

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Otter Tail Power Company/Montana-Dakota
Utilities Co. 345kV Transmission Line-Jamestown
to Ellendale Public Convenience & Necessity

Case No. PU-24-91

**PETITION TO RESCIND THE NOVEMBER 20, 2024 ORDER
APPROVING A 345kV TRANSMISSION LINE AND TO REOPEN THE
PROCEEDINGS FOR FAILURE TO ENSURE DUE PROCESS,
COMPLETE THE RECORD, AND PROTECT THE PUBLIC INTEREST**

Steven J. Leibel (ND # 07361)
KNOLL LEIBEL LLP
P.O. Box 858
1915 N. Kavaney Drive, Ste. 3
Bismarck, ND 58501
(701) 255-2010
steve@bismarck-attorneys.com

Douglas J. Nill (MN # 0194876)
DOUGLAS J. NILL, PLLC
d/b/a FARMLAW
1850 Fifth Street Towers
150 South Fifth Street
Minneapolis, MN 55402
(612) 573-3669
dnill@farmlaw.com

*Counsel for the Petitioners
A Coalition of Landowners, Townships, and Interested Parties*

Dated: May 21, 2025

TABLE OF CONTENTS

INTRODUCTION.	1
PETITION TO INTERVENE.	8
A. Directly affected landowners.	11
B. Undermined townships.	12
C. Ratepayers forced to subsidize private gain.	13
BACKGROUND.	14
A. Overview of the transmission line project and the approval process.	14
B. Petitioners’ interests and how they are affected by the project.....	17
C. The Commission’s majority provides no rationale to support its finding of public convenience and necessity.	17
D. The dissent identifies material omissions and unanswered questions.	18
E. The transmission line primarily serves private, rather than public, interests.	19
1. Project motivated by private generation, not public necessity.	19
2. MISO’s justification is generation-driven, not reliability- driven.	20
3. Claimed public benefits are not part of the MISO case. ...	21
4. Cost burden on North Dakota ratepayers.	21
5. Admission: JETx enables private wind projects.	21

6.	Commissioner concerns: benefits disproportionately favor developers.	22
7.	Transmission constraints are based on speculative future wind development.	22
F.	Local opposition: Wano, Willowbank, Russell, Corwin, and Valley Townships deny Conditional Use Permits and join this Petition as Petitioners.	23
LEGAL BASIS FOR THE PETITION.		26
A.	Procedural and substantive due process.	26
B.	The November 20 Order is not final and does not trigger statutory deadlines.	26
C.	The Commission retains continuing jurisdiction under N.D.C.C. §§ 28-32-40(5), 49-03, and 49-22.	29
1.	The Commission was obligated to issue findings under N.D.C.C. § 28-32-39(1).	30
2.	The Commission must issue a final order that provides adequate notice under N.D.C.C. § 28-32-39(2).	31
3.	The Commission must act in accordance with law under N.D.C.C. § 28-32-46.	31
4.	The Commission improperly relied on N.D.C.C. § 49-03, rather than applying the mandatory requirements of N.D.C.C. ch. 49-22 for siting high-voltage transmission facilities.	32
D.	The Commission’s inherent authority to reopen the permit proceedings to correct due process failures, expose critical omissions, and bring new evidence to light in the public interest.	34
1.	Correct due process failures.	35

2.	Address critical omissions.	36
3.	Ensuring adequate findings and reasoned decision-making.	37
4.	Parallels to Rule 60 of the Rules of Civil Procedure.	37
E.	Legislative developments reinforce the Commission’s duty to ensure procedural integrity.	38
GROUNDS FOR REOPENING THE PROCEEDINGS		41
I.	The Order fails to include the findings of fact and conclusions of law required by North Dakota law.	41
II.	The Order rests on material misrepresentations and omissions.	42
A.	The dissent identifies key evidentiary gaps.	43
B.	The claimed public necessity is a pretext for private gain.	44
1.	“New commercial and industrial loads” reflect private—not public demand.	45
2.	“Accommodating new electric generation projects” prioritizes out-of-state developers and imposes local environmental costs.	45
3.	“Reducing transmission constraints” benefits exporters, not local residents.	47
III.	New evidence demonstrates local opposition and township permit denials.	48
IV.	Legislative developments reinforce the Commission’s duty to reopen the proceedings.	49
CONCLUSION.		50
REQUEST FOR RELIEF.		52

INTRODUCTION

This petition is brought by landowners, townships, and other interested parties seeking to intervene in this proceeding. Petitioners respectfully request that the Commission rescind its November 20, 2024 Order approving the proposed 345kV transmission line from Jamestown to Ellendale and reopen the proceedings to provide procedural due process, complete the evidentiary record, and fully consider new and material evidence bearing on the public interest.

This petition is timely. Although the Public Service Commission is generally exempt from the Administrative Agencies Practice Act under N.D.C.C. § 54-57-03(1), the principles reflected in N.D.C.C. § 28-32-39(1) and (2)—which require agency decisions to include findings of fact and conclusions of law—establish a baseline for what constitutes a final, reviewable order. The Commission’s November 20 Order lacks those fundamental elements. It contains no findings, no conclusions, and no reasoned explanation sufficient to inform affected parties of the basis for the decision. Without those core components, the Order does not satisfy the legal standards for finality and cannot trigger any statutory deadlines for reopening, reconsideration, or judicial review. Accordingly, under N.D.C.C.

§ 28-32-39(1) and (2), the Order is not a final agency action.¹

Recent legislative developments, including the recent enactment of House Bill 1258, further underscore the need to reopen the proceedings. That law retroactively imposes procedural safeguards and reinforces township participation in the siting process for major transmission facilities. Reopening the docket is necessary to ensure compliance with those requirements and to safeguard the due process rights of affected communities and landowners.

Additionally, the Commission retains continuing jurisdiction over these proceedings under N.D.C.C. §§ 28-32-40(5), 49-03, and 49-22. That jurisdiction authorizes the Commission to reopen a proceeding when due process has been denied, critical information has been omitted, or new evidence emerges bearing directly on the public interest. Petitioners respectfully request that the Commission exercise that authority here.

Petitioners include:

- Landowners whose properties lie directly within the path of the proposed line and who face involuntary loss or encumbrance of property rights;

¹ Although the Commission is generally exempt from the Administrative Agencies Practice Act, certain proceedings, such as high-voltage transmission line siting under N.D.C.C. ch. 49-22, are expressly subject to chapter 28-32. *See infra* Parts B and C(4) (Legal Basis for the Petition).

- Townships whose land-use authority has been undermined by the Commission’s summary approval; and
- North Dakota ratepayers and citizens who will bear increased electric rates to advance private commercial interests rather than a legitimate public necessity.

While the majority of the Commission concluded in the November 20 Order that the “public convenience and necessity will be served,” it issued no findings of fact or separate legal conclusions supporting that determination. As a result, the Order does not comply with the requirements of N.D.C.C. § 28-32-39 and fails to evaluate evidence relating to environmental compatibility, alternatives, or compliance with applicable law as required by N.D.C.C. § 49-22-09. A dissenting Commissioner identified these and other material omissions, highlighting deficiencies in the Applicants’ submissions and the Commission’s review.

Since the Commission’s November 20 decision, the townships of Wano and Willowbank in LaMoure County, both located along the proposed transmission line route, voted to deny Conditional Use Permits for the project, on January 29 and April 9, 2025, respectively. These two townships, along with the townships of Russell (LaMoure County), Corwin (Stutsman County), and Valley (Dickey County), now join as Petitioners in this proceeding.

