



Public Service Commission

State of North Dakota

COMMISSIONERS

Julie Fedorchak
Randy Christmann
Brian Kroshus

November 19, 2021

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

Travis R. Jacobson, Director of Regulatory Affairs
Montana-Dakota Utilities Co.
400 North Fourth Street
Bismarck, ND 58501

NOTICE OF NONCOMPLIANCE

RE: Case No. PU-20-342
Montana-Dakota Utilities Co.
Mandan to Ellendale Transmission System Upgrade

On July 16, 2020, Montana-Dakota Utilities Co. (MDU) filed with the Commission a Certification and documentation under North Dakota Century Code (N.D.C.C.) section 49-22-03(3)(a) regarding the upgrade of a 230 kV transmission system beginning near Mandan, North Dakota and ending near Ellendale, North Dakota (Project). The Project involves replacing certain electric transmission line structures and reconductoring the line.

N.D.C.C. 49-22-03 states that:

In this chapter, unless the context or subject matter otherwise requires:

3. "Construction" includes a clearing of land, excavation, or other action affecting the environment of the site after April 9, 1975, but does not include activities:
 - a. Conducted wholly within the geographic location for which a utility has previously obtained a certificate or permit under this chapter, or on which a facility was constructed before April 9, 1975, if:
 - (1) The activities are for the construction of the same type of facility as the existing type of facility as identified in a subdivision of subsection 5 or 6 or in subsection 13 of this section and the activities are:
 - (a) Within the geographic boundaries of a previously issued certificate or permit;
 - (b) For an electric energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
 - (c) For an electric transmission facility constructed before April 9, 1975, within a width of three hundred

fifty feet [106.68 meters] on either side of the centerline;

- (2) Except as provided in subdivision b, the activities do not affect any known exclusion or avoidance area;
- (3) The activities are for the construction:
 - (a) Of a new electric energy conversion facility;
 - (b) Of a new electric transmission facility;
 - (c) To improve the existing electric energy conversion facility or electric transmission facility; or (d) To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
- (4) Before conducting any activities, the utility certifies in writing to the commission that:
 - (a) The activities will not affect a known exclusion or avoidance area;
 - (b) The activities are for the construction:
 - [1] Of a new electric energy conversion facility; Page No. 1
 - [2] Of a new electric transmission facility;
 - [3] To improve the existing electric energy conversion or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
 - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.:

On October 20, 2021, the Commission's held an Informal Hearing on the filing.

At the October 20, 2021, Informal Hearing, MDU disclosed that construction on the Project started in May 2020.

MDU is in noncompliance with N.D.C.C. 49-22-03(4) by failing to file with the Commission certifications and supporting documentation before conducting construction activities associated with the Project.

N.D.C.C. 49-22-21(3) states:

3. Any person who willfully engages in any of the following conduct is subject to a civil penalty of not to exceed ten thousand dollars for each such violation for each day the violations persist, except that the maximum penalty may not exceed two hundred thousand dollars for any related series of violations:
 - a. Begins construction of an electric energy conversion facility or an electric transmission facility without having been issued a certificate or permit pursuant to this chapter.

- b. Constructs, operates, or maintains an electric energy conversion facility or an electric transmission facility other than in compliance with the certificate or permit and any terms, conditions, or modifications contained therein.
- c. Violates any provision of this chapter or any rule adopted by the commission pursuant to this chapter.
- d. Falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained pursuant to a certificate or permit issued pursuant to this chapter.

The civil penalty provided for in this subsection may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise must be deposited in the general fund and, if not paid, may be recovered in a civil action in the courts of the state.

To avoid further action due to noncompliance, Commission Staff asks that MDU begin discussions with Staff as soon as possible regarding a resolution.

You may contact me at 701-328-4077 with any questions concerning this letter.

Best regards,



Patrick Fahn
Director, Public Utilities Division

cc: Paul Sanderson
Allison Mann