

June 16, 2025

Via Electronic Mail & Hand Delivery

Mr. Steve Kahl
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480
ndpsc@nd.gov

In re: Otter Tail Power Company/Montana-Dakota Utilities Co.
345kV Transmission Line – Jamestown to Ellendale
Public Convenience & Necessity
Case No. PU-24-091
Our File No. 072879-000001

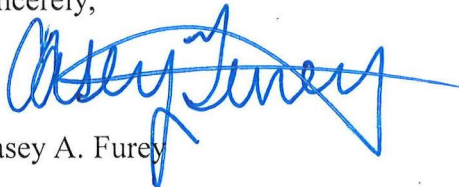
Dear Mr. Kahl:

On behalf of Otter Tail Power Company and Montana-Dakota Utilities Co., enclosed for filing in the above-referenced matter please find the following:

1. Otter Tail Power Company and Montana-Dakota Utilities Co.'s Proposed Order; and
2. Certificate of Service.

Please feel free to contact me if you have any questions. Thank you.

Sincerely,



Casey A. Furey

CAF/lh
Enc.

cc:	Brian Johnson	(via email)	Matthew Olsen	(via email)
	Erik Edison	(via email)	Robert M. Endris	(via email)
	Steven J. Leibel	(via email)	Travis R. Jacobson	(via email)
	Douglas J. Nill	(via email)	Allison Waldon	(via email)

BEFORE THE 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-24-091

PROPOSED ORDER

June __, 2025

Preliminary Statement

On February 29, 2024, Otter Tail Power Company (“Otter Tail”) and Montana-Dakota Utilities Co. (“Montana-Dakota”) (collectively “Applicants”) filed a Joint Application for Certificate of Public Convenience and Necessity (“CPCN”) for a 345-kV transmission line from Jamestown, North Dakota to Ellendale, North Dakota (the “Project”). Dkt. 1.

On March 27, 2024, the Commission issued a Notice of Opportunity for Hearing (“Notice”) on the CPCN Application. Dkt. No. 4.

In early April, 2024, the Notice was published in fourteen local newspapers. Dkt. No. 12.

On July 8, 2024, the Commission held an informal hearing on the CPCN Application. *See* Dkt. No. 14.

On August 19, 2024, the Commission held a work session in the proceeding. *See* Dkt. No. 16.

On October 14, 2024, Midcontinent Independent System Operator, Inc. (“MISO”) submitted comments to the Commission addressing the JETx Project, MISO’s long range planning and Tranche 1 Transmission Expansion plan. Dkt. No. 19.

On October 17, 2024, the Commission held a second work session in the proceeding. *See* Dkt. No. 21.

On November 20, 2024, the Commission issued an order approving the CPCN Application (“Order”). Dkt. No. 23.

On November 25, 2024, the Commission filed its *Affidavit of Service by Certified & Electronic Mail* serving the Applicants with the Commission's Order. Dkt. No. 24.

On May 21, 2025, the Petitioners filed their Petition with the Commission. Dkt. No. 28.

On May 27, 2025, the Petitioners filed their Amended Petition. Dkt. No. 29.

On June 6, 2025, Otter Tail and Montana-Dakota filed a Response in Opposition to the Amended Petition to Intervene, Rescind, and Reopen this proceeding. Dkt. No. 31.

On June 13, 2025, the Petitioners filed a Response to Otter Tail and Montana-Dakota's Brief Opposing the Petition. Dkt. No. 35.

