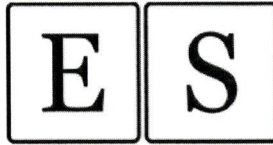


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June 10, 2014

Mr. Darrell Nitschke  
Executive Secretary and Director of Administration  
North Dakota Public Service Commission  
State Capitol  
600 East Boulevard, Dept. 408  
Bismarck, ND 58505-0408



**Re: Case No. PU-13-840**

Dear Mr. Nitschke:

Enclosed for filing is a Findings of Fact, Conclusions of Law, and Order.

Sincerely,

Brenda Vitek, Secretary to  
Paul Sanderson

Encl.

Cc: Janet Seaworth  
Zachary Pelham  
Henry Ford  
Dean Pawlowski

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Montana-Dakota Utilities Co. / Otter Tail Power Company      Case No. PU-13-840  
345 kV Transmission Line – Dickey County  
Siting Application**

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

**June \_\_\_\_\_, 2014**

**Appearances**

Commissioners Brian Kalk, Randy Christmann, and Julie Fedorchak.

Paul Sanderson, Evenson Sanderson, PC, 103 South 3rd Street Suite 5, Bismarck, ND 58501, on behalf of the Applicants Montana-Dakota Utilities Co. and Otter Tail Power Company.

Zachary Pelham, Special Assistant Attorney General, Legal Counsel for Public Service Commission.

Jerry Lein, Public Utility Analyst, Public Service Commission.

Janet Demarais Seaworth, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14<sup>th</sup> Street, Suite 303, Bismarck, ND 58503.

**Preliminary Statement**

Under North Dakota Century Code § 49-22-07, a utility may not begin construction of a transmission facility in the state without first obtaining a route permit. The transmission facility must be constructed, operated, and maintained in conformity with the permit and any terms, conditions, or modifications of the permit.

On October 18, 2013, Montana-Dakota Utilities Co. (“Montana-Dakota”) and Otter Tail Power Company (“Otter Tail”) (hereinafter referred to collectively as “Applicants”) filed with the North Dakota Public Service Commission (“Commission”) a consolidated application for a Certificate of Corridor Compatibility and Energy Transmission Facility Route Permit to authorize construction of a 345-kV transmission line and associated 345-kV substation located in Dickey County, North Dakota (the “Application”). Pursuant to

N.D.C.C. § 49-22-07.2 and North Dakota Administrative Code (N.D.A.C.) Chapter 69-06-06, Applicants also filed a request for waiver of procedures and time schedules.

On February 12, 2014, the Commission deemed the Application complete and issued a Notice of Filing and Notice of Hearing, scheduling a public hearing on the application for April 1, 2014 at 9:30 a.m. CST at the Fireside Restaurant, 415 1st Ave N, Ellendale, ND 58436. The Notice of Hearing identified the following issues to be considered:

1. Are the proposed facilities of such length, design, location, or purpose that they will produce minimal adverse effects and that adherence to applicable procedures and time schedules may be waved?
2. Is it appropriate for the Commission to waive any procedures and time schedules as requested in the application?
3. 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?
4. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?
5. 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?

On March 31, 2014 the Commission delayed the start time of the public hearing from 9:30 a.m. to 1:00 p.m. CDT on April 1, 2014 due to winter weather conditions.

On April 1, 2014, a public hearing was held as scheduled in Ellendale, North Dakota. The Applicants presented two witnesses and members of the public were given the opportunity to provide comments. The Applicants offered twelve exhibits at the public hearing which were received into evidence without objection.

On May 29, 2014, late filed Exhibit Number 13 was filed by the Applicants.

Having allowed all interested persons an 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 registered to conduct business in the State of North Dakota. Montana-Dakota is a "utility" as defined at N.D.C.C. § 49-22-03(13) engaged in the generation and transmission of electric energy under the regulatory jurisdiction of this Commission.

2. Otter Tail is registered to conduct business in the State of North Dakota. Otter Tail is a "utility" as defined at N.D.C.C. § 49-22-03(13) engaged in the generation and transmission of electric energy under the regulatory jurisdiction of this Commission.

