

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

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

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

**ORDER ON CONSENT AGREEMENT**

**March 30, 2022**

**Preliminary Statement**

On July 26, 2021, Montana-Dakota Utilities Co. (Montana-Dakota) filed a final combined application (Application) for a certificate of corridor compatibility and a route permit for the location of an approximately 1.5-mile-long 230-kilovolt electric transmission line in Morton County, North Dakota (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 corridor compatibility or a route permit.

On November 19, 2021, Commission Advocacy Staff (Advocacy Staff) issued a Notice of Noncompliance to Montana-Dakota for constructing an electric transmission facility without first having obtained a certificate of corridor compatibility or route permit.

On December 6, 2021, Montana-Dakota filed a supplement to its July 26, 2021 Application indicating it had located Project structures within 500 feet of three residences without having obtained waivers from the residences.

On December 29, 2021, the Commission's Findings of Fact, Conclusions of Law and Order issued Route Permit No. 234 to Montana-Dakota for the Project with Certification Relating to Order Provisions - Transmission Facility Siting attached to and made part of the Order.

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

On February 7, 2022, the Commission received notice from the Commission's third-party inspector that on January 21, 2022, topsoil was removed during Project construction.

On February 8, 2022, Advocacy Staff issued a Notice of Noncompliance to Montana-Dakota for removal of topsoil from frozen soil prior to obtaining Commission approval.

On March 4, 2022, a Consent Agreement between Advocacy Staff and Montana-Dakota was filed for resolution of the November 19, 2021, Notice of Noncompliance, and the February 8, 2022, Notice of Noncompliance.

### **Discussion**

Montana-Dakota Utilities Co. is a foreign corporation with a principal address of 400 North Fourth Street, Bismarck, ND 58501.

North Dakota Century Code ("N.D.C.C.") Section 49-22-07(1) states that "[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."

N.D.C.C. Section 49-22-05.1(3) states that "[e]xcept 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."

Commission Advisory Staff (Advisory Staff) investigated the November 19, 2021, Notice of Noncompliance and concluded that Montana-Dakota began construction of the Project without a route permit, and it did so within 500 feet of inhabited rural residences without having received the waivers permitting it to do so. Therefore, Advisory Staff concluded that Montana-Dakota violated N.D.C.C. Section 49-22-07(1) and Section 49-22-05.1(3).

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 stated that "[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."

Advisory Staff investigated the February 8, 2022, Notice of Noncompliance and concluded that Montana-Dakota removed topsoil from frozen soil as part of the Project

without Commission approval. Therefore, Advisory Staff concluded that Montana-Dakota violated N.D.C.C. Section 49-22-07(1).

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

Under the Consent Agreement, Montana-Dakota agrees to be assessed a civil penalty of \$50,000 with \$10,000 suspended for violating N.D.C.C. Section 49-22-07(1) on the condition that Montana-Dakota commits no further violation of N.D.C.C. Chapter 49-22 within seven years of the date of an Order.

Under the Consent Agreement, Montana-Dakota also agrees to be assessed a civil penalty of \$60,000 with \$60,000 dismissed for violating N.D.C.C. Section 49-22-05.1(3).

Having considered this matter, the Commission finds the Consent Agreement filed on March 4, 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 March 4, 2022, is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. Montana-Dakota is assessed a civil penalty of \$50,000 with \$10,000 suspended for violating N.D.C.C. Section 49-22-07(1) on condition that Montana-Dakota commit no further violation of N.D.C.C. Chapter 49-22 within seven years after the date of an Order accepting or approving the Consent Agreement.
3. Montana-Dakota is assessed a civil penalty of \$60,000 with \$60,000 dismissed for violating N.D.C.C. Section 49-22-05.1(3).
4. Montana-Dakota shall remit the \$40,000 penalty, payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent Agreement.
5. In the event the Commission finds Montana-Dakota has committed a future violation of N.D.C.C. Chapter 49-22 within seven years of the date of the Order accepting or approving the Consent Agreement, Montana-Dakota shall remit the suspended portion

of the penalty, \$10,000, within the time ordered by the Commission, and in addition, any additional fees or penalties imposed for future violations.

6. If within seven years of the date of an Order accepting or approving the Consent Agreement, there is no subsequent violation of the N.D.C.C. Chapter 49-22 by Montana-Dakota, the remaining \$10,000 penalty is withdrawn.

**PUBLIC SERVICE COMMISSION**

  
Randy Christmann  
Commissioner

  
Julie Fedorchak  
Chair

  
Sheri Haugen-Hoffart  
Commissioner

**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 2<sup>nd</sup> 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