility will be of an acceptable minimum or managed at an acceptable minimum.
8. The location, construction, and operation of the proposed transmission facility will produce only minimal adverse effects of the environment and upon the welfare of the citizens of North Dakota.
9. The Application submitted by Montana-Dakota meets the corridor and route evaluation criteria required by Chapter 49-22 of the North Dakota Century Code.
10. The proposed transmission facility corridor and route will 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.

11. The proposed transmission facility is compatible with the environmental preservation and the efficient use of resources.
12. The requested waivers of procedures is justified based upon: the minimal impacts on the environment and the welfare of the citizens of North Dakota; the lack of objection to the proposed transmission facility by federal, state and local government bodies and agencies, or by the majority of landowners along the route; and the objective to have a reliable integrated transmission system in North Dakota.
13. The proposed transmission facility is of such length, design, location, and purpose that it will produce minimal adverse effects.
14. From the foregoing Findings of Fact and Conclusions of Law, the Commission now makes its:

### **Order**

The Commission orders:

1. Montana-Dakota's Application for a Waiver of Procedures and Time Schedules is granted.
2. A Certificate of Corridor Compatibility for Transmission Facility Corridor No. XX is issued to Montana-Dakota, designating a Corridor for its proposed transmission facility as described in Montana-Dakota's Application and presented at the hearing.
3. A Route Permit for Transmission Facility No. XX is issued to Montana-Dakota granting authority to construct the proposed transmission line as described in the Application and presented at the hearing.
4. Montana-Dakota shall conduct a preconstruction conference prior to commencement of any construction, which must include a Montana-Dakota representative, its construction supervisor, and a representative of Commission staff, to ensure that Montana-Dakota fully understands the conditions set forth in this Order.
5. Montana-Dakota will comply with the rules and regulations of all other agencies having jurisdiction over any phase of the proposed transmission facility. Prior to commencing construction of any phase of the proposed project, Montana-Dakota shall obtain all other necessary approvals and permits for construction of such phase and provide copies to the Commission prior to the construction of each such phase.
6. Montana-Dakota shall inform the Commission of its intent to start construction on the transmission facility prior to the commencement of construction, and, once construction has started, Montana-Dakota shall keep the Commission updated of construction activities on a weekly basis.

7. Montana-Dakota shall construct and operate the transmission facility in the manner described in its Application and at the hearing, and in accordance with all applicable safety requirements.
8. Montana-Dakota shall promptly report to the Commission the presence in the permit area of any critical habitat of threatened or endangered species, or of bald or golden eagles that Montana-Dakota becomes aware of and that were not previously reported to the Commission.
9. If any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, earth disturbing activities in the immediate vicinity of the discovery must be halted. The resource must be marked, preserved, and protected from further disturbances until a professional examination can be made in consultation with the State Historical Preservation Office. A report of such examination must be filed with the Commission, and clearance to proceed must be given by the Commission.
10. All pre-existing roads and lanes used during construction must be restored to a condition that will accommodate their previous use and areas used as temporary roads during construction must be restored to their original condition.
11. Construction must be suspended when weather conditions are such that construction activities will cause irreparable damage, unless adequate protection measures approved by the Commission are taken.
12. Reclamation along the right-of-way shall be continuous and coordinated with construction.
13. Reclamation, fertilization, and reseeding is to be done by Montana-Dakota according to the Natural Resource Conservation Service recommendations unless otherwise specified by the landowner and approved by the Commission.
14. Montana-Dakota will comply with the Commission's Tree and Shrub Mitigation Specifications attached to this Order except that the width of clear cuts through windbreaks, shelterbelts and all other wooded areas shall be limited to 120 feet rather than 50 feet.
15. Montana-Dakota's obligation for reclamation and maintenance of the right-of-way shall continue throughout the life of the transmission facilities.
16. Montana-Dakota shall work with landowners and residents to mitigate any increase in television and residential radio interference that results from the transmission line.
17. Montana-Dakota shall repair or replace all fences and gates removed or damaged during all phases of construction and operation of the proposed transmission facilities.
18. Structure locations filed on February 7, 2011, and April 8, 2011 are approved and Montana-Dakota shall obtain approval from the Commission or from Commission staff prior to any further changes in structure locations.

19. Montana-Dakota shall provide the Commission with a copy of the facility alignment plan and profile drawings showing the facility as built (hard copy and electronic versions), and an electronic version of the as-built facility that can be imported into ESRI GIS mapping software, within three months of the completion of the construction.
20. The authorizations granted by the Corridor Certificate and Route Permit are subject to modification by order of the Commission if deemed necessary to further protect the public or the environment.

**PUBLIC SERVICE COMMISSION**

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Kevin Cramer  
Commissioner

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Tony Clark  
Chairman

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Brian P. Kalk  
Commissioner