

**BEFORE THE NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Montana-Dakota Utilities Co.  
Mandan to Ellendale Transmission System Upgrade  
Siting Exclusion Certification**

**Case No. PU-20-342**

**CONSENT AGREEMENT**

**Preliminary Statement**

This Consent Agreement is entered into by and between Montana-Dakota Utilities Co. ("Montana-Dakota") and the Public Service Commission Advocacy Staff ("Staff") (together, the "Parties") for resolution of Staff's November 19, 2021, Notice of Noncompliance issued to Montana-Dakota in Case No. PU-20-342 (the "Matter") concerning the Mandan to Ellendale Transmission System Upgrade.

***Transmission Siting Statute***

The Energy Conversion and Transmission Facility Siting Act, codified at North Dakota Century Code ("N.D.C.C.") Chapter 49-22, provides for the orderly siting of energy conversion and transmission facilities prior to construction. However, the statute also exempts certain construction activities from the siting process. N.D.C.C. § 49-22-03(3). In order to qualify for one of these exemptions, the utility must make certain certifications to the Commission in writing prior to commencement of construction. Section 49-22-03(3)(a) provides:

- (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;
    - [2] Of a new electric transmission facility;

- [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.

This Chapter provides for a civil penalty for certain violations, including for instances where a person “[v]iolates any provision of this chapter or any rule adopted by the commission pursuant to this chapter.” N.D.C.C. § 49-22-21(3)(c). Such 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.” N.D.C.C. § 49-22-21(3). The Commission has the authority to compromise these civil penalties.

***Certificate of Site Compatibility – Mandan to Ellendale Transmission System Upgrade***

On July 16, 2020, Montana-Dakota filed with the Commission a Certification and documentation under N.D.C.C. § 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 (the “Project”). The Project involves replacing certain electric transmission line structures and reconductoring the line.

On October 20, 2021, the Commission held an Informal Hearing on the filing. At that Hearing, MDU disclosed that construction on the Project started in May 2020.

## **Terms of Consent Agreement**

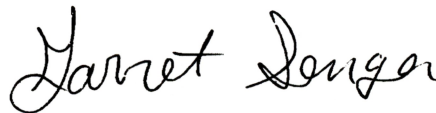
Montana-Dakota and Staff engaged in good faith settlement discussions regarding this Matter resulting in this Consent Agreement. Having agreed that settlement of this Matter will avoid further administrative proceedings or litigation and that entry of this Consent Agreement is the most appropriate means of resolving this Matter, Staff and Montana-Dakota agree on the following terms, subject to the approval and acceptance of the Commission:

1. Montana-Dakota violated N.D.C.C. § 449-22-03(3)(a)(4) by beginning construction activities on a 230-kilovolt electric transmission line prior to filing with the Commission certifications and supporting documentation.
2. Montana-Dakota agrees to be assessed a civil penalty of \$10,000 for violating N.D.C.C. § 49-22-03(3)(a)(4).
3. Montana-Dakota agrees to remit \$10,000, payable within ten business days of service of an Order accepting or approving the Consent Agreement.
4. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violation alleged in the Matter.
5. Montana-Dakota consents to the filing of the Consent Agreement and an Order in this case and hereby waives any further procedural requirements with respect to the Order's issuance. Provided the Commission adopts this Consent Agreement and issues an Order consistent with it, Montana-Dakota understands and agrees in this case to waive all rights to contest the violations, the right to be represented by counsel, the right to present evidence and arguments to the Commission, the

right to cross-examine witnesses, or contest the validity of this Consent Agreement and Order Adopting this Consent Agreement, including all rights to administrative or judicial hearings or appeals.

6. There are no covenants, promises, undertakings, or understandings related to the resolution of the Matter other than those specifically set forth in this Agreement and Order.
7. This Agreement may be executed in counterparts and duplicate copies, each which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.
8. The undersigned on behalf of Montana-Dakota is authorized to act on behalf of Montana-Dakota and bind Montana-Dakota for purposes of this Consent Agreement and knows and fully understands the content and effect of this Consent Agreement.

Dated this   1   day of   February  , 2022



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Garret Senger  
EVP, Regulatory Affairs, Customer Service & Admin.  
Montana-Dakota Utilities Co.

Dated this 2<sup>nd</sup> day of February, 2022



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Brian Johnson  
Special Assistant Attorney General Bar ID 07397  
North Dakota Public Service Commission