Although N.D.A.C. §§ 69-02-06-01 and -02 and N.D.C.C. § 28-32-42 establish deadlines for petitions to reopen, reconsider, or appeal, those deadlines are triggered only upon issuance of a final order. Under N.D.C.C. § 28-32-39(1)–(2), an agency order is not final unless it contains explicit findings of fact and separate legal conclusions and is served on the parties. Because the Commission’s Order lacks these essential components, it does not qualify as a final order, and the statutory deadlines have not yet commenced.

This understanding of finality is consistent with broader administrative law principles, including in analogous contexts. For example, in *Rued v. Commissioner of Human Services*, No. A22-1420, slip op. at 3 (Minn. Oct. 23, 2024), the Minnesota Supreme Court held that the 30-day deadline to appeal an agency decision under Minn. Stat. § 256.045, subd. 7, is a waivable limitations period, not a jurisdictional bar—meaning that if a party to the proceeding or an agency fails to provide adequate notice, including required findings, the appeal period does not begin to run. While *Rued* arose under Minnesota law, its reasoning reinforces the principle that deadlines do not run from legally insufficient orders lacking the required findings.

Even if the Order were final, the Commission retains continuing jurisdiction under N.D.C.C. § 28-32-40(5) to reopen any proceeding where authorized by statute. That continuing authority includes the Energy Conversion and Transmission Facility Siting Act (“Siting Act”), N.D.C.C. ch. 49-22, and related provisions in Chapter 49-03. Any decision upon reopening must conform with § 28-32-39 and the requirements of N.D.C.C. § 28-32-46.

Importantly, the Commission’s November 20 Order appears to have been issued solely under Chapter 49-03, which governs Certificates of Public Convenience and Necessity. At present, the record contains no indication that the Commission has initiated the siting procedures required under Chapter 49-22 of the North Dakota Century Code. Because the proposed 345kV transmission line qualifies as a transmission facility under N.D.C.C. §§ 49-22-03(6) and 49-22-07(1), the Commission’s failure to comply with Chapter 49-22, including requirements for environmental review, alternatives analysis, and engagement with local governments, constitutes a significant legal deficiency. These omissions underscore the need to reopen the proceedings to ensure statutory compliance and protect affected stakeholders.

These statutory mandates, along with the Commission’s constitutional obligation to provide due process, compel reopening where a decision is

rendered without explanation, where material misrepresentations have tainted the record, or where new facts have emerged bearing on the public interest.

The November 20 Order is arbitrary. It fails to articulate a reasoned basis for concluding that the proposed transmission line is necessary, thereby falling short of both statutory requirements and Petitioners' due process rights. As the dissenting Commissioner observed, the record contains material omissions and unresolved factual issues that warrant further examination.

The Applicants' assertion of public necessity does not withstand scrutiny. In reality, the proposed transmission line is being driven by private wind generation interests west and north of Ellendale and the commercial imperative of exporting electricity to out-of-state markets via Jamestown and eastern transmission corridors. North Dakota ratepayers would be saddled with the financial burden, while the primary benefits accrue to private developers. The alleged transmission constraints are speculative and contingent on unbuilt generation projects. By branding the line as a "Jamestown to Ellendale" project, the Applicants mischaracterize its function—masking a strategy to offload electricity generated in western

Dickey County to utilities outside the state.

These stated objectives—“accommodating new electric generation projects” and “reducing transmission constraints to export more North Dakota electricity”—serve to advance the business model of companies such as EDF Renewables North America, a subsidiary of the French utility EDF Group. While EDF is not a party to this proceeding, it has pursued extensive lease agreements across western Dickey County in support of future wind development. The financial and operational burdens imposed on North Dakota landowners and ratepayers by infrastructure that primarily benefits out-of-state markets raise serious questions about whether the project serves a legitimate public need.

The Commission’s November 20 decision is inconsistent with North Dakota law. The Order must be rescinded, and the permit proceedings reopened to allow Petitioners to present evidence that the project advances private interests, not a legitimate public need. As one court has observed, a public utility certificate cannot be justified where the infrastructure primarily serves private purposes:

“A sharply divided Commission entered an order rescinding the petitioner’s certificate that was previously issued after concluding that the proposed pipeline was likely only to serve the petitioner’s private needs and; further, that a public need for the pipeline did not exist.”

Quantum Pipeline Co. v. Illinois Commerce Commission, 709 N.E.2d 950, 952 (Ill. App. 1999).

At this stage, the issue is not whether the project is ultimately necessary, but whether the Commission has complied with the legal requirements for approving such a project. Because it has not, the Order must be rescinded and the proceedings reopened to ensure statutory compliance and protect the rights of affected stakeholders.

PETITION TO INTERVENE

Petitioners Mike and Patty Bartel; Richard and Susan R. Long; Steven and Julia Nelson; Phyllis P. Otterness and Patricia A. Vick; Brandon and Tausha Schweigert; Shockman Farm Partnership, LLLP; Debra Sue Wald; and Lucas and Jill Wald (each owning land in LaMoure County in the path of the proposed transmission line); Wano Township, Willowbank Township, and Russell Township (LaMoure County); Corwin Township (Stutsman County); Valley Township (Dickey County); Tim Leppert (Dickey, ND); Orr Farms (Ypsilanti, ND); Steve M. and Sandra J. Rupp (Edgeley, ND); David A. and Denette M. Schweigert (Edgeley, ND); Allen D. and Inna N. Swiontek (Berlin, ND); David and Holly Wald (Edgeley, ND); Weston Wald (Edgeley, ND); and Willowbank Hutterian Brethren Association (Edgeley, ND), by and through

counsel Douglas J. Nill and Steven J. Leibel, hereby petition to intervene pursuant to N.D.A.C. § 69-02-02-05.

Petitioners respectfully request that the Commission rescind its November 20, 2024 approval of the proposed 345kV transmission line between Jamestown and Ellendale and reopen the proceedings on the grounds of due process violations, material omissions, and newly emerged evidence warranting Commission review in the public interest.

This petition is brought under N.D.A.C. § 69-02-06-01. In the alternative, Petitioners seek relief under N.D.A.C. §§ 69-02-06-02, 69-02-01-11, and N.D.C.C. § 28-32-40(5), as well as under general principles of procedural due process that apply to all governmental decision-making, without prejudice to the Applicants.

Although the Public Service Commission is generally exempt from the Administrative Agencies Practice Act under N.D.C.C. § 54-57-03(1), certain proceedings, such as high-voltage transmission line siting under N.D.C.C. ch. 49-22, are expressly subject to the Act. Furthermore, the principles reflected in N.D.C.C. § 28-32-39, which require final agency decisions to include findings of fact, conclusions of law, and service on all parties, offer a persuasive framework for evaluating the adequacy and finality of the

Commission's actions.

The November 20 Order does not meet those basic standards. It contains no findings of fact or conclusions of law and offers no reasoned basis for its determination. As such, it does not constitute a final decision under generally accepted administrative law principles, and statutory timelines for rehearing or judicial review have not been triggered. The Order remains interlocutory and legally deficient.

The Commission retains continuing jurisdiction over the permit proceedings under N.D.C.C. §§ 28-32-40(5), 49-03, and 49-22, and has both statutory and inherent authority to correct procedural errors, address material omissions, and consider new evidence bearing on the public interest.

Standing and Grounds for Intervention

Petitioners possess direct, substantial, and legally protectable interests that will be adversely affected if intervention is denied. Their intervention is timely, will not expand the scope of issues, and any resulting delay will be neither undue nor unjustified in light of the serious legal and factual deficiencies in the existing record.

Petitioners satisfy the criteria for intervention under N.D.C.C. § 28-32-28 and N.D.A.C. § 69-02-02-05. See *Minn-Kota Ag Prods., Inc. v. N.D. Pub.*

Serv. Comm'n, 938 N.W.2d 118, 130–31 (N.D. 2020) (applying North Dakota’s liberal intervention standard).

