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,

Appellants,

v.

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

Appellees.

Case No. 08-2025-CV-02068

APPELLANTS' REPLY IN SUPPORT OF MOTION TO STAY PROCEEDINGS UNDER N.D.C.C. CHAPTER 49-22 PENDING APPEAL

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INTRODUCTION

Despite extensive briefing by the PSC and the Utilities, neither addresses the threshold statutory question at the core of this appeal: whether the Commission may authorize a 345-kV electric transmission facility outside the exclusive siting framework of N.D.C.C. ch. 49-22 by first issuing a Certificate of Public Convenience and Necessity ("CPCN") under ch. 49-03 and then relying on that order in a subsequent 49-22 docket.

The statutes answer this question clearly. For 115-kV-and-above lines, ch. 49-22 is the Legislature's exclusive, integrated process. A utility may not "begin construction" without a route or site permit "pursuant to this chapter," and the Commission's decision must be guided by a record that includes the applicant's statement of need and detailed findings under § 49-22-09. A prior "need" determination under ch. 49-03 bypasses this required process and is fundamentally incompatible with the framework the Legislature enacted.

The present case illustrates why this matters. The Utilities faced a difficult task: to convince the PSC that there is a genuine public need within North Dakota for a new 345-kV transmission line running from Ellendale to Jamestown—when, in fact, no such need exists. The true purpose of the line is to serve private wind developers west and north of Ellendale and to

facilitate the export of electricity to out-of-state markets via Jamestown and eastern transmission corridors. *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 [generation] to be transmitted from North Dakota eastward*." (Emphasis added). North Dakota ratepayers bear the cost, while out-of-state beneficiaries reap the reward. The supposed transmission constraints are speculative, contingent on future generation projects, and do not support a present showing of necessity. Even the project's name—"Jamestown to Ellendale"—misrepresents its function, masking its true purpose: to evacuate power from western Dickey County toward Minnesota and beyond.

Faced with these realities, the Utilities developed a strategy: avoid the rigorous "need" showing required under ch. 49-22 by obtaining a CPCN under ch. 49-03, a statute historically concerned with territorial disputes between utilities and the extension of existing lines, not with new high-voltage transmission. Chapter 49-03 contains no meaningful protections for landowners or local governments and was never intended to authorize CPCNs for new 345-kV lines. The Utilities are now attempting to import the

ch. 49-03 CPCN, an order issued by the PSC on November 20, 2024 with the validity of that order challenged through this appeal, into their August 8, 2025 ch. 49-22 siting application; thus, short-circuiting the process the Legislature mandated.

That strategy cannot stand. The Jamestown–Ellendale line is a new "electric transmission facility" under ch. 49-22—not a territorial encroachment under ch. 49-03. These statutes are not two stages of a single process. A CPCN under ch. 49-03 cannot pre-determine "need" under ch. 49-22, and the Commission lacks authority to issue such a certificate for this type of project.

The Utilities' argument rests on a misreading of *Matter of Nebraska Pub. Power Dist.*, 330 N.W.2d 143, 148-49 (N.D. 1983), which states that ch. 49-22 provides "no direction" for the Commission to assess need. From that, the Utilities extrapolate that they had no choice but to seek a CPCN under ch. 49-03, because the Commission allegedly lacks authority to determine need under ch. 49-22. That interpretation cannot be squared with the statutory text. Chapter 49-22 requires applicants to submit a "statement explaining the need for the facility" and directs the Commission to evaluate routing based on criteria that inherently implicate need, including system

configuration, alternatives, and consumer demand. The Legislature placed the need determination firmly within ch. 49-22—not outside it.

The legislative history confirms this. Chapter 49-22 was enacted in 1975 as an emergency measure—the Energy Conversion and Transmission Facility Siting Act—to ensure that large energy infrastructure projects were subject to a comprehensive and public-focused process, including an assessment of need.

To the extent *Nebraska* is read to prohibit the Commission from evaluating need as directed by ch. 49-22, it should be reconsidered and not followed.

This brings us to the present motion. On August 6, 2025, Appellants moved to stay proceedings under ch. 49-22 in light of the Utilities' impending August 8 siting application, which now repeatedly cites and relies on the disputed November 20, 2024 CPCN. That citation alone underscores the danger: the Commission is being asked to presuppose the legality of an order that is under direct appellate review. N.D.C.C. § 28-32-48 permits this Court to grant stay relief "upon application and after a hearing or the submission of briefs." The statute does not require prior certification of the administrative record, especially for a threshold question of statutory authority.

