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BEFORE THE WYOMING PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE FORMAL)
COMPLAINT OF FRANK AND)
GEORGIA BOLEY,)
Complainants,)
)
v.) Docket No. 20004-175-EC-25
) (Record No. 17929)
MONTANA-DAKOTA UTILITIES CO.,)
Respondent.)

MOTION TO DISMISS FORMAL COMPLAINT

Respondent, Montana-Dakota Utilities Co. (“Montana-Dakota” or “Company”), by and through its undersigned counsel, respectfully moves the Wyoming Public Service Commission (“Commission”), pursuant to Rule 12(b)(6) of the Wyoming Rules of Civil Procedure as adopted by Chapter 2, Section 3(a)(i) of the Rules of the Commission, to dismiss the Formal Complaint filed by Frank and Georgia Boley (collectively the “Complainants” or “Boleys”).

I. INTRODUCTION

The Complainants object to Montana-Dakota’s construction of a 41.6 kV transmission line in Sheridan County, asserting insufficient communication, interference with viewsheds, and a potential property devaluation. They seek to require the transmission line to be relocated or buried underground. As a matter of law, the

Complaint does not allege a violation of any statute, Commission rule, order, or tariff.

Moreover, the Commission lacks jurisdiction over this matter.

II. BACKGROUND

The Commission on August 11, 2025, notified the Company of a formal complaint filed by Frank and Georgia Boley. The formal complaint alleged that the Company failed to properly communicate notice of the transmission line project to affected property owners, interfered with multiple properties' viewshed, and risked devaluation of adjacent properties due to the proximity of the transmission line to neighboring property lines. The notice required the Company to file a response.

The Sheridan Transmission Project (“Project”) involves approximately four miles of 41.6 kV transmission line needed to connect the Sheridan Southwest Substation with the Big Horn Substation to increase redundancy and reliability of service in the Sheridan area. Attachment 1 is a depiction of the location of the proposed route. The Project has been contemplated since the late 1980s, when Montana-Dakota obtained more than thirty easements to support it. In April 2024, Montana-Dakota—through its agent, HDR, Inc.—mailed 38 notices and survey permits to landowners along proposed routes. HDR also met with Ms. Boley directly at her residence to discuss potential impacts. Ultimately, Montana-Dakota selected a route utilizing existing rights-of-way and newly obtained easements.

The Project is located entirely within T55N, R84W, Sheridan County, which lies within Montana-Dakota's certificated service territory.¹ ²

III. LEGAL STANDARD

Rule 12 of the Wyoming Rules of Civil Procedure provides that a responding party must file a response within the time required by the rule or the deciding body, nevertheless the pleader may alternatively file a motion to dismiss if the complaint fails to state a claim upon which relief can be granted. The courts have held:

We will affirm an order of dismissal only when it is certain from the face of the complaint that the plaintiff cannot assert any facts which would entitle him to relief. *Id.* Dismissal under W.R.C.P. 12(b)(6) is warranted if, having assumed the allegations of the complaint are true and viewing the facts in the light most advantageous to the plaintiffs, the facts dictate judgment for the defendant as a matter of law. *Cantrell v. Sweetwater County School District No. 2*, 2006 WY 57, ¶ 4, 133 P.3d 983, 984 (Wyo.2006).³

While dismissal is a drastic remedy and is sparingly granted; nevertheless, appellate bodies will sustain a Rule 12 (b)(6) dismissal when it is certain from the facts of the complaint that the complainant cannot assert any set of facts that would entitle that party to relief. *Robinson v. PacifiCorp*, 10 P.3d 1133, 1135–36 (Wyo.2000). In like manner, Commission Rule Ch. 3, § 11 requires a complaint to allege facts which, if true, would establish a violation of law, rule, order, or tariff. The Complainants have not carried this burden in their Complaint.

The Commission's statutory authority is set out in Wyoming Statutes which allow the Commission to regulate and supervise public utilities within the state:

¹ See; *Order; In the Matter of the Application of Montana-Dakota Utilities Co. for Amendment to Its Certificate of Public Convenience and Necessity ...*, Docket No. 9422 Sub 11, Wyo. Pub. Service Com'n., Nov. 12, 1969, pp. 5 &11. In its Application, Montana-Dakota requested a large area to be certificated to it including Townships 55N and R82-85W. While the Com'n limited the request, it did grant the CPCN to the Montana-Dakota for Township 55N, R84W.