Discussion

Before the Commission is a Petition to Rescind the Commission's Order Approving the Application for Certificate of Public Convenience and Necessity issued in this matter and to Reopen the Proceedings (the "Petition"). Dkt. No. 28. The Petition, brought by a group of landowners, townships, and other parties (collectively, "Petitioners"), also requests that the Petitioners be granted intervenor status. *Id.*

As an initial matter, the bulk of Petitioners' arguments are grounded in factors to be considered in siting proceedings under N.D.C.C. ch. 49-22. This is not a siting proceeding; this is a public convenience and necessity proceeding under N.D.C.C. ch. 49-03. A proceeding under N.D.C.C. ch. 49-03 concludes with the Commission issuing an order approving or denying the issuance of a Certificate of Public Convenience and Necessity ("CPCN"). In contrast, a proceeding under N.D.C.C. ch. 49-22 (a "Siting Proceeding") for an electric transmission facility concludes with the Commission issuing an order approving or denying the issuance of: (1) a Certificate of Corridor Compatibility; and (2) a Route Permit.

Because a Certificate of Corridor Compatibility and a Route Permit (in addition to a CPCN) are required to construct the Project, the Commission anticipates a siting application under

N.D.C.C. ch. 49-22 will be filed in the future as indicated by Applicants. Dkt. No. 17. Should a siting application be filed for the Project, a siting proceeding will be initiated and the siting factors under N.D.C.C. ch. 49-22 will be addressed by the Commission at that time. Petitioners' arguments related to N.D.C.C. ch. 49-22 are not ripe for consideration by the Commission.

I. Petition to Intervene.

Petitioners seek to intervene in this proceeding under N.D. Admin. Code § 69-02-02-05, which requires that, “[a] petition to intervene in any proceeding must be filed at least ten days prior to the hearing, but not after except for good cause shown.” Because Petitioners attempt to intervene after an order was issued in this proceeding, they must show good cause as to why they, “should be allowed to intervene late under the circumstances.” *Minn-Kota Ag Prods., Inc. v. N. Dakota Pub. Serv. Comm'n*, 2020 ND 12, ¶ 42, 938 N.W.2d 118. “[P]ost-judgment intervention is ‘unusual and not often granted.’” *Id.*; see also *Energy Transfer LP v. N. Dakota Priv. Investigative & Sec. Bd.*, 2022 ND 85, ¶ 16, 973 N.W.2d 394.

The Petition fails to establish good cause as to why Petitioners should be allowed to intervene six months after the Order was issued. The Petition does not address the good cause standard and states only that “intervention is timely, will not expand the scope of issues, and any resulting delay will be neither undue nor unjustified.” Petition at p. 10. Furthermore, Petitioners' stated grounds for intervention are related to issues largely outside of the scope of the matters to be considered in a CPCN proceeding. *Id.* at pp. 10–14. The Commission finds that allowing intervention after the Order has been issued in this proceeding will result in prejudice to the Applicants and is contrary to the orderly conduct of its proceedings. In sum, Petitioners fail to

show good cause exists that warrants granting the unusual and extraordinary relief of allowing intervention after an order has been issued in this proceeding.

II. Petition to Reopen.

Petitioners ask the Commission to reopen this proceeding. A petition to reopen may be filed at “any time after the conclusion of a hearing, but before the final order is issued or a rule is adopted.” N.D. Admin. Code § 69-02-06-01. An order was issued in this matter on November 20, 2024. The Petition was filed six months after the Order was issued and is untimely. Additionally, the Commission’s rules limit who may petition to reopen to *parties* to the proceeding. *Id.* Petitioners were not parties to this proceeding and therefore lack standing to request that the Commission reopen the proceeding. The Petition to Reopen fails due to its untimeliness and Petitioners’ lack of standing. Moreover, Petitioners have not identified any conditions of relevant fact or law that have so changed, as to warrant reopening this proceeding. N.D. Admin. Code § 69-02-06-01(4).

III. Petition to Reconsider.

Although not clearly stated, Petitioners also appear to request the Commission reconsider its November 2024 Order. Petitions for reconsideration are governed by statute under N.D.C.C. § 28-32-40 and Commission rule under N.D. Admin. Code § 69-02-06-02. “Any party before an administrative agency who is aggrieved by the final order of the agency . . . within fifteen days after notice has been given as required by section 28-32-39, may file a petition for reconsideration with the agency.” N.D.C.C. § 28-32-40; *see also* N.D. Admin. Code § 69-02-06-02 (Commission rule requiring petitions to be filed within fifteen days of service of the order). As noted above, service of the Order was made on November 25, 2024. To the extent the Petitioners seek

reconsideration, their request is untimely. Furthermore, reconsideration is limited to *parties* to a proceeding. Because Petitioners are not a party to this proceeding, they lack standing to request reconsideration.