Because the Utilities' August 8, 2025 siting application under ch. 49-22 repeatedly references and relies upon the disputed November 20, 2024 CPCN, a stay is necessary to preserve the integrity of the statutory process. The 49-03 order cannot serve as the foundation for the 49-22 proceeding while its legality remains unresolved in this appeal. Judicial intervention is required to ensure that the siting record develops in accordance with the framework the Legislature enacted for high-voltage transmission projects, without distortion from a legally defective CPCN.

BACKGROUND

The controversy at the heart of this proceeding is whether the North Dakota Public Service Commission may approve a high-voltage transmission line based on speculative, future wind development while bypassing the statutory safeguards enacted for projects of this magnitude. Appellants contend that the proposed 345kV line from Ellendale to Jamestown is not driven by any verified public need within North Dakota, but by private developers and out-of-state energy exporters seeking to shift financial and environmental burdens onto North Dakota landowners and ratepayers. The November 20 Order enabling this infrastructure giveaway was issued without findings of fact, legal conclusions, or statutory compliance—making

it legally defective and not a final agency action.

This case is not about stopping energy development. It is about ensuring that the siting process for high-voltage transmission lines respects due process, local decision-making, and the plain requirements of ch. 49-22. Until the Commission's earlier Order is tested in court, allowing the 49-22 proceeding to move forward would distort the record, sideline township decisions, and entrench a project whose justification remains unproven. The stay motion seeks to prevent that outcome and preserve the integrity of the statutory process.

ARGUMENT

I. The Utilities improperly invoke ch. 49-03—a statute designed for territorial disputes—to short-circuit the public-need determination required by ch. 49-22.

A. Chapter 49-03 is intended to prevent utilities from unfairly interfering with the service areas of other utilities.

N.D.C.C. ch. 49-03, known as the Territorial Integrity Act, was enacted to regulate competition among utilities by preventing unfair encroachments into each other's service territories. It requires a utility to obtain Commission approval before constructing or extending facilities outside municipal limits or to serve new customers. *See* N.D.C.C. § 49-03-01.

The purpose of a certificate under ch. 49-03 is not to establish the necessity of new transmission infrastructure, but to resolve disputes over overlapping service and avoid inefficient duplication. As the North Dakota Supreme Court explained, customer preference is only a "minor consideration" that "cannot prevail where economic factors, such as relative costs and wasteful duplication, provide other criteria for choice." *Application of Otter Tail Power Co.*, 451 N.W.2d 95, 104 (N.D. 1990). Legislative history likewise confirms that "the primary purpose of the Act was to keep to a minimum wasteful duplication of capital-intensive utility services and conflicts between suppliers of electricity." N.D. Legis. Council, *Territorial Integrity Act – History and Operation* (Oct. 1997).

B. The 345kV Jamestown-Ellendale line is a new transmission facility, not a territorial intrustion.

The 345kV Jamestown–Ellendale high-voltage line at issue here—a new line conceived by MISO to carry electricity from wind projects west of Ellendale to Jamestown and then eastward into Minnesota—is not a mere territorial intrusion into an existing system or an extension of an existing line. It is a brand-new transmission facility that falls squarely within the scope of ch. 49-22.

By statute, an "electric transmission facility" is "an electric

transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts." N.D.C.C. § 49-22-03(7). Section 49-22-07(1) further provides that "[a] utility may not begin construction of an electric energy conversion facility or an electric transmission facility in the state without first having obtained a certificate of site compatibility or a route permit from the commission pursuant to this chapter."

This framework is not discretionary. Chapter 49-22 establishes a mandatory, front-end process for high-voltage lines that exceed the statutory threshold. It requires the utility to obtain a route permit before construction begins and prescribes a comprehensive procedure: environmental review, landowner notice, public hearings, detailed application submissions under § 49-22-08, and explicit findings of fact under § 49-22-09.

C. Chapters 49-03 and 49-22 are not two parts of a single process.

The Utilities contend that because ch. 49-03 contains no express prohibition, they may seek a CPCN for a high-voltage transmission facility under that statute. But the absence of an express bar does not equate to legislative approval. The statutory framework and policy statement in § 49-22-02 make clear that ch. 49-22 was designed to govern both the initiation and completion of the siting process for new high-voltage lines. It is a

comprehensive, exclusive process—not a supplemental routing step to be layered onto a prior CPCN granted under a different statute.