² Attachment 2 is the Certificated Territory Map on file with the Commission.

³ *Gronberg v. Teton County Housing Authority*, 247 P.3d 35, (Wyo, 2011).

The PSC's statutory authority is set out in W.S. 37-2-112 (1977): "The Commission shall have general and exclusive power to regulate and supervise every public utility within the state." This statute is plain and unambiguous on its face. Words used within statutes are to be given their plain and ordinary meaning. *Department of Revenue & Taxation of State of Wyoming v. Casper Legion Baseball Club, Inc.*, 767 P.2d 608, 610 (Wyo.1989). Section 37-2-112 grants the PSC general and exclusive regulatory powers.⁴

While the Commission has statutory authority to regulate public utilities, its authority is limited by its enabling authority. It is a statutory body that must act strictly within the powers granted by its enabling legislation; its authority is limited to that expressly or impliedly conferred by statute, and actions beyond that grant are invalid.

Powder River Basin Res. Council v. Wyo. PSC, 2024 WY 26, ¶¶ 28–31, 546 P.3d 1002, 1011–12 (Wyo. 2024); *KN Energy, Inc. v. City of Casper*, 755 P.2d 207, 210–11 (Wyo. 1988)). The Complainants' have not alleged any violation which would bring this case within the Commission's jurisdiction. Furthermore, the Project is not one that requires any separate notice or approval from the Commission. The Company has previously obtained a certificate of public convenience and necessity ("CPCN") for the subject area, and given the size of the Project, it did not need to file an application with the Commission. Therefore, neither the Complaint nor the Project implicates the Commission's jurisdiction and the Complaint must be dismissed.

⁴ *Vandehei Devs. v. Pub. Serv. Comm'n of Wyoming*, 790 P.2d 1282, 1285 (Wyo. 1990).

IV. ARGUMENT

The Commission's jurisdiction is limited by statute and rule. The Commission's jurisdiction requires it to ensure safe, adequate, and reliable service at just and reasonable rates. *Mountain Fuel Supply Co. v. Wyo. Pub. Service Com'n*, 662 P.2d 878, 885 (Wyo., 1983).

W.S. § 37-2-205(a) provides that no public utility shall construct or extend a line without having a CPCN, except: (i) for extensions into territory already served, or (ii) for extensions in the ordinary course of business. Specifically, W.S. 37-2-205 states:

(a) Except as provided in this subsection, no public utility shall begin construction or complete the purchase of a line or plant, or of any extension of a line or material addition to a plant, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction or purchase. This act shall not be construed to require any public utility operating outside of a city or town to secure a certificate for an extension into an area within which it has lawfully commenced operation, or for an extension into territory contiguous to its line or plant for which no certificate is in force and is not served by a public utility of like character or for any extension within or to territory already served by it, necessary in the ordinary course of its business.

Because the Project is entirely within Montana-Dakota's certificated territory and undertaken in the ordinary course of business to improve reliability, no CPCN is required. W.S. § 37-2-205(a).

Commission Rule Ch. 3, § 21(b)(i) requires notice to the Commission only for transmission projects 69 kV or greater and longer than three miles, unless exempted. W.S. § 37-2-205 (b) exempts the Sheridan Transmission Project from CPCN requirements; it states:

(b) Utilities shall notify the Commission of the following proposed facilities or projects:

(i) For electric utilities, a summary of the proposed modification, construction or re-route for any project associated with any generation plant, substations or switching station 69kV and above or transmission lines 69kV and above that are greater than three miles in length, except that, no utility notification shall be required for a non-situs project if the capital investment in such facility or project that is assigned or allocated to Wyoming customers is less than one percent (1%) of the utility's total Wyoming rate base from the most recent general rate case;

The statute is intended to regulate larger utility extensions; not smaller reliability upgrades made in the normal course of business. Commission Rule Ch. 3, § 21 confirms that no notice or waiver was required. The Project, a 41.6 kV electric transmission line, is below the 69 kV threshold provided by the regulation, such that public notice was not required.

