



UTILITIES CO.

A Subsidiary of MDU Resources Group, Inc.

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Bismarck, ND 58501  
701-222-7900

April 19, 2022

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

Re: Heskett Water Line Siting  
Case No. PU-22-034

Montana-Dakota Utilities Co. herewith submits a Proposed Findings of Fact, Conclusions of Law and Order for the above referenced Heskett Water Line.

Sincerely,

A handwritten signature in blue ink that reads 'Travis R. Jacobson'.

Travis R. Jacobson  
Director of Regulatory Affairs

Attachment

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

Montana-Dakota Utilities Co.  
12-inch Water Pipeline Project – Morton County  
Combined Application for Corridor Compatibility  
and Route Permit

Case No. PU-22-034

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

\_\_\_\_\_, 2022

**Appearances**

Commissioners Julie Fedorchak, Randy Christmann and Sheri Haugen-Hoffart.

Allison Mann, Attorney, MDU Resources Group, Inc., 1200 West Century Avenue, Bismarck, ND 58503, on behalf of Montana-Dakota Utilities Co.

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

Timothy J. Dawson, 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 January 18, 2022, Montana-Dakota Utilities Co. (“Montana-Dakota” or “Company”) filed a final Combined Application for a Certificate of Corridor Compatibility and Route Permit concerning the location of approximately 2,684 feet of 12-inch water pipeline in Morton County, North Dakota (the “Pipeline”).

On February 23, 2022, the Commission deemed Montana-Dakota’s application complete and issued a Notice of Filing and Public Hearing. The public hearing was scheduled to begin at 9:00 a.m. CDT on April 5, 2022, 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. Are 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 April 5, 2022, 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 of the North Dakota Century Code. 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 2,684-foot water pipeline, and associated facilities, in Morton County, North Dakota. The Project will provide fire suppression and evaporative cooling to the existing Heskett 3, and future Heskett 4 natural gas turbines located at R. M. Heskett Station. It will replace an existing water pipeline which is fed directly from the Missouri River and through the Heskett Units 1 and 2 coal-fired generating units.

3. The Project is necessitated by the retirement of the Heskett Units 1 and 2 coal-fired generating units. The Pipeline was the most economical replacement option for fire suppression and evaporative cooling.

4. Montana-Dakota seeks a Corridor that is one hundred (100) feet wide centered on the proposed Route from an existing City of Mandan 30-inch diameter municipal water pipeline to R. M. Heskett Station. Montana-Dakota also requests a fifteen (15) foot buffer zone on either side of the proposed Route.

5. The Pipeline will be constructed with 12-inch diameter HDPE or ductile iron piping using a conventional open trenching method for all portions of the Pipeline that do not require boring. A boring method will be used to install portions of the Pipeline that will cross underneath one wetland area and one county right of way. The Project will also

include installation of a permanent water meter building along with associated backflow prevention, hydrant, valving, metering, electrical power, and communications. The permanent water meter building is expected to be 12 feet wide by 35 feet in length by 12 feet high and include a floor drain, sump pit, exhaust fan, and electrical panel for lights, receptacles, instrumentation, and heaters. The Project also includes the installation of a hydrant near the midpoint of the line. This hydrant is located at a high point on the Route and will be used to bleed the system during commissioning to ensure all the air is removed from the Pipeline. The hydrant will be surrounded by 4 bollards.

6. The total cost to construct the Project is approximately \$1.6 million.

7. Montana-Dakota plans to have the Pipeline operational by June 30, 2022 with the overall Project's final completion date to be July 31, 2022.

### **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; and (2) City of Mandan.

9. Montana-Dakota completed a Class I Literature Review of site files and survey reports maintained by the North Dakota State Historic Preservation Office ("SHPO") over a 1-mile-wide study area ("Survey Area").

10. Montana-Dakota conducted several surveys across a generally 100-foot-wide area centered on the Route as approximated on Hearing Exhibit 6, designated the "100' Corridor", and identified precisely by the associated GIS map data ("Corridor"). Montana-

Dakota conducted surveys for wildlife, threatened and endangered species, critical habitats, wetlands, waterbodies, and trees, saplings, and shrubs.

11. Montana-Dakota conducted Class III Cultural Resources Inventory in the Corridor, which included a Class III field survey and a Report which has been filed as Hearing Exhibit 1, Appendix G. 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 1, Appendix C.

12. Montana-Dakota has acquired all easements for the proposed Route.

### **Siting Criteria**

13. The Commission has established criteria pursuant to North Dakota Century Code (N.D.C.C.) § 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 (N.D.A.C.) § 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; specifically, critical habitat for the piping plover along the Missouri River. Project impacts 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 N.D.A.C. § 69-06-08-02(2)(c). Montana-Dakota's Class III Cultural Resources Inventory recorded one previously recorded site. Cultural and archeological resources identified within the survey area have been avoided; therefore, impacts are not expected.

19. Montana-Dakota's studies and surveys identified two Avoidance Areas within the Survey Area. The Missouri River was identified as a water supply source and the North Dakota Game and Fish Department has a recreational fishing facility along the Missouri River. Both of these identified Avoidance Areas will be avoided during construction.

20. In accordance with the Commission's Selection Criteria set forth in N.D.A.C. § 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 water 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 to the viewshed of nearby residences are anticipated.

25. Wetlands, woodlands, and wooded areas are Selection Criteria. One wetland was identified; however, Montana-Dakota will bore under that area and the bore pits are located outside of the wetland area.

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 are not affected by the construction and placement of the Pipeline.

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 N.D.A.C. § 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 American Society for Testing and Materials (ASTM), the Occupational Safety and Health Administration (OSHA), the American Water Works Association (AWWA), the National Fire Protection Association (NFPA), the American Concrete Institute (ACI), the American Society of Mechanical Engineers (ASME), Federal Specifications (FS), and all other construction standards that may apply.
30. Montana-Dakota has submitted its Safety and Emergency Plan, which is included in Hearing Exhibit 1, Appendix C.
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 the proposed Route avoids these areas.
33. Montana-Dakota will secure General Construction Permit for Stormwater Discharge from the North Dakota Department of Environmental Quality.
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 N.D.C.C. Ch. 49-22.1.
2. Montana-Dakota is a utility as defined in N.D.C.C. § 49-22.1-01(13).
3. The Project is a liquid transmission facility as defined in N.D.C.C. § 49-22.1-01(7).
4. The Application submitted by Montana-Dakota for the Project meets the site evaluation criteria as required by N.D.C.C. Ch. 49-22.1.
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 12-inch water pipeline and associated facilities 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 one hundred (100) feet wide for the construction, operation, and maintenance of approximately 2,684 feet of a water pipeline and associated facilities in Morton County, North Dakota, as identified on Hearing Exhibit 6 and identified precisely by the associated GIS map data.
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 2,684 feet of a water pipeline and associated facilities. The designated route for this purpose is approximated on Hearing Exhibit 6 and identified precisely by the associated GIS map data. A fifteen (15) foot buffer on either side of the Route is also granted.
3. Tree and shrub mitigation is not necessary for this Project.
4. The Certification Relating to Order Provisions – Transmission Facility Siting, executed on March 21, 2022 (“Certification”), is incorporated by reference and attached to this Order. To the extent there are any conflicts or inconsistencies between Montana-Dakota’s Application and the Certification, the Certification provisions control.
5. 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.
6. 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.
7. 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**

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Randy Christmann  
Commissioner

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Julie Fedorchak  
Chair

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Sheri Haugen-Hoffart  
Commissioner