Petitioners fall into three distinct but overlapping categories:

A. Directly affected landowners.

The following landowners face imminent involuntary loss or encumbrance of property rights from the proposed transmission line:

- Mike and Patty Bartel, Sec. 4-134-63W, LaMoure County
- Richard and Susan R. Long, Sec. 33 T134 R63; SE $\frac{1}{4}$ Sec. 4 T133 R63 N $\frac{1}{2}$, LaMoure County
- Steven and Julia Nelson, T133N R63W, Sec. 9 W $\frac{1}{2}$, Sec. 16 NW $\frac{1}{4}$, LaMoure County
- Phyllis P. Otterness and Patricia A. Vick, NE $\frac{1}{4}$ 9-134-63 and NW $\frac{1}{4}$ 10-134-63, LaMoure County
- Brandon & Tausha Schweigert, SW 33-134-63, LaMoure County
- Shockman Farm Partnership, LLLP, SE 16-134-63, LaMoure County
- Debra Sue Wald, NW 21-134-63, SW 21-134-63, and NW 33-134-63, LaMoure County
- Lucas and Jill Wald, NW28-134-63 and NW33-134-63, LaMoure County

These landowners will present evidence showing that the project is not a public necessity, but rather an infrastructure giveaway to private

commercial wind developers seeking to export energy out of state.

Their rights are not adequately protected by any existing party, and their intervention is essential to ensure that property rights are not subordinated to private interests under the guise of a public project.

B. Undermined townships.

The following townships have lawfully denied Conditional Use Permits for the proposed line and have voted to intervene through this Petition to defend their local land use authority:

- Wano Township, LaMoure County – Denial: January 29, 2025, Declaration of Douglas J. Nill (“Nill Decl.”), Ex. 1; Vote: April 29, 2025. Nill Decl., ¶ 2.
- Willowbank Township, LaMoure County – Denial: April 9, 2025, Nill Decl., Ex. 3; Vote: April 30, 2025. Nill Decl., ¶ 3.
- Russell Township, LaMoure County – Vote: April 29, 2025, Nill Decl., ¶ 4.
- Corwin Township, Stutsman County – Vote: April 28, 2025. Nill Decl., ¶ 5.
- Valley Township, Dickey County – Vote: April 29, 2025. Nill Decl., ¶ 6.

The Commission’s approval directly undermines the townships’ lawful zoning authority and constitutional right to self-govern land use within their borders.

C. Ratepayers forced to subsidize private gain.

The following ratepayers, customers of Otter Tail Power Company and Montana-Dakota Utilities Co., will be forced to bear rate increases to finance a project that serves private developers, not the public:

- Tim Leppert, Dickey, ND
- Orr Farms (Darron Orr), Ypsilanti, ND
- Steve M. and Sandra J. Rupp, Edgeley, ND
- David A. and Denette M. Schweigert, Edgeley, ND
- Allen D. and Inna N. Swiontek, Berlin, ND
- David and Holly Wald, Edgeley, ND
- Weston Wald, Edgeley, ND
- Willowbank Hutterian Brethren Association, Edgeley, ND

Petitioners will show that the project is a private expansion plan disguised as public infrastructure, improperly shifting financial risks onto North Dakota citizens.

Conclusion

The Commission must grant this Petition to Intervene, rescind its November 20 Order, and reopen the proceedings to correct serious procedural defects, protect property and governance rights, and ensure that only genuine

public necessities—not private commercial interests—receive regulatory approval.

BACKGROUND

A. Overview of the transmission line project and the approval process.

On February 29, 2024, Otter Tail Power Company (Otter Tail Power) and Montana-Dakota Utilities Co. (MDU) filed a joint application for a Certificate of Public Convenience and Necessity to construct, own, and operate approximately 85 miles of 345kV transmission line from Ellendale to Jamestown (JETx), along with the expansion of four substations located in Stutsman, LaMoure, and Dickey Counties in North Dakota.

On March 27, 2024, the Commission issued a Notice of Opportunity for Hearing, inviting written comments or requests for a hearing by May 10, 2024. Although the Commission contends that no responses were received, Petitioner Tim Leppert submitted a timely letter to the Commission. Based on subsequent discussions with residents and township officials, it appears that many affected landowners did not recognize the Notice as pertaining to a major electric transmission line project and were not aware of its significance at the time.

The March 27 notice outlined two main issues for consideration:

1. Whether public convenience and necessity will be served by construction and operation of the facilities.
2. Are [Otter Tail Power/MDU] technically, financially, and managerially fit and able to provide the service?

On July 8, 2024, the Commission discussed these issues in an informal hearing, which was electronically recorded. On August 19, 2024, the Commission held a work session, also electronically recorded. On October 14, 2024, the Commission received comments from the Midcontinent Independent System Operator, Inc. (MISO).² Following this, on October 17, 2024, the Commission held another work session, which was electronically recorded. On November 20, 2024, the Commission issued an Order granting the certificate in a 2-1 vote, with the majority finding that “public convenience and necessity” would be served. However, the majority decision lacked any rationale or explanation to support this conclusion. In dissent, Commissioner Randy Christmann criticized the responses to the Commission’s questions as “vague,” stating that Otter Tail Power and MDU had multiple opportunities to provide more detailed answers, but failed to do so.

² MISO is a non-profit organization that manages the electric grid and wholesale electricity markets across a large portion of North America. Utilities like Otter Tail Power and MDU are members of MISO.

As noted, the responses from Otter Tail Power and MDU were considered vague because there is no clear evidence that the transmission line serves a public necessity. The Applicants' own documents suggest that the line serves private interests, rather than the public. Specifically, MISO's October 14, 2024, letter indicated that the transmission line would "allow for the continued interconnection of new generation resources in areas with higher capacity factors for intermittent resources, such as wind generation." In simpler terms, the transmission line would enable companies with wind towers in the Missouri Coteau, a significant part of the North Dakota duck flyway, to transmit electricity out of North Dakota.

The resulting cost to customers is an additional *\$0.123 per month* for MDU customers and *\$0.117 per month* for Otter Tail Power residential customers, as noted in the November 20 Order. This means that North Dakota customers would be funding a transmission line that primarily benefits wind energy companies looking to export electricity out of the state. This clearly represents a private need, not a public necessity.

The key issue at this stage is not whether the transmission line serves public convenience and necessity. Rather, the issue is the failure of the Commission majority to provide a clear rationale or reasoning for their

decision. Once the November 20 Order is rescinded and the permit application process is reopened, the petitioners intend to pursue discovery to further address the private interests driving the permit application.

B. Petitioners’ interests and how they are affected by the project.

As detailed in the Petition to Intervene, Petitioners include landowners, local governments, and ratepayers whose distinct and directly affected interests warrant intervention under N.D.A.C. § 69-02-02-05.

C. The Commission’s majority provides no rationale to support its finding of public convenience and necessity.

The November 20 Order largely recites procedural background, including the roles of Otter Tail Power and MDU, their participation in MISO’s Long-Range Transmission Planning, and cost allocations. However, the Commission stated without explanation that “the public convenience and necessity will be served” by the proposed transmission line. The Order contains no findings of fact or legal analysis to support this assertion, as required by N.D.C.C. § 28-32-39 and due process principles. *See* Order at 1–2. Critically, the Order fails to identify a specific public need within North Dakota, assess the adequacy of existing transmission infrastructure, evaluate reasonable alternatives, address land use, environmental, or community

impacts, or provide a rational connection between the asserted facts and the Commission's conclusion. This lack of reasoning renders the decision arbitrary and deprives Petitioners of a meaningful opportunity to respond.