In regard to the Commission's regulatory authority, it is axiomatic that an administrative agency is a creature of statute and possesses only those powers conferred by the legislature. The Wyoming Supreme Court has consistently held that “[a]n administrative agency has only those powers expressly conferred by statute or necessarily implied from the statutory grant of authority.” *Tri County Telephone Ass'n, Inc. v. Wyoming Public Service Comm'n*, 910 P.2d 1359, 1361 (Wyo. 1996), *Montana-Dakota Utilities Co. v. Public Service Com'n of Wyoming*, 847 P.2d 978, 983 (Wyo. 1993); see also *Matter of Adoption of Voss*, 550 P.2d 481, 485 (Wyo. 1976) (“Administrative agencies are creatures of statute and have only such authority as is expressly conferred by statute.”). Where the legislature has limited the scope of an agency's jurisdiction, the agency may not expand its authority by implication. *Rocky Mountain Oil & Gas Ass'n v. State*, 645 P.2d 1163, 1167 (Wyo. 1982). While the Commission has broad authority to

regulate utilities in the public interest, it also must act within its enabling statute and its own regulations.

While it need not do so, when an agency adopts rules pursuant to its statutory authority, those rules and regulations “have the force and effect of law.” *RME Petroleum v. Dept. of Revenue*, 150 P.3d 673, 688 (Wyo., 2007), *Painter v. Abels*, 998 P.2d 931, 938 (Wyo. 2000), *.Jensen v. State ex rel. Wyoming Workers’ Compensation Div.*, 784 P.2d 224, 226 (Wyo. 1989). Accordingly, an agency must follow its own rules. Deviation from its regulations constitutes unlawful action. As the U.S. Supreme Court explained, “It is a well-settled rule that an agency is bound by its own regulations so long as those regulations remain in force.” *Service v. Dulles*, 354 U.S. 363, 388 (1957); see also *Vitarelli v. Seaton*, 359 U.S. 535, 545 (1959).

As applicable to the complaint, the Wyoming Public Service Commission’s jurisdiction is circumscribed by Wyo. Stat. § 37-2-205 and by its duly adopted rules. Both sources of authority limit Commission review to projects requiring a CPCN or, in the case of lower-voltage projects, to those triggering notice requirements under Commission Rule Ch. 3, § 21. Where a project falls outside of these statutory and regulatory thresholds—as is the case here—the Commission has no jurisdiction to require a CPCN or to impose additional obligations. To hold otherwise would expand the Commission’s power beyond its enabling statute, extend its intended regulation beyond the regulatory framework it established and violate the principle that agencies must act within both statutory and regulatory bounds.

The Company recognizes that the Commission is authorized by statute (W.S. § 37-2-119) and regulation (Chap 3, Sec. 11) to consider complaints from individuals such

as the Complainants, the statute authorizes the Commission, in the course of any investigation, to consider the utility's costs and the value of its property "used and useful" for the benefit or convenience of the public. While this language reflects a legislative intent that the Commission weigh certain broader consequences of utility regulation, the statute does not confer open-ended authority. The Wyoming Supreme Court has consistently held that "an administrative agency is a creature of statute and has only those powers expressly conferred by the legislature, together with those reasonably implied therefrom." *Tri-County Tel. Assoc., Inc. v. Wyo. PSC*, 910 P.2d 1359, 1361 (Wyo., 1996), *Montana Dakota Utilities Co. v. Public Service Com'n of Wyoming*, 847 P.2d 978, 983 (Wyo. 1993) (*quoting Tri-County Elec. Ass'n v. City of Gillette*, 525 P.2d 3, 8-9 (Wyo. 1974)), see also *U.S. West Comm'cns, Inc. v. Wyo. Pub. Serv. Comm'n*, 958 P.2d 371, 374 (Wyo. 1998)⁵. Thus, while § 37-2-119 requires the Commission to consider enumerated externalities in the proper context of its investigations, the statute does not authorize the Commission to expand its jurisdiction to address generalized land-use, aesthetic, or "viewshed" concerns; such matters remain assigned-if at all, to other agencies. Accordingly, while the Commission has broad authority to protect the public interest, it must fulfil its statutory responsibilities **squarely within its regulatory enabling authority.**⁶

In this case, the Company recognized the need to upgrade its facilities and as part of its normal course of business; reviewed possible alternative routes, provided notice,

⁵ The US West case stated: "As a creature of the legislature, an administrative agency has limited powers and can do no more than it is statutorily authorized to do. *** Any agency decision that falls outside the confines of the statutory guidelines articulated by the legislature is contrary to law and cannot stand. *** Such decisions are arbitrary and capricious." *US West* at 374.

