

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

ORDER ON PETITION

June 18, 2025

Preliminary Statement

On February 29, 2024, Otter Tail Power Company (OTP) 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 and expand 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 (Notice) allowing until May 10, 2024, for receiving comments or requests for hearing.

On November 20, 2024, the Commission issued its Order granting OTP and MDU certificates of public convenience and necessity.

On May 21, 2025, Douglas J. Nill filed on behalf of a group of landowners, townships and other interested parties (Petitioners) a petition to intervene, to rescind the Commission's November 20, 2024, Order, and to reopen the proceedings (Petitions).

On May 27, 2025, Douglas J. Nill filed an amended petition to intervene, to rescind the Commission's November 20, 2024, Order, and to reopen the proceedings on behalf of the Petitioners.

On June 6, 2025, OTP and MDU filed a response to the Petitions.

On June 13, 2025, Douglas J. Nill filed a supplemental response to OTP and MDU's response.

On June 16, 2025, OTP and MDU filed a proposed order.

On June 17, 2025, Douglas J. Nill filed an objection to OTP and MDU's June 16, 2025, filing.

Discussion

North Dakota Administrative Code Section 69-02-06-02 provides:

69-02-06-02. Petition for reconsideration.

1. Time for filing. A petition for reconsideration must be filed within fifteen days after notice of the decision has been given under North Dakota Century Code section 28-32-13.

2. Content. The petition must state the specific grounds upon which the petition rests or a statement of any further showing to be made. The petition must also state if a rehearing or oral argument is requested.

3. Service. A petition must be served by the petitioner upon all parties and a certificate to that effect must be attached to and filed with the commission at the time the petition is filed. The original and seven copies must be filed with the commission.

4. Responses. Within ten days after the service of the petition, any party to the proceeding may file with the commission an original and seven copies of the party's response. Failure is a waiver of any objection to the granting of the petition.

North Dakota Century Code Section 28-32-42 (1) provides:

Any party to any proceeding heard by an administrative agency, except when the order of the administrative agency is declared final by any other statute, may appeal from the order within thirty days after notice of the order has been given as required by section 28-32-39. If a reconsideration has been requested as provided in section 28-32-40, the party may appeal within thirty days after notice of the final determination upon reconsideration has been given as required by sections 28-32-39 and 28-32-40. If an agency does not dispose of a petition for reconsideration within thirty days after the filing of the petition, the agency is deemed to have made a final determination upon which an appeal may be taken.

North Dakota Administrative Code Section 69-02-02-05 (2) provides:

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.

North Dakota Century Code Section 28-32-22 provides:

Unless otherwise prohibited by specific statute or rule, informal disposition may be made of any adjudicative proceeding, or any part or issue thereof, by stipulation, settlement, waiver of hearing, consent order, default, alternative dispute resolution, or other informal disposition, subject to agency approval. Any administrative agency may

adopt rules of practice or procedure for informal disposition if such rules do not substantially prejudice the rights of any party. Such rules may establish procedures for converting an administrative matter from one type of proceeding to another type of proceeding.

Petitioners could have timely requested reconsideration 15 days after the Order was issued. It should be noted that the reference to North Dakota Century Code (NDCC) in North Dakota Administrative Code (NDAC) section 69-02-06-02 should be updated since that is no longer the original cite as NDCC 28-32 has been amended since the rule went into effect in 1992. The updated section should read NDCC 28-32-39.

Petitioners have asked for the Order to be rescinded and reopened. Reopening the case is very untimely as reopening can only occur between the hearing and issuance of the final order as per NDAC Section 69-02-06-02-01. It is unclear where the petitioners find authority for the Commission to rescind the Order.

Petitioners have also missed the time allowed to appeal the Commission's decision to a district court as it is also very untimely. The Petitioners had 30 days from the issuance of the Order as allowed under NDCC 28-32.

The Petitioners petition to intervene was filed more than one year after the expiration of the Notice issued by the Commission. Since NDAC Section 69-02-02-05 (2) requires petitions to intervene to be filed at least ten days prior to the hearing, the petition to intervene is clearly not timely and should be denied.

The Petitioners request to rescind the Commission's November 20, 2024, Order and reopen the proceedings based upon its lack of inclusion of findings of fact or conclusions of law is not founded in the appropriate section of law. While the Commission's Order lacked specific title headings of finding of fact, and conclusions of law, the discussion section does contain the facts the Commission relied upon and the conclusions of law used in reaching its decision. Under NDCC Section 28-32-22 the Commission may make an informal disposition of any adjudicative proceeding. In this instance informal disposition was made only after publishing the Notice in fourteen separate North Dakota newspapers, including those that are local to the Petitioners. Similarly, while the Commission retains continuing jurisdiction, the petition to rescind and reopen proceedings was filed more than one year after opportunity to provide comments or requests for hearing had expired.

The Petitions cite sections of NDCC and NDAC which are entirely appropriate for a proceeding involving an application for a certificate of corridor compatibility and route permit; however, it does not provide a sufficient basis for the reconsideration of the Order concerning public convenience and necessity. The Petitioners will have an opportunity to raise these concerns when the Commission receives the application for a certificate of corridor compatibility and route permit from OTP and MDU if and when it is filed. For

clarification, the line may not be constructed without obtaining a certificate of corridor compatibility and route permit from the Commission.

The Commission followed all laws regarding notices and opportunity for hearing, which is the procedure to ensure Due Process. The petitioners were not denied Due Process, they missed their opportunity to exercise it in a timely manner that is fair to all parties involved.

The Petitions do not provide any new evidence for the Commission to consider but rather rely upon arguments relating to the evidence already received and considered by the Commission on the record in this proceeding.

The Petitioners objected to OTP and MDU filing a proposed order. The Commission is under no obligation to use the proposed order and will give it the appropriate weight.

Order

The Commission Orders:

1. The June 17, 2025, objection is **overruled**.
2. The Petitioners petition to intervene in this proceeding is **denied**.
3. The Petitioners petition to rescind the Commission's November 20, 2024, Order is **denied**.
4. The Petitioners petition to reopen the proceedings is **denied**.

PUBLIC SERVICE COMMISSION

		
Sheri Haugen-Hoffart	Randy Christmann	Jill Kringstad
Commissioner	Chair	Commissioner