D. The dissent identifies material omissions and unanswered questions.

Commissioner Randy Christmann, dissenting in the November 20 Order, highlighted significant gaps in the Applicants' evidence and analysis. He stated (emphasis and paragraph breaks added):

Throughout the last seven months *the explanation has remained vague*. MISO's long term transmission study is [cited] which shows dozens of voltage and thermal problems that this project would relieve. However, the vast majority of the problems are forward looking, meaning they do not exist yet. It will be future actions that will cause most of these problems. *No clear information is provided* that allows us to determine who will be causing these future actions, whether they are preventable, nor whether they are realistic.

One of the few examples provided of the coming changes that would create the need for this transmission is 800 megawatts of solar electric generation, but much of that even appears to be conjecture because *no information is provided regarding who would build these nor where they would be built*.

One key factor that is known about the future of transmission in this area is a large new load near Ellendale, ND that is already partially operational and partially under development. We know this facility has already relieved congestion in this area of the state. MISO *refuses to update their Tranche #1 study*, which is more than two years old, or even take this new load into consideration.

Adding costs of this significance to North Dakota ratepayers deserves

careful scrutiny. Perhaps this project is a necessity, but *there have been multiple opportunities for the applicants to answer more questions and provide more detail. They have not done so.* Until better justification is provided this Certificate should be denied.

This candid assessment reflects what the record confirms: Applicants Otter Tail Power and MDU have failed to meet their burden of proof. Their reliance on outdated studies and speculative projections cannot support a finding of public necessity.

The omission of current data and failure to disclose material facts may reasonably be construed as a misrepresentation by omission—an issue that warrants investigation and weighs heavily against approval of the Certificate.

E. The transmission line primarily serves private, rather than public, interests.

1. Project motivated by private generation, not public necessity.

The Applicants’ July 8, 2024 PowerPoint presentation to the Commission explicitly identifies private development—not public need—as the driving force behind the proposed Ellendale to Jamestown transmission line. According to the presentation, the project is intended to:

- “Enable new commercial and industrial loads”
- “Accommodate new electric generation projects”

- “Reduce transmission constraints to export more North Dakota generation”

•
See Nill Decl., Ex. 5.

Although the Applicants claim the existing 230 kV system is “heavily constrained” with “[e]xcessive loadings” and “voltage depressions,” they acknowledged that these issues are caused by prospective surplus generation in the future from privately-owned wind projects west and north of Ellendale, Nill Decl., Ex. 6 (PSC Informal Hearing, July 8, 2024, at 0:14:55 (“contingency analysis of this *future condition*”) (emphasis added); and the intent is to move that generation out of state. See Oct. 16, 2024 Memorandum by PSC Public Utility Analyst Christopher C. Hanson addressing an October 14, 2024 letter from Jeremiah Doner, the Director of Cost Allocation with MISA: “it creates *additional capacity for more wind to be transmitted from North Dakota eastward.*” (Emphasis added). Nill Decl., Ex. 8.

2. MISO’s justification is generation-driven, not reliability-driven.

Otter Tail Power’s spokesperson stated that MISO focused on the project because “the amount of generation being built in this region is far outpacing what’s happening in other parts of MISO,” and they are “trying to

get ahead of the transmission needs” associated with that private generation.

Nil Decl., Ex. 6 (PSC Informal Hearing, July 8, 2024) at 0:34:50.

3. Claimed public benefits are not part of the MISO case.

When asked about the public benefits used to justify the line, such as landowner easement payments and tax revenue, Otter Tail admitted these are not included in MISO’s business case for the project:

(Commissioner Fedorchak): “And the benefits that you mentioned in your discussion ... those aren’t part of the MISO business case, are they?”

(Speaker Weirs): “They are not actually part of the MISO case.”

Ex. 6 at 0:41:05–0:41:24.

4. Cost burden on North Dakota ratepayers.

Despite the private nature of the need, the cost burden is placed on North Dakota residential customers:

(Speaker Weirs): “Otter Tail residential customers are going to see a rate impact of 18 cents per month, MDU customers will see an impact of 12 cents per month.”

Ex. 6 at 0:46:42.

5. Admission: JETx enables private wind projects.

The Applicants themselves concede that the line is essential for enabling further private wind development:

(Speaker Weirs): "...without projects like this, it's hard to develop additional generation within the state."

Ex. 6 at 0:56:34.

6. Commissioner concerns: benefits disproportionately favor developers.

PSC Commissioner Christmann clearly expressed concern that the project disproportionately benefits private developers:

"So our ratepayers pay to build this and the benefits are ... mostly to whoever the new developer is that comes in and builds another wind farm, a few landowners, but not to most of these Otter Tail and MDU customers."

Nill Decl., Ex. 7 (PSC Work Session, Aug. 19, 2024) at 0:22:26. He further emphasized:

"If the issue is somebody else's out-of-state's need for energy ... fine, pay for it. Not our rates all the time." *Id.* at 0:23:53. And:

"... among the project benefits are to accommodate new electric generation projects. And to me, that's who out to be paying ... because that, to me, is the key benefit." *Id.* at 0:30:35.

7. Transmission constraints are based on speculative future wind development.

According to a PSC memorandum dated October 16, 2024, prepared by analyst Christopher C. Hanson, the transmission constraints that the proposed line is intended to address are not present conditions, but rather projected issues based on long-term forecasts of load and generation growth.

See Nill Decl., Ex. 8 (Hanson Memo re: letter from Jeremiah Doner, Director of Cost Allocation, MISO) (emphasis added):

“Specifically, he states that this project will remedy the N-1 and N-1-1 issues noted in the previous memo and he identifies the elements that are projected to be affected by thermal and voltage issues. These N-1 and N-1-1 events are *projected* based upon each company’s long-term forecasts of load and generation growth.”

Further, Hanson quotes Doner as stating:

“These projects will allow for the continued interconnection of new generation resources in areas that offer higher capacity factors for intermittent resources, such as wind generation.”

See also Nill Decl., Ex. 6 (PSC Informal Hearing, July 8, 2024, at 0:14:55

(referring to “contingency analysis of this future condition”). In other words, the transmission line is being built to enable export capacity for wind projects that have not yet materialized; not to address any present reliability concerns.

F. Local opposition: Wano and Willowbank Townships deny Conditional Use Permits and Wano, Willowbank, Russell, Corwin, and Valley Townships vote to participate as Petitioners in this proceeding.

Wano Township: On January 29, 2025, the Wano Township Zoning Board held a meeting, with strong community attendance. See Nill Decl., Ex.

1. Kris Koch represented Otter Tail Power. Concerns were raised by residents, particularly regarding potential impacts on local roads and wind

towers:

“There was a lot of concern expressed about the wind towers, someone said there were 285 proposed to be installed in Stutsman and LaMoure counties that could tie into the line ... Lots of people sounded uncomfortable with the proposed changes regarding the power line and wind towers.”

After discussion, the Board voted to deny the Conditional Use Permit. On April 29, 2025, the Wano Township Board voted to participate as a Petitioner in this proceeding. Nill Decl., ¶ 2.

Willowbank Township: On January 22, 2025, the Willowbank Township Zoning Board held a meeting attended by Kris Koch of Otter Tail Power. *See* Nill Decl., Ex. 2. The meeting, which was livestreamed on Facebook, drew significant participation from local residents. Koch presented an overview of the proposed JETx transmission line project, including the planned route, and stated that directly affected landowners would receive an average one-time payment of \$55,000. Following his 27-minute presentation, the floor was opened for questions and public comment.