IV. The Commission's Order is Final.

Petitioners assert the Commission's Order is not final and therefore subject to challenge. The prerequisites to issuance of a CPCN are set forth at N.D.C.C. § 49-03-02. Consistent with the CPCN process, the Commission described the issues to be considered in this proceeding as, "(1) Whether public convenience and necessity will be served by construction and operation of the facilities; [and] (2) Are OTP/MDU technically, financially, and managerially fit and able to provide the service?" *See* Dkt. Nos. 4, 23.

The Petitioners fail to identify any specific findings or conclusions required in a CPCN proceeding that were not made in the Order. The Commission's "Discussion" section of the Order sets forth the factual basis for its order and concludes that "public convenience and necessity will be served by the construction and operation of the facilities and that OTP and MDU are technically, financially, and managerially fit to be able to provide the service." Dkt. No. 23. No further findings or conclusions are required from the Commission in a CPCN proceeding. Petitioners' attack on the Commission's Order as lacking sufficient findings and conclusions appears to be based on a failure to distinguish the CPCN and siting processes.

V. Petitioners Were Afforded Due Process.

Petitioners also fail to identify any due process violations. The Commission followed the procedure outlined in North Dakota law and rule for issuing a CPCN. *See* N.D.C.C. ch. 49-03; *see also* N.D. Admin. Code Title 69. This process provides due process by requiring notice of the

proceeding be issued and affording the public opportunities to participate. Petitioners acknowledge that the Commission provided notice and opportunity for hearing. Petition at pp. 14–15. The Petition fails to identify any procedural deficiency with the notice or this proceeding that amounts to a due process violation.

VI. Petitioners’ Remaining Claims Are Not Relevant to a CPCN Proceeding.

Throughout the Petition, Petitioners refer to factors to be considered in a siting proceeding under N.D.C.C. ch. 49-22. This is not a siting proceeding and the Petition’s arguments related to the siting process are not relevant to the relief requested. Similarly, the local permitting issues and legislative changes cited by Petitioners are not relevant to this proceeding, do not alter the factors to be considered in a CPCN proceeding under N.D.C.C. ch. 49-03, and do not support reopening the record. Petitioners will have the opportunity to raise their siting concerns in the Siting Proceeding.

Order

The Commission Orders:

1. The Petition for Intervention is DENIED.
2. The Petition to Reopen is DENIED.
3. To the extent the Petition also requests the Commission reconsider the Order, that request is DENIED.
4. Any remaining requests for relief or allegations contained in the Petition, but unaddressed in this Order were found to be irrelevant to this proceeding or unsupported by the record.

PUBLIC SERVICE COMMISSION

**Sheri Haugen-Hoffart
Commissioner**

**Randy Christmann
Chair**

**Jill Kringstad
Commissioner**

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

Case No. PU-24-091

CERTIFICATE OF SERVICE

[¶1] I hereby certify that on the 16th day of June, 2025, a true and correct copy of the following document:

1. Otter Tail Power Company and Montana-Dakota Utilities Co.'s Proposed Order
was filed with the North Dakota Public Service Commission via electronic mail and hand delivery,
and was served via electronic mail and hand delivery, upon the following:

Steve Kahl
ND Public Service Commission
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480
ndpsc@nd.gov

Brian Johnson
ND Public Service Commission
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480
brljohanson@nd.gov

[¶2] I further certify that on the 16th day of June, 2025, a true and correct copy of the same was served via electronic mail upon the following:

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Dated this 16th day of June, 2025.

By:



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