### Size, Type, and Preferred Location of Facility

3. The proposed transmission project ("Project") will consist of a 345-kV transmission line that is approximately 160 to 170 miles long traversing through North Dakota and South Dakota. The Project will include a new 345-kV Substation near Ellendale, North Dakota ("Ellendale 345-kV Substation"). The North Dakota facilities subject to Commission jurisdiction consists of approximately nine (9) miles of single-circuit, alternating current, 345-kV transmission line and associated facilities located entirely within Dickey County, North Dakota. The segment of the transmission line located within North Dakota will extend from the Ellendale 345-kV Substation to the North Dakota-South Dakota State border.

4. Associated facilities in addition to the 345-kV transmission line to be constructed within the Project area in North Dakota include:

- a. Ellendale 345-kV Substation located immediately west of the existing Ellendale 230-kV Substation;
- b. 230-kV tie line;
- c. Modifications to the Ellendale 230-kV Substation; and
- d. Temporary laydown area.

5. The purpose of the Project is to transmit electrical energy generated from sources primarily within North Dakota and South Dakota to consumers across the Midcontinent Independent System Operator, Inc. (MISO), formerly Midwest Independent Transmission System Operator, region.

6. The Project will use single-pole, steel single-circuit structures for the transmission line unless engineering or environmental conditions require the use of other

structure types. The typical structure height will be approximately 125-155 feet with span lengths averaging approximately 1,000 feet.

7. The Project will be designed to meet or surpass all relevant state and local codes, National Electrical Safety Code requirements, Avian Power Line Interaction Committee guidelines, and the standards of Montana-Dakota and Otter Tail.

#### Need for the Facility

8. MISO is a not-for-profit, member-based regional transmission organization. The Project is part of MISO's MVP portfolio, a regionally-planned portfolio of transmission projects supported by significant research and analysis. On December 8, 2011, the MISO Board of Directors approved a regional transmission plan for the construction of a portfolio of MVPs. The Applicants are members of MISO and participated in MISO's transmission planning efforts that identified MVPs. The Applicants concur with MISO's planning report as it pertains to the Project. The Project is designed to reduce the wholesale cost of energy delivery for consumers across the MISO region by enabling the delivery of low-cost generation to load, reducing congestion costs, and increasing system reliability. The MISO region, consisting of all or part of eleven states, is the general area served by the Project. A certificate of public convenience and necessity was issued by the Commission for the North Dakota facilities of the Project in Case No. PU-13-272 for Montana-Dakota and Case No. PU-13-273 for Otter Tail on September 25, 2013.

#### Study of Preferred Locations

9. In their Application, the Applicants identified a Project corridor width of one mile. The project corridor was reduced to one hundred fifty feet in the Applicants' late-filed exhibit. The Applicants identified a refined study area of approximately 24 miles long and 12 miles wide for siting and routing purposes.

10. The Applicants analyzed a number of routing alternatives and factors, including engineering, economic, safety, and environmental factors, in addition to landowner considerations, to determine the most feasible route.

11. The Applicants contacted federal, state, and local government agencies to notify them of the Project and to request their comments with respect to the Project. Copies of such written comments were provided in the Application

12. The Applicants conducted a Class I literature search on a two-mile wide North Dakota Facility Study Area. Additionally, environmental GIS data collected included

information on soils, land use, wetlands and water body crossings, and North Dakota Natural Heritage Inventory.

13. The State Historic Preservation Office (SHPO) concurred with the Applicant's recommendation from the Class I literature search regarding the Class II (reconnaissance) and Class III (pedestrian) survey approach for the Project.

#### Siting Criteria

14. N.D.A.C. § 69-06-08-02 sets forth criteria to guide and govern the preparation of the inventory of exclusion and avoidance areas, and the corridor and route suitability evaluation process for transmission facilities. The criteria set forth in N.D.A.C. § 69-06-08-02 are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

15. Exclusion Areas must be excluded in the consideration of a route for a transmission facility. Exclusion Areas may be located within a corridor, but at no point shall such an area encompass more than fifty percent of the corridor width unless there is no reasonable alternative. A buffer zone of a reasonable width to protect the integrity of an Exclusion Area must be included in the siting of the transmission facility.

16. No Exclusion Areas defined by N.D.A.C. § 69-06-08-02(1) exist within the Project corridor, therefore the Project will not have a significant impact on Exclusion Areas defined by N.D.A.C. § 69-06-08(1).

17. Avoidance Areas 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.

18. One Avoidance Area defined by N.D.A.C. § 69-06-08-02(2) exists within the Project corridor:

- a. A planned center-pivot irrigation system.