Residents expressed numerous concerns, including whether the proposed transmission line was necessary. In response, Koch stated that “there is congestion, and the power needs to be moved from one area to another.” However, Koch did not provide the full context: the congestion he

referenced stems from projected future generation by private wind tower projects, and the Applicants intend to export this power from North Dakota to Minnesota. Additional concerns raised by residents included the condemnation process if easements are not signed, the anticipated installation of 285 wind towers occupying approximately 3,000 acres of farmland, increased energy demands from Artificial Intelligence (AI) data centers in Ellendale and Jamestown, and potential health impacts.

Due to the presence of only two board members, no final action was taken. The Board voted to table the decision on the Conditional Use Permit.

On April 9, 2025, with Otter Tail Power Company representatives present, the Willowbank Township Board voted to deny a Conditional Use Permit for the Jamestown to Ellendale transmission line. Concerns were expressed that the transmission line did not comply with the Willowbank Zoning Ordinance to “protect the health, safety, morals, comfort, convenience, prosperity, and general welfare of the people of the Township of Willowbank.” On April 30, 2025, the Board voted to participate as a Petitioner in this proceeding.

Russell Township: On April 29, 2025, the Township Board voted to participate as a Petitioner in this proceeding.

Corwin Township: On April 28, 2025, the Township Board voted to participate as a Petitioner in this proceeding.

Valley Township: On April 29, 2025, the Township Board voted to participate as a Petitioner in this proceeding.

LEGAL BASIS FOR THE PETITION

The Commission has jurisdiction to address this Petition for the following reasons:

A. Procedural and substantive due process.

The Commission's failure to articulate the basis for determining public necessity constitutes a violation of both procedural and substantive due process under the Fourteenth Amendment to the U.S. Constitution. It also violates the North Dakota Constitution, including Article I, Section 12 (guaranteeing due process in administrative proceedings) and Article I, Section 9 (ensuring judicial access and remedy).

B. The November 20 Order is not final and does not trigger statutory deadlines.

Under North Dakota law, the deadlines to petition for reopening (N.D.A.C. § 69-02-06-01), reconsideration (N.D.A.C. § 69-02-06-02), or appeal (N.D.C.C. § 28-32-42) do not commence unless and until the Commission issues a final order. Although the Public Service Commission is generally

exempt from the Administrative Agencies Practice Act under N.D.C.C. § 54-57-03(1), the principles reflected in N.D.C.C. § 28-32-39 remain instructive in determining whether an agency order is final and reviewable. Specifically, N.D.C.C. § 28-32-39 requires:

1. “explicit” findings of fact and separate conclusions of law; and
2. service of those findings, conclusions, and the order on all parties.

N.D.C.C. N.D.C.C. § 28-32-39(1), (2).

The Commission’s November 20 Order includes neither. It contains no findings of fact, no conclusions of law, and no reasoned explanation for its determination. Accordingly, it does not satisfy basic finality standards and has not triggered any statutory deadline for reopening, reconsideration, or judicial review.

While the Commission may not be formally bound by the adjudicative procedures of N.D.C.C. ch. 28-32 in all respects, it remains subject to binding statutory and constitutional requirements that impose comparable obligations. Under the Energy Conversion and Transmission Facility Siting Act (N.D.C.C. ch. 49-22), the Commission is required to issue decisions “in accordance with the evidence presented at the hearings” and “*with reasons*” for the decision. N.D.C.C. §§ 49-22-08(6) and 49-22-08.1(5) (The Commission

shall designate a route for the construction of an electric transmission facility ... in accordance with the evidence presented at the hearings, an evaluation of the information provided in the application, the criteria established pursuant to section 49-22-05.1, and the considerations set out in section 49-22-09 *in a finding with reasons for the designation ...*”). (Emphasis added). These are not discretionary. Moreover, the availability of judicial review under N.D.C.C. § 49-22-19 presupposes a decision that contains sufficient findings and legal rationale to permit meaningful appellate scrutiny. A rehearing “must be conducted *pursuant to chapter 28-32*.”). (Emphasis added).

In addition, the Commission is bound by constitutional due process. Even where formal adjudicative rules do not apply, due process under the U.S. and North Dakota Constitutions requires that affected parties receive notice, a meaningful opportunity to be heard, and a reasoned decision supported by the record. This principle is well established in both state and federal law. *See, e.g., Goldberg v. Kelly*, 397 U.S. 254 (1970). Finally, even post-permit, the Commission must comply with all provisions of the Administrative Agencies Practice Act. Section 28-32-46 permits judicial review of agency decisions that are unlawful, unsupported by evidence, or

issued without fair procedure.

This conclusion is further supported by persuasive authority from other jurisdictions:

- *Rued v. Commissioner of Human Services* (Minn. 2024): Appeal clock did not begin to run absent proper notice.
- *First Minn. Bank v. Overby Dev., Inc.*, 783 N.W.2d 405, 409 (Minn. App. 2010): Time to appeal did not run where notice was deficient.
- *Alford v. County of L.A.*, 51 Cal. App. 5th 742, 744 (Cal. App. 2020): Judicial review deadline was not triggered where notice of decision was not in compliance with the statute.

These decisions affirm the basic principle that statutory deadlines do not begin to run until an agency issues a legally sufficient final decision—including adequate notice, findings, and conclusions—even where formal procedural rules may vary by jurisdiction.³

C. The Commission retains continuing jurisdiction under N.D.C.C. §§ 28-32-40(5), 49-03, and 49-22.

Even apart from the finality issue, the Commission has authority to

³ The Commission reopened a permit proceeding in the Dakota Access Pipeline case at the request of the applicant, Energy Transfer, even though the request was untimely. By February 19, 2020 Findings of Fact, Conclusions of Law and Order, PU-19-204, the Commission allowed a new permit application for a pump station in Emmons County, which nearly doubled the pipeline’s capacity. This action was taken despite previous permit applications and the project’s already extensive regulatory history.

reopen proceedings under N.D.C.C. § 28-32-40(5), which preserves agency jurisdiction where provided by statute. Chapters 49-22 (the Siting Act) confers continuing oversight powers.

Notably, N.D.C.C. § 49-22-20 allows revocation or suspension of permits for:

- False statements in the application;
- Noncompliance with permit conditions or the law;
- Unfair tactics in acquiring land or easements;

This statutory framework reflects legislative intent that the Commission’s jurisdiction does not end with the permit order. Rather, it retains authority to enforce compliance and protect the public interest.

1. The Commission was obligated to issue findings under N.D.C.C. § 28-32-39(1).

Section 28-32-39(1) requires the Commission to issue findings of fact and separate conclusions of law. This is not optional. As the North Dakota Supreme Court has held, “[a]n agency’s findings are adequate when they enable a reviewing court to understand the agency’s decision.” *State v. Sandberg*, 956 N.W.2d 342, 347 (N.D. 2021).

Here, while the Commission stated that “public convenience and necessity will be served,” it gave no rationale or supporting analysis. That

failure violates both § 28-32-39 and the due process rights of Petitioners. The dissent's identification of critical omissions by the Applicants only underscores the inadequacy of the majority's reasoning.

2. The Commission must issue a final order that provides adequate notice under N.D. C.C. § 28-32-39(2).

The requirement to serve a final order with findings and conclusions is not merely procedural; it ensures that parties understand the agency's rationale and can assess their rights. Without such notice, reconsideration, appeal, or other remedies cannot be meaningfully pursued.

As in *Alford* and *Pan Am. Petroleum Corp. v. Wyo. Oil & Gas Conservation Comm'n*, 446 P.2d 550 (Wyo. 1968), failure to explain the basis for an agency decision defeats judicial review and undermines the rule of law. The PSC's November 20 Order fails that basic standard.

