

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No. PU-20-342

ORDER ON CONSENT AGREEMENT

February 23, 2022

Preliminary Statement

On July 16, 2020, Montana-Dakota Utilities Co. (MDU) filed with the Commission a certification and documentation under North Dakota Century Code (NDCC) section 49-22-03(3)(a) regarding the upgrade of a 230 kV transmission system beginning near Mandan, ND and ending near Ellendale, ND (the "Project").

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

On November 19, 2021, Commission Advocacy Staff (Staff) sent a Notice of Noncompliance indicating that MDU was in noncompliance with NDCC 49-22-03(4) by failing to file with the Commission certifications and supporting documentation before conducting construction activities associated with the Project.

On February 2, 2022, a Consent Agreement between Staff and MDU was filed for resolution of the November 19, 2021, Notice of Noncompliance.

Discussion

Montana-Dakota Utilities Co. is a foreign corporation with a principal address of 400 N 4th St, Bismarck, ND 58501.

NDCC section 49-22-03(3)(a)(4) states that prior to conducting any construction activities on a transmission facility, the utility must certify in writing to the commission that "[t]he activities will not affect a known exclusion or avoidance area." MDU did not make such a certification with supporting documentation prior to conducting construction activities associated with the Project. Having investigated, Commission Staff has concluded that MDU violated NDCC section 49-22-03(3)(a)(4).

MDU and Staff engaged in good faith settlement discussions resulting in a Consent Agreement intended to avoid further administrative proceedings or litigation.

Under the Consent Agreement, MDU agrees to be assessed a civil penalty of \$10,000, payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent Agreement.

Having considered this matter, the Commission finds the Consent Agreement filed on February 2, 2022, is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement between Montana-Dakota Utilities Co. and Advocacy Staff filed with the Commission on February 2, 2022, is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. MDU is assessed a civil penalty of \$10,000 for violating NDCC section 49-22-03(3)(a)(4), and MDU agrees to remit the \$10,000 payable to the North Dakota Public Service Commission with ten business days of service of an Order accepting or approving the Consent Agreement.

PUBLIC SERVICE COMMISSION


Randy Christmann
Commissioner


Julie Fedorchak
Chair


Sheri Haugen-Hoffart
Commissioner

**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



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

Dated this 2nd day of February, 2022



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