

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

October 25, 2021

Executive Secretary  
North Dakota Public Service Commission  
State Capitol Building  
Bismarck, ND 58505-0480

Re: Mandan Reroute Project  
Combined Application for Corridor Compatibility and Route Permit  
Case No. PU-21-151

Montana-Dakota Utilities Co. herewith submits its Proposed Findings of Fact, Conclusions of Law and Order in the above referenced case pursuant to the Administrative Law Judge's request at the Public Hearing held October 7, 2021 at the Mandan City Hall in Mandan, North Dakota.

Sincerely,

**/s/ Travis R. Jacobson**

Travis R. Jacobson  
Director of Regulatory Affairs

Attachment

cc: Paul Sanderson  
Allison Mann

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Proposed Findings of Fact Conclusions of Law and Order  
Montana-Dakota Utilities Co.  
Travis Jacobson, Director Reg. Affairs

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

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

Montana-Dakota Utilities Co.  
Mandan Reroute Project  
Combined Application for Corridor Compatibility  
and Route Permit

Case No. PU-21-151

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

October \_\_, 2021

Appearances

Commissioners Julie Fedorchak, Randy Christmann and Brian Kroshus.

Paul Sanderson, Counsel, Evenson Sanderson PC, 1100 College Drive, Suite 5, Bismarck, ND 58501.

Brian L. Johnson, Special Assistant Attorney General, 600 E Boulevard Ave. Bismarck, North Dakota 58505, North Dakota Public Service Commission.

Hope L. Hogan, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14<sup>th</sup> Street, Suite 303, Bismarck, North Dakota 58503, as Procedural Hearing Officer.

**Preliminary Statement**

On July 21, 2021, Montana-Dakota Utilities Co. (Montana-Dakota or Company) filed a final Combined Application for a Certificate of Corridor Compatibility and Route Permit to construct, own and operate an approximately 1.5 mile long, 230-kilovolt (kV) electrical transmission line near the Heskett Station north of Mandan in Morton County, North Dakota.

On August 4, 2021, the Commission deemed Montana-Dakota's application complete and issued a Notice of Filing and Hearing. The public hearing was scheduled to begin at 9:00 a.m. CDT on October 7, 2021, at Mandan City Hall, 205 Second Avenue Northwest, Mandan, ND 58554. The Notice identified the following issues to be considered at the consolidated hearing:

1. Will construction, operation, and maintenance of the facility at the proposed location produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Is the proposed facility compatible with the environmental preservation and the efficient use of resources?

3. Will construction, operation, and maintenance of the facility at the proposed location 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 October 7, 2021, the public hearing was held as scheduled.

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

### **FINDINGS OF FACT**

1. Montana-Dakota is a Delaware corporation duly authorized to do business in the State of North Dakota as a foreign corporation, and that it is doing business in the State of North Dakota as a public utility subject to the jurisdiction of and regulation by the North Dakota Public Service Commission (Commission) under Title 49, N.D.C.C. The Company's Certificate of Incorporation and amendments thereto have been previously filed with the Commission, such Certificate and Amendments are hereby incorporated by reference, as though fully set forth herein.

#### **Size, Type, and Preferred Location**

2. Montana-Dakota proposed to construct, own and operate an approximately 1.5 mile long, 230-kilovolt (kV) electrical transmission line within the city of Mandan, Morton County, North Dakota. The Project includes the three segments of 230-kilovolt (kV) electrical transmission and will involve construction of two new proposed segments of 230-kilovolt (kV) electrical transmission line connected by an existing 230-kilovolt (kV) segment. An overview of the Project is shown in Hearing Exhibit 1. The Project is identified as well as the Mandan and Heskett Transmission Substations to which the Project will originate and terminate, respectively.

3. The Project is a replacement of existing facilities and will be performing the same function as the current facilities. The line relocation is necessary to build new substation facilities because of the Heskett Units 1 and 2 coal-fired generating stations closure. In addition, the replacement of the current facilities will improve the reliability of the system.

4. Montana-Dakota seeks a project corridor that is 200 feet wide centered on the proposed route from the Mandan Transmission Substation to the Heskett Transmission Substation.

5. The Project will be constructed using H-frame, three-pole guyed suspension, and dead-end structures will be used. Poles 7, 10, and 14 will require guy wires (dead-end structures). It is anticipated that 20 guys (and associated anchors) will be required for each of the dead-end structures and will extend 50 to 85 feet from the structure. Pole 15 is being placed as a temporary structure and is expected to be removed in 2022 when the transmission line crossing of the Missouri River is reconducted with permanent structure replacement. The maximum span is 714 feet. See Hearing Exhibit 5 for engineering design layouts for the Project.

6. The total cost to construct the Project is approximately \$1.3 million.
7. Montana-Dakota plans to complete construction by November 2021 and commence operations in December 2021.

