



# Public Service Commission State of North Dakota

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COMMISSIONERS

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February 8, 2022

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

## NOTICE OF NONCOMPLIANCE

RE: Case No. PU-21-151,  
Montana-Dakota Utilities Co.  
230 kV Transmission Line – Morton County

On July 26, 2021, Montana-Dakota Utilities Co. (MDU) filed a final combined application for a corridor certificate and a route permit for the location of an approximately 1.5-mile-long 230-kilovolt electrical transmission line. The project originates at the R. M. Heskett Station and terminates at the Mandan Transmission Substation. The 1.5-mile-long transmission line consists of an existing 0.4-mile line segment and construction of two segments totaling approximately 1.1 miles located in Morton County, North Dakota (Project).

On December 29, 2021, the Commission adopted the Findings of Fact, Conclusions of Law and Order, issuing Certificate of Corridor Compatibility 224 and Route Permit 234. Incorporated and attached to the Order was the Certification Relating to Order Provisions – Transmission Facility Siting (Certification) that MDU agreed to follow. Provision 11 of the Certification states “[u]nless otherwise approved by the Commission, topsoil must be removed before topsoil freezes in the late fall/ early winter to the point that frost inhibits proper soil segregation.”

On January 18, 2022, the Commission received a request to remove topsoil from frozen soil for five pole structures in a letter dated January 14, 2022.

On February 7, 2022, the Commission received notice from the Commission's third-party inspector that on January 21, 2022, they witnessed topsoil removal and segregation as part of the construction of the Project. The Commission had not acted on MDU's January 18, 2022 request.

North Dakota Century Code (N.D.C.C.) 49-22-07(1) states:

1. A utility may not begin construction of an electric energy conversion facility or an electric transmission facility in the state without first having obtained a certificate of site compatibility or a route permit from the commission pursuant to this chapter. The facility must be constructed, operated, and maintained in conformity with the certificate or permit and any terms, conditions, or modifications of the certificate or permit. A certificate or permit may be transferred, subject to the approval of the commission, to any person who agrees to comply with its terms, conditions, and modifications.

MDU is in noncompliance with N.D.C.C. section 49-22-07(1) by not constructing the electric transmission facility in conformity with the conditions of the corridor certificate and route permit. Specifically, MDU failed to obtain approval from the Commission to remove topsoil prior to topsoil freezing as required by Provision 11 to the Certification.

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.

You may contact me at 701-328-4153 with any questions concerning this letter.

Best regards,

A handwritten signature in blue ink, appearing to read 'a r', with a long horizontal flourish extending to the right.

Adam Renfandt  
Analyst, Public Utilities Division