

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

**PETITIONERS' OBJECTION TO APPLICANTS' IMPROPER FILING
OF PROPOSED ORDER AND REQUEST FOR FAIR
CONSIDERATION OF THE RECORD**

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 (ND # P00392)
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: June 17, 2025

Petitioners respectfully object to the “Proposed Order” submitted by Applicants on June 16, 2025. Although styled as a procedural draft, the document functions as an improper sur-reply. It introduces new factual assertions, legal arguments, and characterizations of Petitioners’ filings that were not raised in the Applicants’ June 6 response.

The Commission has not requested proposed findings or orders from the parties at this stage. Petitioners have had no opportunity to respond to the newly advanced arguments in the “Proposed Order,” many of which misrepresent the Petition, distort the governing legal framework, or incorrectly assert the finality of the Commission’s November 2024 Order.

For example, the Proposed Order asserts that “[t]his is not a siting proceeding” and that “Petitioners’ arguments related to N.D.C.C. ch. 49-22 are not ripe,” despite extensive briefing by Petitioners demonstrating that the Applicants were legally required to proceed—and could only proceed—under Chapter 49-22 as of their February 29, 2024 application, because the proposed 345kV Jamestown to Ellendale transmission line qualifies as a high-voltage transmission line under N.D.C.C. § 49-22-03(6). These arguments remain unresolved and are central to the Petition.

The Applicants state in their June 6 response that “the siting proceeding has yet to commence.” Opposition at 6. They state in their June 16 sur-reply, submitted under the guise of a proposed order, that “[s]hould 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.” Proposed Order at 3. These admissions confirm that the February 29 application was legally defective. The Commission lacked authority to approve the project under ch. 49-03, as exclusive jurisdiction to site and approve high-voltage transmission lines lies under ch. 49-22.

Any suggestion that the Applicants may now proceed under ch. 49-22, while remaining noncommittal about whether they will file at all, amounts to a tacit admission that their original application was improper. This pattern of statutory evasion and procedural misdirection cannot continue, and the Commission should not lend it further credibility by adopting the Proposed Order. The Commission should vacate all actions taken under PU-24-91 and require full compliance with North Dakota’s siting laws.

As noted in Petitioners’ June 13 Response (p. 5):

This case involves more than a routine application for a transmission line. It raises a serious question about whether North Dakota’s siting

laws can be bypassed through selective statutory filing. Otter Tail Power and MDU applied under the wrong statute, N.D.C.C. ch. 49-03, and in doing so avoided the procedural safeguards required under ch. 49-22. Their approach deprived affected landowners, local governments, and the public of the notice, hearing, and evidentiary rights the law requires.

And at pp. 15–16:

While Applicants claim the Commission made all necessary findings for a [Certificate of Public Convenience and Necessity], this argument presumes the wrong statute applies and ignores the procedural shortcomings in the Commission’s decision. The November 20 Order contains no evaluation of local land use impacts, no acknowledgment of township input, and no engagement with the broader public interest considerations required for transmission projects under ch. 49-22. Reopening the proceeding is not only justified, but necessary to ensure the Commission complies with its statutory obligations and does not allow jurisdictional evasion through selective reliance on ch. 49-03.

The problem is compounded by the Commission’s finding in the November 20 Order that “public convenience and necessity will be served by the construction and operation of the facilities.” Although framed as a ch. 49-03 determination, this language closely mirrors the public interest factors that are reserved for analysis under ch. 49-22, including environmental effects, alternative locations, and land use compatibility. Yet the Order contains no findings addressing those issues. The result is a finding of public convenience made without the evidentiary record or procedural safeguards required by law. This creates concrete prejudice: the Commission’s summary conclusion gives the appearance that the project has already passed a full public interest test, potentially predisposing future proceedings and undermining the integrity of the siting process.

Additionally, the Proposed Order asserts that Petitioners’ filings are untimely under rules governing intervention, reopening, and reconsideration.

But these are legal questions that remain in dispute. Petitioners proceed under N.D. Admin. Code § 69-02-06-01 and the Commission’s continuing jurisdiction under N.D.C.C. § 28-32-40(5). They have shown that the Commission retains ongoing authority under N.D.C.C. §§ 28-32-39, 28-32-40(5), and ch. 49-22—the only statute applicable to high-voltage transmission lines—and that the November 2024 Order lacks the findings and conclusions required to constitute a final, reviewable agency action.

Petitioners respectfully request that the Commission not adopt the Applicants’ Proposed Order or treat it as a final recommendation. To do so would deny Petitioners a fair opportunity to respond to new legal and factual claims raised without invitation and would risk prejudging the merits of the Petition based solely on the arguments of the Applicants.

If the Commission is even remotely inclined to consider adopting any form of the Applicants’ Proposed Order, Petitioners respectfully request the opportunity to submit a proposed order of their own, so that the record reflects both sides’ legal arguments and requested findings.

This proceeding has significant implications for rural landowners and townships across North Dakota. The Commission’s process must remain open, impartial, and grounded in law. Affected communities deserve more

than a rushed procedural dismissal based on one party's uninvited draft. The Commission should give full and fair consideration to the legal questions raised in the Petition, which go to the heart of whether this project was lawfully approved and whether it may proceed further under North Dakota law.

In summation, the proposed 345kV Jamestown to Ellendale transmission line was processed under the wrong statute. It advanced without the notice, environmental review, or public participation that North Dakota law requires for high-voltage transmission lines. The Commission approved the project without making the detailed findings or legal conclusions necessary to authorize a project of this scale.

Petitioners submit that the project is not just procedurally defective, but substantively unjustified. They do not want their communities transformed into industrial corridors of transmission lines and wind towers serving foreign investors and out-of-state markets. They seek to protect their land, their livelihoods, and the rural character of North Dakota.

Petitioners ask the Commission to do what the law requires and fairness demands: rescind the approval, acknowledge that no public necessity has been shown, and stop this project from moving forward.

Dated: June 17, 2025

Respectfully submitted,

By: /s/ Douglas J. Nill

Douglas J. Nill (ND # P00392)

DOUGLAS J. NILL, PLLC

d/b/a FARMLAW

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150 South Fifth Street

Minneapolis, MN 55402

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