

STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Wano Township, Willowbank
Township, Russell Township, Corwin
Township, Valley Township, Mike
Bartel, Patty Bartel, Richard Long,
Susan R. Long, Steven Nelson, Julia
Nelson, Phyllis P. Otterness, Patricia
A. Vick, Brandon Schweigert, Tausha
Schweigert, Shockman Farm
Partnership, LLLP, Debra Sue Wald,
Lucas Wald, Jill Wald, Tim Leppert,
Orr Farms, Steve M. Rupp, Sandra J.
Rupp, David A. Schweigert, Denette
M. Schweigert, Allen D. Swiontek,
Inna N. Swiontek, David Wald, Holly
Wald, Weston Wald, and Willowbank
Hutterian Brethren Association,

Case No. 08-2025-CV-02068

Appellants,

v.

North Dakota Public Service
Commission, Otter Tail Power
Company, and Montana-Dakota
Utilities Co.,

Appellees.

DECLARATION OF DOUGLAS J. NILL

I, Douglas J. Nill, declare as follows:

1. I am an attorney of record for Appellants in this matter. I make this declaration in support of Appellants' Motion to Stay proceedings before the North Dakota Public Service Commission (PSC) under N.D.C.C. ch. 49-22, relating to the proposed 345kV transmission line between Jamestown and Ellendale.

2. On November 20, 2024, the PSC issued an order granting a Certificate of Public Convenience and Necessity (CPCN) to Otter Tail Power Company and Montana-Dakota Utilities Co. (collectively, "the Utilities") under N.D.C.C. ch. 49-03. A true and correct copy of that order is attached as Exhibit 1 to both the Notice of Appeal and the Amended Notice of Appeal in this matter. The PSC's June 18, 2025 Order denying Appellants' petition to intervene and reopen is attached as Exhibit 2 to the Notice of Appeal and Amended Notice of Appeal. Both orders are also part of the agency record in this appeal.

3. On July 16, 2025, my associated counsel in North Dakota filed a Notice of Appeal and Specifications of Error on Appellants' behalf in the Burleigh County District Court. The appeal challenges the PSC's authority to issue the CPCN referenced in Paragraph 2 under Chapter 49-03, rather than proceed under Chapter 49-22, which governs high-voltage transmission line

projects in North Dakota.

4. On July 29, 2025, I received a communication from one of my clients, Susan R. Long, indicating that another client, Tim Leppert, had been contacted by Levi Taylor, a Stutsman County Commissioner. Commissioner Taylor reportedly informed Tim that Otter Tail Power intends to file a route permit application with the PSC under N.D.C.C. ch. 49-22 on or about August 8, 2025.

5. A true and correct copy of that email is attached hereto as Exhibit 1.

6. Based on this communication, it appears that the Utilities intend to proceed under Chapter 49-22 while continuing to rely on the CPCN granted under Chapter 49-03, which is currently the subject of this appeal.

7. In my view, if the PSC proceeds with route permitting under Chapter 49-22 before this Court has determined whether the CPCN was lawfully issued, there is a substantial risk that the Utilities will argue that any defects in the Chapter 49-03 proceeding have been cured through subsequent actions. If accepted, such an argument could effectively moot the appeal or frustrate judicial review. Affected landowners would be forced to participate in a regulatory process that may lack a valid legal foundation.

8. Based on my review of Chapters 49-03 and 49-22 and my work on this case, I understand that Chapter 49-22 provides the exclusive legal framework for permitting high-voltage transmission lines in North Dakota. In my role as counsel for Appellants, it is my position that the PSC lacked authority to issue a Certificate of Public Convenience and Necessity under Chapter 49-03 for a 345kV project that falls within Chapter 49-22.

9. I submit this declaration in support of Appellants' request that the Court stay or enjoin further PSC action under ch. 49-22 until the Court resolves the jurisdictional and statutory issues raised in this appeal.

I declare under penalty of perjury under the laws of the State of North Dakota that the foregoing is true and correct to the best of my knowledge.

Dated: August 6, 2025

By: /s/ Douglas J. Nill
Douglas J. Nill (ND # P00392)
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