⁶ In *Monaghan Farms v. Bd. of County Com'rs*, 527 P.3d 1194, 1204 (Wyo., 2023), the Court held, in viewing the need for a conditional use permit, that it would construe a statutory provision to harmonize it with other provisions relating to the same subject matter.

and proceeded with the transmission line consistent with its responsibility to provide service to the public. As the proposed transmission line was within its certificated territory and was less than the threshold requirements of the Commission regulation, it did not request a certificate. The Company proceeded in accord with the regulatory requirement. To like effect, on the regulatory side, the Commission has defined its review authority over construction projects accomplished in the normal course of business and has declined to regulate. Accordingly, the Project should not be reviewed; to do otherwise, would require the Company to undergo the very analysis that it is required to accomplish for a CPCN application-which is specifically proscribed by the regulation and the statute.

While the company is requesting that the formal complaint be dismissed, it is not ignoring the concerns of the Complainants and their neighbors. It has met with them in the past and has agreed to meet with them (whether the Complainants or their neighbors) to discuss the proposed transmission route and address the need for the project. The Company is committed to this process and the need to inform members of the public of its position. Nevertheless, the relief requested by Complainants is not authorized by law and the Commission lacks authority to require the Company to do more than what is specifically required by statute or regulation.⁷

⁷ A governing body such as a county or a municipality does not have the authority to do indirectly anything that it has not been afforded authority to do directly. As stated in *KN Energy, Inc. v. Casper*, 755 P.2d 207, 214 (Wyo., 1988), "[s]tate-wide regulation and supervision of public utilities is the subject of Title 37 of Wyoming Statutes 1977. "The public service commission of Wyoming," created by § 37-2-101, W.S. 1977, has "general and exclusive power to regulate and supervise every public utility within the state in accordance with the provisions of this act."

V. CONCLUSION

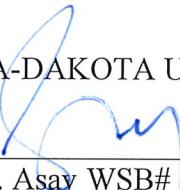
As the Project is exempt from a CPCN application and notice satisfied the statute, the Boleys' Complaint is not within the jurisdiction of the Commission, the Complaint should be dismissed.

WHEREFORE, Montana-Dakota Utilities Co. respectfully requests that the Commission:

1. Dismiss the Formal Complaint in its entirety with prejudice;
2. Deny Complainants' request for a public hearing; and
3. Grant such further relief as the Commission deems just and proper.

Dated this 2nd day of September, 2025,

MONTANA-DAKOTA UTILITIES CO.

By: 

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Attorneys for Montana-Dakota Utilities Co.

VERIFICATION

I, Travis Jacobson, Vice President of Regulatory Affairs for Montana-Dakota Utilities Co., hereby verify under penalty of perjury that I have read the foregoing *Motion to Dismiss Formal Complaint* and that the factual statements contained therein are true and correct to the best of my knowledge, information, and belief.

Dated: September 2, 2025,



Travis Jacobson
Vice President – Regulatory Affairs

STATE OF NORTH DAKOTA)
)ss
COUNTY OF BURLEIGH)

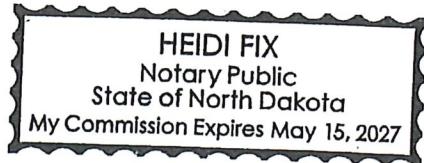
Jurat or Acknowledgement

Sworn to and subscribed and before me on this the 2 day of September, 2025, by Travis Jacobson in the capacity stated.