3. The Commission must act in accordance with law under N.D.C.C. § 28-32-46.

Finally, even post-permit, the Commission must comply with all provisions of the Administrative Agencies Practice Act. Section 28-32-46 permits judicial review of agency decisions that are unlawful, unsupported by evidence, or issued without fair procedure.

As the North Dakota Supreme Court recently held in *Zent v. N.D. Dep't of Health & Human Servs.*, 2025 ND 50, ¶ 16, courts must review whether the agency:

- Acted within the law;
- Complied with Chapter 28-32;
- Afforded due process; and
- Supported its conclusions with evidence and rationale.

By failing to issue findings, support its decision, or provide a reasoned rationale, the Commission acted arbitrarily and in violation of law. That error must be corrected now, before construction and condemnation proceed under a legally defective Order.

- 4. The Commission improperly relied on N.D.C.C. § 49-03, rather than applying the mandatory requirements of N.D.C.C. ch. 49-22 for siting high-voltage transmission facilities.**

Although the Commission opened this proceeding (PU-24-91) under N.D.C.C. § 49-03, which governs applications for a certificate of public convenience and necessity, that statute does not control siting decisions for high-voltage transmission lines. The project at issue, a 345kV transmission line extending from Jamestown to Ellendale, falls squarely within the scope of the Energy Conversion and Transmission Facility Siting Act, codified at

N.D.C.C. ch. 49-22. Under N.D.C.C. § 49-22-03(6), any transmission line designed for operation at 115 kilovolts or more and extending more than one mile is a “transmission facility” subject to the Siting Act. N.D.C.C. § 49-22-07(1).

By proceeding solely under Chapter 49-03, the Commission failed to apply critical statutory protections that attach to siting cases under Chapter 49-22. These include—but are not limited to—requirements for findings on environmental compatibility, analysis of alternatives, local land use conformity, and consideration of township input. *See* N.D.C.C. § 49-22-09. The Commission also bypassed the public hearing and local notice requirements that are central to the integrity of the siting process.

This procedural misstep is not harmless. By avoiding the mandatory siting criteria and procedures, the Commission deprived Petitioners, including affected landowners and townships, of their statutory right to full participation in a proceeding designed to protect their interests. It also rendered the November 20 Order legally deficient, as it lacks the findings and framework required by Chapter 49-22 and by N.D.C.C. § 28-32-39.

Accordingly, the Commission’s reliance on N.D.C.C. § 49-03 cannot substitute for compliance with the specific siting obligations imposed by

Chapter 49-22. Because the project constitutes a transmission facility as defined by law, the Commission was required to conduct the proceeding under the Siting Act. Its failure to do so further supports Petitioners' request to rescind the Order and reopen the proceeding.

This failure to comply with the governing statute is not a mere technical defect—it deprives affected landowners, townships, and the broader public of the very procedural protections the legislature has deemed essential.

D. The Commission's inherent authority to reopen the permit proceedings to remedy due process violations, address material omissions, and consider new evidence in the public interest.

As previously discussed, the North Dakota Legislature has granted the Commission continuing jurisdiction over electric transmission line permits under N.D.C.C. § 28-32-40(5) and Chapter 49-22. That jurisdiction includes the authority to reopen proceedings. Further, under N.D.C.C. § 28-32-39(1), the Commission must base its findings and conclusions on the record; under N.D.C.C. § 28-32-39(2), it must issue a final order containing those findings and conclusions; and under N.D.C.C. § 28-32-46, it must act in accordance with law.

These statutory mandates, together with the Commission’s duty to ensure the integrity of its processes, provide both explicit and inherent authority to reopen proceedings when necessary—particularly where due process has been denied, material omissions have tainted the record, or new evidence has emerged bearing on the public interest.

1. Correct due process failures.

Courts have long recognized the inherent authority of administrative agencies to revisit decisions that are legally deficient. Reconsideration is a fundamental administrative power, especially to correct arbitrary or capricious decisions unsupported by adequate findings or conclusions. *See, e.g., McAllister v. United States*, 3 Cl. Ct. 394, 400 (1983) (holding that if the agency failed to apply the regulations properly or otherwise acted contrary to law, the presumption of inherent authority to reconsider applies); *Bookman v. United States*, 453 F.2d 1263, 1265 (Fed. Cl. 1972) (“[R]econsideration is often the sole means of correcting errors of procedure or substance.”); *Citizens Against the Pellissippi Parkway Extension v. Mineta*, 375 F.3d 412, 416–18 (6th Cir. 2004) (holding that it was an abuse of discretion not to remand to allow an agency to correct legal defects); *Iowa Power & Light Co. v. United States*, 712 F.2d 1292, 1294, 1297 (8th Cir. 1983) (ICC had inherent authority

to reconsider a rate decision resulting from legal error); *cf. Rosebud Sioux Tribe v. Gover*, 104 F. Supp. 2d 1194, 1202–13 (D.S.D. 2000), *rev'd on other grounds sub nom. Rosebud Sioux Tribe v. McDivitt*, 286 F.3d 1031 (8th Cir. 2002) (concluding that the agency lacked inherent authority in part because its decision was not arbitrary or capricious); *Ramponi v. Bd. of Selectmen*, 533 N.E.2d 226, 228 (Mass. App. Ct. 1989) (agency had inherent authority to correct a legally defective decision).

2. Address critical omissions.

Agencies also have inherent authority to reopen proceedings where their decisions may have been influenced by fraud, material omissions, or other misleading representations. *See, e.g., Gorbach v. Reno*, 179 F.3d 1111, 1123 (9th Cir. 1999) (“There is nothing remarkable about recognizing an agency’s power to reopen and reconsider its own decisions, especially those arguably obtained by fraud.”); *Aronson v. Brookline Rent Control Bd.*, 477 N.E.2d 182, 185–87 (Mass. App. Ct. 1985); *Mid-South Rd. Builders, Inc. v. Ark. Contractors Licensing Bd.*, 946 S.W.2d 649, 652 (Ark. 1997); *Alberta Gas Chem., Ltd. v. Celanese Corp.*, 650 F.2d 9, 13 (2d Cir. 1981). This principle applies here, where the applicants failed to disclose critical facts, as detailed in the dissent.

3. Ensuring adequate findings and reasoned decision-making.

The Commission is required to issue findings and conclusions that reflect reasoned decision-making, not arbitrary will. See, e.g., *Matter of Authority to Provide Alternative Operator Services in Minnesota*, 490 N.W.2d 920, 923–24 (Minn. App. 1992) (agency failure to make statutory findings renders decision arbitrary); *Peoples Natural Gas Co. v. Minn. Pub. Utils. Comm’n*, 342 N.W.2d 348, 352 (Minn. App. 1983) (decision unsupported by findings reflects will, not judgment); *Reserve Mining Co. v. Minn. Pollution Control Agency*, 364 N.W.2d 411, 415 (Minn. App. 1985), *pet. for rev. dismissed* (Minn. June 10, 1985) (agency decisions must include more than conclusory findings to withstand judicial review). An agency decision unsupported by such findings is inherently arbitrary and lacks legal durability.

4. Parallels to Rule 60 of the Rules of Civil Procedure.

Minnesota courts have acknowledged that an agency’s inherent authority to reopen proceedings parallels Rule 60 of the Minnesota Rules of Civil Procedure, which permits relief from a judgment due to fraud, mistake, or newly discovered evidence within one year. See *In re Minn. Pub. Utils. Comm’n*, 417 N.W.2d 274, 280–83 (Minn. App. 1987). These civil procedural

standards reinforce the agency's obligation to ensure not only legal sufficiency, but justice.