### **Study of Preferred Location**

8. Montana-Dakota initiated correspondence seeking comments from the following federal, state and local agencies regarding the Project:
  - a. Federal: (1) Federal Aviation Administration; (2) U.S. Army Corps of Engineers; (3) U.S. Department of Defense; and (4) U.S. Fish and Wildlife Service.
  - b. State: (1) North Dakota Office of Attorney General; (2) North Dakota Department of Agriculture; (3) North Dakota Department of Career and Technical Education; (4) North Dakota Department of Commerce; (5) North Dakota Department of Environmental Quality; (6) North Dakota Aeronautics Commission; (7) North Dakota Department of Human Services; (8) North Dakota Department of Transportation; (9) North Dakota Department of Trust Lands; (10) North Dakota Energy Development Impact Office; (11) North Dakota Game and Fish Department; (12) North Dakota Indian Affairs Commission; (13) North Dakota Industrial Commission; (14) North Dakota Department of Labor; (15) North Dakota Parks and Recreation Department; (16) North Dakota Soil Conservation Committee; (17) North Dakota State Water Commission; (18) Job Service of North Dakota; (19) North Dakota State Historic Preservation Office (SHPO); (20) North Dakota Office of the Governor; (21) North Dakota Transmission Authority; (22) North Dakota Pipeline Authority; and (23) North Dakota Geological Survey.
  - c. Local: (1) Morton County Commission.
9. Montana-Dakota conducted an assessment that included a natural resource desktop review and Class I cultural resource inventory of a 1-mile-wide study area.
10. Montana-Dakota conducted several surveys across a generally 200-foot-wide area centered on the Project route (Survey Area) as approximated on Hearing Exhibit 4 and identified precisely by the associated GIS map data. Montana-Dakota conducted surveys for wildlife, threatened and endangered species, critical habitats, wetlands, waterbodies, and trees/saplings/shrubs.
11. Montana-Dakota conducted Class I and III Cultural Resources Inventory which included a Class III field survey and a Report as Hearing Exhibit 6. The survey corridor was 200 feet-wide centered on the Project route. The SHPO determined the report acceptable and that there had been a good faith effort to avoid impacts to significant sites. Montana-Dakota's Unanticipated Discovery Plan for Cultural Resources is provided in Hearing Exhibit 12.
12. Montana-Dakota has acquired all easements for the proposed Project route.

## **Siting Criteria**

13. The Commission has established criteria pursuant to North Dakota Century Code (NDCC) § 49-22-5.1 to guide the site, corridor, and route suitability evaluation and designation process. The criteria, as set forth in North Dakota Administrative Code (NDAC) § 69-06-08-02, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

14. Montana-Dakota evaluated the Project for Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria of the Commission.

15. An Exclusion Area is a geographic area that must be excluded in the consideration of a route for a transmission facility. An Exclusion Area may be located within a corridor, but at no given point may such an area or areas encompass more than fifty percent of the corridor unless there is no reasonable alternative. A transmission facility route must not be sited within an Exclusion Area.

16. Montana-Dakota's studies and surveys did identify one Exclusion Area within the Survey area. Project impacts within the site area will be superficial and not in excess of existing disturbance. SHPO agreed that there has been a good faith effort to avoid impacts.

17. An Avoidance Area is a geographic area that 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. Historical resources which are not specifically designated as exclusion or avoidance areas are designated avoidance areas under NDAC § 69-06-08-02(2)(c). Montana-Dakota's Class Cultural Resources Inventory recorded one previously recorded site. Cultural and archeological resources identified within the survey area have been avoided; therefore, there impacts are not expected.

19. Montana-Dakota's studies and surveys identified six residences within 500 feet of the project route. The Company has obtained waivers from three residences and the other residences declined to sign the waiver. At the public hearing testimony was heard that moving the transmission line to a distance of 500 feet would make a difference to their viewshed. Montana-Dakota did not record any other avoidance areas within the Survey Area.

20. In accordance with the Commission's Selection Criteria set forth in NDAC § 69-06-08-02(3), a transmission facility corridor or route shall be approved only if it is demonstrated that any significant adverse effects that will result from the location, construction, and maintenance of the transmission facility will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. Montana-Dakota has analyzed the impacts of the Project in relation to all relevant Selection Criteria.

