



Public Service Commission  
State of North Dakota

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March 4, 2022

Mr. Steve Kahl  
Executive Secretary  
ND Public Service Commission  
600 E Boulevard Avenue Dept. 408  
Bismarck, ND 58505-0480

***via Hand Delivery***

Re: Case No. PU-21-151  
Montana-Dakota Utilities Co.  
230 kV Transmission Line – Morton County  
Siting Application

Dear Mr. Kahl:

Enclosed is a copy of the Consent Agreement to be filed in the above captioned case.

Best Regards,

Brian Johnson  
Legal Counsel

Enclosure

77 **PU-21-151** Filed: 3/4/2022 Pages: 7  
**Letter enclosing Consent Agreement**

Public Service Commission

Brian Johnson, Legal Counsel

**BEFORE THE NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Montana-Dakota Utilities Co.  
230 kV Transmission Line - Morton County  
Siting Application**

**Case No. PU-21-151**

**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 Staffs November 19, 2021, and February 8, 2022, Notices of Noncompliance issued to Montana-Dakota in Case No. PU-21-151 (the "Matter") concerning the Mandan Reroute Project.

**Construction Before Obtaining a Certificate of Site Compatibility or a Route  
Permit**

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. N.D.C.C. Section 49-22-07(1) provides:

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.

On July 21, 2021, Montana-Dakota 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 electric transmission line. The project originates at the R. M. Heskett Station and terminates at the Mandan Transmission Substation. The 1.5-mile-long 230 kilovolt transmission line consists of an existing 0.4-mile line segment and construction of two line segments totaling approximately 1.1 miles located in Morton County, North Dakota (the "Project").

On October 7, 2021, the Commission held a public hearing on the application at the Mandan City Hall, Ed "Bosh" Froehlich Meeting Room, 205 Second Avenue Northwest, Mandan, ND 58554.

At the hearing, MDU testified that transmission structures 1 through 6 had been constructed prior to filing an application with the Commission to obtain a certificate of site compatibility or a route permit.

On November 19, 2021, Commission staff issued a Notice of Noncompliance to Montana-Dakota.

### **Construction in Avoidance Areas**

N.D.C.C. § 49-22-05.1(3) addresses exclusion and avoidance areas.

3. Except for electric transmission lines in existence before July 1, 1983, areas within five hundred feet [152.4 meters] of an inhabited rural residence must be designated avoidance areas. This criterion does not apply to a water pipeline. The five hundred foot [152.4 meters] avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing.

On October 7, 2021, at the hearing, testimony and evidence showed structures 3 through 5 were placed within 500 feet of inhabited rural residences, which is designated as an avoidance area unless the issue is waived by the owner of an inhabited rural

residence in writing as stated in N.D.C.C. § 49-22-05.1 (3). Montana-Dakota did not have the required waivers at the time of hearing. Montana-Dakota agrees to move structures 3 through 5 outside of the 500-foot avoidance areas.

### **Winter Construction**

On January 18, 2022, the Commission received from Montana-Dakota a request to remove topsoil from frozen soil for five pole structures.

On February 7, 2022, the Commission received notice from the Commission's third-party inspector that on January 21, 2022, they witnessed topsoil removal as part of the construction of the Project.

On February 2, 2022, the Commission approved Montana-Dakota's request to remove topsoil from frozen soil.

On February 8, 2022, Commission staff issued a Notice of Noncompliance to Montana-Dakota.

Montana-Dakota failed to obtain approval from the Commission to remove topsoil prior to topsoil freezing as required by Provision 11 to the Certification Relating to Order Provisions - Transmission Facility Siting attached to and made part of the Commission's December 29, 2021, Findings of Fact, Conclusions of Law and Order in this proceeding.

### **Penalty Provisions**

N.D.C.C. § 49-22-21 provides for a civil penalty for certain violations, including for instances where a person "[b]egins construction of an electric energy conversion facility or an electric transmission facility without having been issued a certificate or permit pursuant to this chapter" and where a person "[v]iolates any provision of this chapter or any rule adopted by the commission pursuant to this chapter. 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.

### **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, the Staff and Montana-Dakota agree on the following terms, subject to the approval and acceptance of the Commission:

1. Montana-Dakota began construction activities on a 230-kilovolt electric transmission line prior to obtaining a certificate of site compatibility or a route permit, and therefore did not comply with N.D.C.C. § 49-22-07(1).
2. Montana-Dakota constructed in an avoidance area (within 500 feet of occupied residences), and therefore did not comply with N.D.C.C. § 49-22-05.1(3).
3. Montana-Dakota failed to obtain approval from the Commission to remove topsoil prior to topsoil freezing as required by Provision 11 to the Certification Relating to Order Provisions - Transmission Facility Siting attached to and made part of the Commission's December 29, 2021, Findings of Fact, Conclusions of Law and Order, and therefore did not comply with N.D.C.C. § 49-22-07(1).
4. Subject to the provisions of this Agreement, Montana-Dakota agrees to be assessed civil penalties as follows:

- a. \$50,000 for noncompliance with N.D.C.C. § 49-22-07(1), with \$10,000 suspended on the condition that Montana-Dakota commits no further violation of N.D.C.C. Chapter 49-22 within seven (7) years of the date of an Order accepting or approving the Consent Agreement.
  - b. \$60,000 for noncompliance with N.D.C.C. § 49-22-05.1(3). However, due to Montana-Dakota's agreement to move the facilities out of the affected avoidance areas, this penalty is dismissed.
5. Montana-Dakota agrees to remit \$40,000, payable within ten business days of service of an Order accepting or approving the Consent Agreement.
6. In the event the Commission finds Montana-Dakota has committed a future violation of N.D.C.C. Chapter 49-22 within seven (7) years of the date of the Order,<sup>1</sup> Montana-Dakota shall remit the suspended portion of the penalty, within the time ordered by the Commission, in addition to any additional fines or penalties imposed for the subsequent violation.
7. If within seven (7) years of the date of the Order there is no subsequent violation of the N.D.C.C. Chapter 49-22 by Montana-Dakota, the remaining penalty is withdrawn.
8. 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.
9. 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.

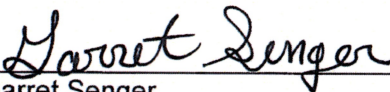
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<sup>1</sup> The parties recognize that the issues raised in the Notice of Noncompliance filed in PU-20-342 shall not be considered a future violation for purposes of this Agreement.


10. 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.

11. 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 2nd day of March, 2022

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

Dated this 4<sup>th</sup> day of March, 2022

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