E. Legislative developments reinforce the Commission's duty to ensure procedural integrity.

While Petitioners' claims rest firmly on violations of existing law and the Commission's continuing jurisdiction, recent legislative developments further underscore the necessity of revisiting and reopening these proceedings. As context, the Commission's November 20 Order contains neither findings of fact nor conclusions of law and therefore cannot be considered a final decision under North Dakota law. *See* N.D.C.C. § 28-32-39(1) and (2) (requiring findings of fact and conclusions of law for final orders in adjudicative proceedings).

Subsequently, on January 29 and April 9, 2025, Wano and Willowbank Townships denied Conditional Use Permits for the proposed transmission line. On April 15, 2025, Governor Kelly Armstrong signed House Bill 1258 into law, amending key provisions of the North Dakota Century Code governing the siting of electric transmission facilities.⁴ Among other changes,

⁴ H.B. 1258, 69th Leg., Reg. Sess. (N.D. 2025), amending N.D.C.C. § 49-22-16.

HB 1258 imposes new procedural requirements: the Commission must provide notice to affected townships upon receiving a transmission line application, and may not hold a public hearing fewer than 45 days after such notice.⁵

The statute also clarifies that local zoning requirements are not automatically preempted. Instead, they remain in effect unless the Commission finds by a preponderance of the evidence that the requirements are “unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of location,” or that they conflict with state or federal law.⁶ Importantly, HB 1258 applies retroactively to January 1, 2025.⁷

Although the law was enacted after the Commission’s November 20 Order, its retroactive effect encompasses the critical time period during which Wano and Willowbank exercised zoning authority. Wano Township’s

⁵ N.D.C.C. § 49-22-16(2)(d) (2025) (“The commission shall notify... The commission may not schedule a public hearing sooner than forty-five days from the date notification is sent...”).

⁶ N.D.C.C. § 49-22-16(2)(c) (2025).

⁷ H.B. 1258, § 2 (2025) (“This Act applies retroactively to January 1, 2025.”).

denial on January 29, 2025, and Willowbank's on April 9, 2025, both fall squarely within the statute's scope. The record reflects no notice to these townships, no opportunity to submit local regulations, and no compliance with the mandated 45-day hearing window. These omissions further underscore the need for the Commission to re-evaluate the permit in light of the procedural framework and local participation requirements now codified in law.

Petitioners do not contend that HB 1258, standing alone, invalidates the Commission's prior Order. Rather, the statute reflects a legislative reaffirmation of core principles—transparency, procedural fairness, and meaningful local input—that were absent from the original proceeding. Under N.D.C.C. §§ 28-32-39, 28-32-40(5), 28-32-46, and 49-22, the Commission retains continuing jurisdiction to reopen a proceeding in light of material changes in law or fact. HB 1258 is precisely such a development.

Reopening the matter under these circumstances is not only authorized by statute; it is necessary to preserve the integrity of the process. Allowing the permit to stand despite the absence of the notice, timelines, and participation now required by law would frustrate legislative intent and undermine fundamental principles of due process.

GROUNDS FOR REOPENING THE PROCEEDINGS

The Commission must vacate its November 20 Order and reopen the proceedings. That Order violates fundamental requirements of due process, fails to meet the Commission's statutory obligations, relies on materially incomplete or misleading evidence, and has been overtaken by new facts and legal developments that compel reconsideration. Under North Dakota law, including N.D.C.C. §§ 28-32-39, 28-32-40(5), 28-32-46, 49-03 and 49-22, the Commission retains jurisdiction to reopen this matter and is obligated to do so under the present circumstances.

I. The Order fails to include the findings of fact and conclusions of law required by North Dakota law.

The Commission's November 20 Order fails to include the findings of fact and conclusions of law required to support a lawful determination of public necessity. The Order offers only a conclusory assertion that "public convenience and necessity will be served" without identifying specific facts or demonstrating that the statutory criteria have been met.

North Dakota law, particularly N.D.C.C. §§ 28-32-39 and 28-32-46, requires the Commission to provide a reasoned decision that includes adequate findings and conclusions. *See also* N.D.C.C. §§ 49-22-08(6) and 49-22-08.1(5). These findings must be sufficiently detailed to enable informed

public review and judicial scrutiny. Yet the Order fails to:

- Identify a specific public need within North Dakota;
- Assess the adequacy of existing transmission infrastructure;
- Evaluate reasonable alternatives;
- Address land use, environmental, or community impacts;
- Provide a rational connection between asserted facts and the conclusion.

Although the Commission appears to rely heavily on the project's inclusion in MISO's Long-Range Transmission Plan, deference to a regional planning body does not relieve it of its independent statutory duty to assess public necessity and siting requirements under North Dakota law.

Because these omissions render the findings legally and procedurally defective, the Order does not qualify as valid final agency action under N.D.C.C. § 28-32-39(1) and (2) and must be reopened under the Commission's continuing authority to correct such deficiencies. Petitioners respectfully request that the Commission reopen the proceeding to develop a proper factual record, apply the statutory criteria, and issue a lawful decision supported by specific findings and conclusions.

II. The Order rests on material misrepresentations and omissions.

The Commission has authority to reopen proceedings where a permit

was granted based on materially incomplete or misleading information. That is the case here. The Applicants failed to disclose critical facts regarding the generation projects the line is intended to serve, the private entities that stand to benefit, and the limited and private scope of the asserted “public necessity.” Despite repeated opportunities to clarify the record, the Applicants withheld basic information. These omissions invalidate the permit and warrant reopening.

A. The dissent identifies key evidentiary gaps.

Commissioner Christmann’s dissent is not merely a policy disagreement; it exposes evidentiary deficiencies that undermine the Order’s validity. As the dissent details, the record lacks credible analysis of load forecasts, in-state demand, or feasible alternatives. Applicants also failed to disclose the identities of the customers or describe their commercial arrangements. The dissent highlights the speculative and incomplete nature of the Commission’s decision:

- “Throughout the last seven months, the explanation has remained vague.”
- “No clear information is provided that allows us to determine who will be causing these future actions, whether they are preventable, nor whether they are realistic.”
- “No information is provided regarding who would build these nor

where they would be built.”

- “There have been multiple opportunities for the applicants to answer more questions and provide more detail. They have not done so.”
- “Until better justification is provided, this Certificate should be denied.”

The Applicants’ refusal to provide basic information demonstrates disregard for the landowners directly affected, the townships that have denied local permits, and the North Dakotans who will be asked to subsidize a project that benefits private actors—many of them based outside the state or country.

B. The claimed public necessity is a pretext for private gain.

As previously discussed in their July 8, 2024 presentation, the Applicants cited three core justifications for the project:

- Enabling new commercial and industrial loads;
- Accommodating new electric generation projects; and
- Reducing transmission constraints to export more electricity.

Each rationale, however, advances private commercial interests, not a genuine public necessity.

1. “New commercial and industrial loads” reflect private—not public—demand.

The primary “new load” is Applied Digital’s 100MW data center west of Ellendale; a three-story, 363,000-square-foot facility designed to leverage North Dakota’s wind energy. In a January 22, 2025 meeting with the Willowbank Township board, Otter Tail Power spokesperson Kris Koch acknowledged that “there [is] more data processing planned, and this line will be needed.” Nill Decl., Ex. 2.

This is a private industrial demand driven by speculative future growth. Local residents and small businesses, who will bear the cost through rate increases, receive no offsetting benefit. One of the primary corporate beneficiaries is Macquarie Asset Management, an Australian investment firm with ownership interest in Applied Digital. Nill Decl., Ex. 12.

2. “Accommodating new electric generation projects” prioritizes out-of-state developers and imposes local environmental costs.