19. The Project will not have a significant impact on Avoidance Areas defined by N.D.A.C. § 69-06-08-02(2). The proposed route has also been adjusted so as to not interfere with the planned center-pivot irrigation system.

20. A Class III cultural resource survey will be performed. Applicants will submit the results of the Class III cultural resource survey to SHPO.

21. In accordance with the Commission's Selection Criteria, a transmission facility shall be approved only if it is demonstrated that no significant adverse impacts will result from the location, construction, and maintenance of the transmission facility.

22. The Project will not have a significant impact on the Selection Criteria set forth in N.D.A.C. § 69-06-08-02(3) because any adverse effects on natural resources will be managed and maintained at an acceptable minimum. Once the Project is completed, the Applicants will restore all disturbed areas.

23. In accordance with the Commission's Policy Criteria, preference may be given to an applicant that maximizes benefits resulting from the adoption of certain policies and practices.

24. The Applicants have demonstrated their commitment to maximize the benefits of the Project as to meet the Policy Criteria in N.D.A.C. § 69-06-08-04(4) by designing and locating the Project in a manner as to maximize operational efficiency and economic benefits while minimizing impacts on agriculture, extractable resources, health and safety, plant and animal life, communications, and the visual effect on the surrounding area.

#### Measures to Minimize Impacts

25. The Applicants have agreed to a number of steps to mitigate the impact of the Project as indicated by the Certification Relating to Order Provisions and Tree and Shrub Mitigation Specifications filed with the Commission at the April 1, 2014 public hearing as Exhibits 9 and 10, respectively.

26. The Applicants will implement various measures to protect the right-of-way (ROW) or mitigate the adverse impacts of ROW preparation and transmission line construction, operation, and maintenance on the human and natural environment.

27. The Applicants will participate in the North Dakota One-Call Excavation Notice System.

28. The Applicants presented evidence that in order for the Project to comply with the North American Electric Reliability Corporation's (NERC) Vegetation Management Standards, clear cuts through windbreaks, shelterbelts, and all other wooded areas on this Project will need to extend to the edge of the one hundred fifty foot ROW.

#### **Conclusions of Law**

1. The Commission has jurisdiction over this proceeding under N.D.C.C. Chapter 49-22.

2. The proposed Project and associated facilities are transmission facilities as defined by N.D.C.C. § 49-22-03(12).

3. The location, construction, and operation of the proposed transmission facilities will produce only minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.

4. The Application submitted by the Applicants meets the corridor and route evaluation criteria required by N.D.C.C. Chapter 49-22.

5. 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.

6. The proposed transmission facilities are compatible with the environmental preservation and the efficient use of resources.

7. 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.

8. The proposed transmission facilities are of such length, design, location, and purpose that it will produce minimal adverse effects.

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

### **Order**

The Commission orders:

1. That the Applicants' Application for a waiver of procedures and time schedules be granted.

2. That a Certificate of Corridor Compatibility be issued to the Applicants designating a corridor for the construction, operation, and maintenance of the proposed 345-kV

transmission line and associated facilities in Dickey County, North Dakota. For the purposes of the Certificate, the Corridor will consist of a one hundred fifty foot area.

3. That a Route Permit be issued to the Applicants granting authority to construct and operate the proposed 345-kV transmission line and associated facilities in Dickey County, North Dakota as described in the Application, at the public hearing, and in the Applicant's exhibits.

4. That the Certification Relating to Order Provisions - Transmission Facility Siting with the accompanying Tree and Shrub Mitigation Specifications filed with the Commission at the April 1, 2014 public hearing be incorporated by reference and attached to the Order issued by the Commission, with the exception of paragraph 8 of the Tree and Shrub Mitigation Specifications, where the maximum width of clear cuts through windbreaks, shelterbelts, and all other wooded areas on this project is one hundred fifty feet.

#### **PUBLIC SERVICE COMMISSION**

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**Randy Christmann**  
**Commissioner**

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**Brian P. Kalk**  
**Chairman**

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**Julie Fedorchak**  
**Commissioner**



*Brenda Vitek*

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Brenda Vitek

Subscribed and sworn to before me today this 10th day of June, 2014.

*Barbara S. Evenson*

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NOTARY PUBLIC  
State of North Dakota