Heidi Fix
Notary Public

My Commission expires: May 15, 2027



CERTIFICATE OF SERVICE

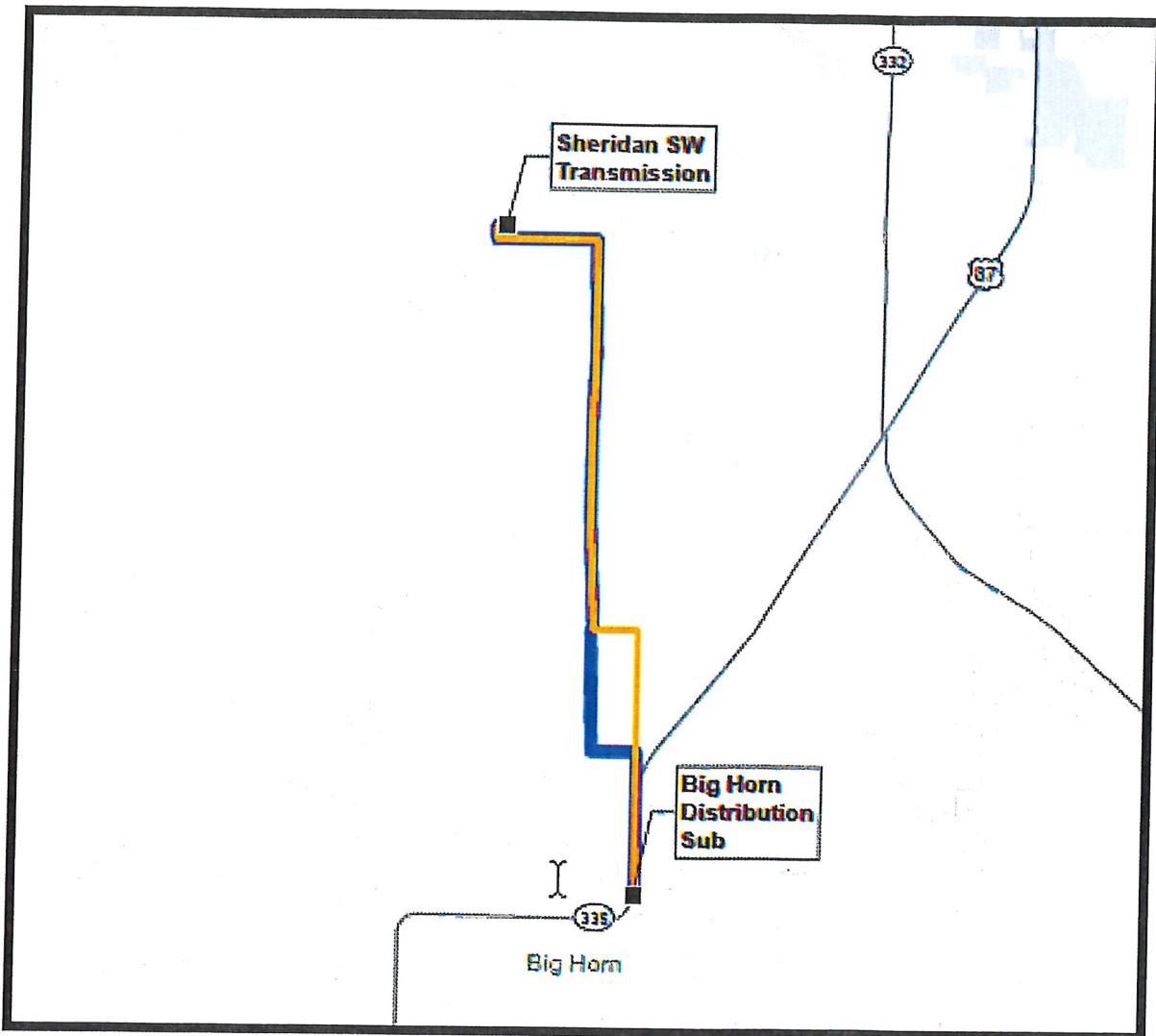
I hereby certify that on this 2nd day of September, 2025, a true and correct copy of the foregoing *Motion to Dismiss Formal Complaint* was served by [U.S. Mail / electronic mail] upon the following:

Frank and Georgia Boley
66 Box Cross Rd
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tailorednutritonllc@gmail.com



Associated Legal Group, LLC

PROJECT MAP:



The Study Area is subject to refinement during project development.

SUBDIVISION MAP