Petitioners will show that the project is a private expansion plan disguised as public infrastructure, improperly shifting financial risks onto North Dakota citizens. Among the primary beneficiaries are foreign and out-of-state developers seeking to export electricity eastward from wind energy projects sited in sensitive prairie and migratory bird habitats. These projects

do not address any documented local demand for new generation capacity. Instead, they are designed to feed electricity into regional and national markets through high-voltage transmission infrastructure paid for in part by North Dakota communities.

Among the targeted generation projects are:

- The Drift Prairie Wind Project, developed by EDF Renewables, a French company operating via a U.S. subsidiary, which is proposed to include turbines in German, Northwest, Hamburg, Potsdam, and Whitestone Townships, all located in the Prairie Pothole Region of western Dickey County. Nill Decl., Ex. 13.
- The Wallflower Wind Farm, a 650 MW facility by First Mile Development in Dickey and LaMoure Counties, is slated to interconnect directly with the proposed Ellendale to Jamestown transmission line. Nill Decl., Ex. 14.

Local landowners report devastating impacts on migratory wildlife

Local residents near existing wind projects have already reported significant negative impacts. For example, near the 150 MW Merricourt Wind Project, landowners have observed substantial harm to migratory birds and protected wildlife. Brandon Schweigert, a directly affected landowner and Petitioner in this proceeding, described his experience farming cropland on the Coteau Hills Ridge west of Ellendale:

“What I've witnessed in the last 10 years of farming that location has become rather disheartening. Twice a year, during bird migration, the

area becomes a slaughter zone. Mallard ducks, Canadian geese, snow and blue geese are frequently struck by turbine blades, dying either on impact or later after being injured, often finished off by coyotes. We've even found dead bald eagles. It's never a good day planting through a field strewn with dead geese and a pair of bald eagles. Perhaps there's no perfect place for a wind farm, but common sense tells me not to place one in the largest migratory bird flyway in the United States."

Nill Decl., Ex. 15 (Declaration of Brandon Schweigert, May 1, 2025, at ¶ 4).

These wind projects are concentrated along the Missouri Coteau migratory flyway, one of the most critical wildlife corridors in North America. The environmental cost to local ecosystems, combined with the lack of local demand and the foreign ownership of generation assets, underscores the central flaw in the transmission proposal: it is not a project in the public interest, but a profit-driven scheme advancing nonresident economic interests at North Dakota's expense.

3. "Reducing transmission constraints" benefits exporters, not local residents.

The final justification, that the project will ease transmission constraints, means only that companies like EDF and First Mile will be able to export more electricity. Local consumers are not requesting more turbines or transmission infrastructure. The claimed benefit is not to the public, but to private developers and their investors.

III. New evidence demonstrates local opposition and township permit denials.

Petitioners submit new and material evidence supporting the reopening of this proceeding: two townships directly in the proposed path of the transmission line—Wano and Willowbank Townships in LaMoure County—have voted to deny Conditional Use Permits for the project. In addition, Wano, Willowbank, and Russell Townships in LaMoure County, Corwin Township in Stutsman County, and Valley Township in Dickey County have voted to join this Petition.

These actions, taken after public deliberation, reflect growing community opposition and further rebut the Applicants' claims of public necessity.

North Dakota law affirms the zoning authority of townships over energy infrastructure within their borders. These denials are significant because:

- *They reflect informed, democratic decisions.* The township boards reviewed project materials, heard public comment, and concluded that the project is not in the public interest.
- *They expose a gap between claimed and actual public benefit.* The communities most directly affected do not support the project and have denied it local permits.
- *They constitute new and material evidence.* These actions were not part

of the original record and trigger the Commission’s authority to reopen proceedings under N.D.C.C. §§ 28-32-39 and 28-32-40(5).

The Commission cannot ignore these official township decisions. Where local governments determine, after public process, that the project is not justified, the Commission cannot rely on a conclusory finding of “public necessity” unsupported by facts or reasoned analysis.

IV. Legislative developments reinforce the Commission’s duty to reopen the proceedings.

Although this Petition rests on existing law and the Commission’s continuing jurisdiction, recent legislative developments underscore the need for reconsideration. The North Dakota Legislature’s enactment of House Bill 1258 affirms the importance of transparency, local participation, and procedural rigor in siting decisions.

HB 1258 codifies minimum notice requirements, expands local input rights, and affirms township zoning authority. While enacted after the November 20 Order, it applies retroactively to January 1, 2025—squarely encompassing the permit denials by Wano and Willowbank Townships.

Petitioners do not contend that HB 1258 nullifies the Order on its own. Rather, it reinforces what existing law already requires: meaningful findings, respect for local land use decisions, and adherence to due process. The

Commission must reopen the proceedings to align its process with the Legislature’s clear intent and restore public confidence in the integrity of this decision.

CONCLUSION

Otter Tail Power and MDU seek to construct a high-capacity transmission line from Ellendale to Jamestown based on speculative projections tied to wind generation projects proposed by private developers like EDF Renewables, a U.S. subsidiary of a French corporation. Their asserted justification—relieving transmission congestion—serves primarily out-of-state energy markets and foreign investors, not North Dakota consumers. The purported public benefits are, in reality, a pretext for private commercial gain.

State ratepayers would be asked to subsidize a project that lacks verified demand, clear necessity, or local support. The speculative need to transmit power from unbuilt generation projects cannot meet the legal standard of “public necessity.” The record is devoid of the factual findings required to justify this designation, and the Commission must not allow private interests to dictate the state’s energy infrastructure at the expense of North Dakota landowners, communities, and ratepayers.

Crucially, the Commission’s November 20 Order is not a final, appealable decision under North Dakota law. It includes no findings of fact or conclusions of law as required by N.D.C.C. §§ 28-32-39(1) and (2), and therefore does not trigger statutory timelines for rehearing, appeal, or judicial review. The Commission retains full jurisdiction to reopen the matter.

Moreover, the recent enactment of House Bill 1258, with retroactive effect to January 1, 2025, reinforces the need to revisit the proceeding. HB 1258 imposes new procedural safeguards, including township notice requirements, a mandatory 45-day waiting period before public hearings, and clarified protections for local zoning authority. These requirements were not observed in this case, despite Wano and Willowbank Townships asserting jurisdiction during the relevant timeframe.

For all these reasons—material omissions, due process violations, new evidence, local permit denials, and intervening legal developments—Petitioners respectfully request that the Commission rescind the November 20 Order and reopen the permit application proceeding in the interest of transparency, accountability, and the public good.

REQUEST FOR RELIEF

Petitioners respectfully request that the Commission exercise its continuing jurisdiction under N.D.C.C. §§ 28-32-39, 28-32-40(5), 28-32-46, and 49-22 to vacate the November 20, 2024 Order and reopen the permit proceedings. Petitioners further request that the Commission suspend any further construction, acquisition, or condemnation activity related to the proposed transmission line pending the outcome of reopened proceedings and issue a revised decision only after developing a complete factual record, evaluating statutory criteria, and incorporating input from affected local governments and communities.

Dated: May 21, 2025

Respectfully submitted,

By: /s/ Douglas J. Nill

Douglas J. Nill (MN # 0194876)

DOUGLAS J. NILL, PLLC

d/b/a FARMLAW

1850 Fifth Street Towers

150 South Fifth Street

Minneapolis, MN 55402

(612) 573-3669

dnill@farmlaw.com

Steven J. Leibel (ND # 07361)

KNOLL LEIBEL LLP

P. O. Box 858

1915 N. Kavaney Drive, Ste. 3

Bismarck, ND 58501

(701) 255-2010

steve@bismarck-attorneys.com

Counsel for the Petitioners