21. Family farms and ranches are a Selection Criteria. The Project will have no impacts to family farms and ranches.
22. Agricultural production is a Selection Criteria. The Project will have no new permanent impacts within active cropland.
23. Sound-sensitive land uses is a Selection Criteria. Residences near the Project are understood to be noise sensitive. Minimal noise will occur during construction, but no long-term noise impacts are anticipated.
24. The visual effect on the adjacent area is a Selection Criteria. Minimal impacts are anticipated to the viewshed of nearby residences; however, the line is located in proximity to existing overhead electrical transmission line corridors and will result in no net change to the viewshed.
25. Wetlands, woodlands, and wooded areas are Selection Criteria. One pole structure (Pole 11) will be placed within a potential wetland area. Impacts are anticipated to be minimal and consistent with use of USACE Nationwide Permit 57, with self-reporting. Montana Dakota will span one waterbody, which will not be temporarily or permanently impacted.
26. Animal health and safety is a Selection Criteria. No impacts to livestock are anticipated from the operation of the transmission line. Raptors, waterfowl, and other bird species may be minimally affected by the construction and placement of the transmission lines. Avian collisions are a possibility after completion of the transmission line. Waterfowl are typically more susceptible to transmission line collision, especially if the line is placed between agricultural fields that serve as feeding areas, or between wetlands and open water, which serve as resting areas. Generally, the most difficult part of the structure for the bird to see is the shield wire. Mitigation measures such as co-locating the line next to existing transmission lines, will help increase visibility of the line, which will help minimize these impacts.
27. The adverse effects to Selection Criteria that will result from the construction, operation, and maintenance of the Project at this location will be at an acceptable minimum.
28. The Commission's Policy Criteria are set forth in NDAC § 69-06-08-02(4). The Commission may give preference to an applicant that will maximize benefits that result from the adoption of various policies and practices. There is no need for the Commission to give preference to the applicant in this proceeding.

#### **Additional Measures to Minimize Impact**

29. The Project will be constructed according to standards of the Rural Utilities Service, the National Electric Safety Code, the Institute of Electrical and Electronics Engineers, the American Society of Civil Engineers, the American Institute of Steel Construction, and the American Concrete Institute.
30. Montana-Dakota has submitted its Safety and Emergency Plan which is shown as Hearing Exhibit 15.

31. Montana-Dakota will employ standard monitoring and maintenance procedures to limit the spread of noxious weeds.

32. There are very few trees, shrubs, and saplings within the project corridor, with the bulk of these species being near aquatic resources. There are no anticipated impacts to trees, shrubs, and saplings, as there will be no clearing of the project corridor and pole structures will avoid these areas. No trees are with the Project route that will require future removal.

33. Due to the size of the Project, a stormwater pollution prevention plan and construction and environmental program plan were not required. Project disturbance is anticipated to be less than 0.5 acre.

34. Montana-Dakota will take appropriate measures to ensure erosion controls and practices are followed and dust control measures minimize the impact to the Project disturbance area.

From the foregoing Findings of Fact, the Commission makes the following:

#### **CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the applicant, Montana-Dakota Utilities Co., and the subject matter of the application under NDCC Ch. 49-22.
2. Montana-Dakota is a utility as defined in NDCC § 49-22-03(13).
3. The Project is an electric transmission facility as defined in NDCC § 49-22-03(6).
4. The application submitted by Montana-Dakota for the Project meets the site evaluation criteria as required by NDCC Ch. 49-22.
5. The location, construction, and operation of the Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
6. The Project 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.
7. The construction, operation, and maintenance of the transmission line at the proposed location is compatible with environmental preservation and the efficient use of resources.

From the foregoing Findings of Fact and Conclusions of Law, the Commission issues the following:

**ORDER**

The Commission orders:

- 1. Certificate of Corridor Compatibility No. \_\_\_ is issued to Montana-Dakota Utilities Co. designating a corridor for the construction, operation, and maintenance of approximately 1.5 miles of 230 kV transmission line and associated facilities in Morton County, North Dakota. The approved corridor is 200 feet wide centered on the proposed route from the Mandan Substation to the Heskett Substation.
- 2. Route Permit No. \_\_\_ is issued to Montana-Dakota Utilities Co. designating a route in Morton County, North Dakota, for the construction, operation, and maintenance of approximately 1.5 miles of 230 kV transmission line and associated facilities. The designated route for this purpose is approximated as the Route and Structure Locations on Map 1 of 6 in Hearing Exhibit 4 and identified precisely by the associated GIS map data.
- 3. Tree and Shrub Mitigation is not necessary for this Project.
- 4. To the extent there are any conflicts or inconsistencies between Montana-Dakota’s application and the Certification, the Certification provisions control.

Montana-Dakota shall obtain all other necessary licenses and permits prior to commencing construction on such portion of the Project for which the license and/or permit is required and shall provide copies of such licenses and permits to the Commission prior to construction of such portion.

Montana-Dakota is required to comply with all applicable laws, rules, and/or regulations in the event it desires to construct another or a different transmission facility than was specified in the application within the corridor designated in this proceeding.

- 5. If modifications are made to the Project Montana-Dakota shall complete a Class III Cultural Resource Survey for any previously un-surveyed portions of the designated corridor affected by construction activities, in accordance with SHPO guidance, and shall submit cultural resource finds to SHPO for review and file a copy of SHPO’s response with the Commission prior to beginning construction in said areas.

**PUBLIC SERVICE COMMISSION**

\_\_\_\_\_  
Randy Christmann  
Commissioner

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Julie Fedorchak  
Chair

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Brian Kroshus  
Commissioner