Treating the process as bifurcated—first obtaining a CPCN under ch. 49-03 and then importing that determination into a ch. 49-22 route application—undermines the Legislature's scheme. The requirements of ch. 49-22 are not mere formalities. They are substantive safeguards for landowners, local governments, and the public. Allowing a CPCN under 49-03 to predetermine "necessity" reduces the subsequent ch. 49-22 proceeding to a rubber stamp.

By statute, the route-permitting process expressly requires consideration of need in light of alternatives, environmental compatibility, and system configuration. *See* N.D.C.C. § 49-22-09(1)(a), (b), (e), (f), (h). That analysis cannot be meaningful if the Commission has already resolved the threshold question of necessity under ch. 49-03 before the siting process begins.

D. A CPCN issued under ch. 49-03 cannot predetermine need in a ch. 49-22 siting proceeding.

Even if ch. 49-03 may apply in other contexts, it cannot be used to resolve "need" for a new 345-kV line outside the integrated framework the Legislature established in ch. 49-22. By statute, a ch. 49-22 application must

include "[a] statement explaining the need for the facility." N.D.C.C. § 49-22-08(c). The Commission is then required to make findings guided by the statutory factors, including alternatives, system configuration, and environmental compatibility. N.D.C.C. § 49-22-09.

Allowing a prior CPCN under ch. 49-03 to fix "need" before the ch. 49-22 hearing prejudges that evaluation. It strips the siting process of its substance and reduces it to a procedural formality. That outcome is irreconcilable with the text, structure, and purpose of ch. 49-22, which was enacted to ensure that high-voltage transmission lines are fully justified and publicly scrutinized before construction begins.

E. *Nebraska Pub. Power Dist.* should not control; to the extent it excludes a need determination from ch. 49-22, it should be reconsidered.

Nebraska Pub. Power Dist., 330 N.W.2d at 148-49, is cited by the Appellees for the proposition that the Siting Act contains "no direction" to assess need. That interpretation cannot be reconciled with the statute's language. Chapter 49-22 requires an applicant to submit "a statement explaining the need for the facility." N.D.C.C. § 49-22-08(c). It also directs the Commission to base its route decision on factors that inherently involve need, including alternatives, efficient use of resources, system configuration, and

consumer demand. N.D.C.C. § 49-22-09. These provisions place the need inquiry within the ch. 49-22 record, not outside it.

To the extent *Nebraska* is read to prohibit the Commission from considering need as the statute itself requires, it misreads the Legislature's design. Stare decisis does not entrench a construction that contradicts statutory text or renders express provisions superfluous. The Court should reaffirm that need is an essential component of the ch. 49-22 record, and that it cannot be predetermined under ch. 49-03 and then imported to constrain the 49-22 proceeding.

1. The statutory text of ch. 49-22 requires consideration of public need.

Chapter 49-22 itself makes clear that public need is part of the siting analysis. The Legislature's policy statement provides:

> "[I]t is a policy of this state to site energy conversion facilities and to route transmission facilities in an orderly manner compatible with environmental preservation and the *efficient use of resources*." N.D.C.C. § 49-22-02 (emphasis added).

The "efficient use of resources" necessarily reflects a need inquiry, balancing demand against environmental and economic impacts. The statute reinforces this requirement in multiple provisions. Section 49-22-08(1)(c) requires an applicant to submit "[a] statement explaining the need for the

facility." Section 49-22-09(1) directs the Commission to be guided by specific considerations in reaching its decision, including § 49-22-09(1)(e), which requires analysis of "[a]lternatives to the proposed site, corridor, or route which are developed during the hearing process and which minimize adverse effects." And § 49-22-16(2)(c) identifies the "needs of consumers" as a factor to be considered.

Taken together, these provisions demonstrate that a ch. 49-22 proceeding necessarily entails an evaluation of public need, grounded in statutory text and not imported from any other chapter.

2. The legislative history confirms that public need is central to the siting process.

The legislative history of ch. 49-22, enacted as an emergency measure effective April 9, 1975 (1975 N.D. Sess. Laws ch. 436), underscores that route or site approval for high-voltage lines requires a showing of public need.

For example, in testimony on S.B. 2050 before the House Committee on Natural Resources, Ken Ziegler of Basin Electric emphasized that public review was essential so that "the total public convenience and necessity can finally be met." Statement on S.B. 2050 (Mar. 6, 1975).

Legislative Council materials from the same period confirm the same point. A January 1974 background report explained that:

> "Construction of a major utility transmission facility cannot be commenced without obtaining a certificate of environmental compatibility and public need. Applications for the certificate are to contain … a statement of need … and a description of any reasonable alternative locations. Prior to granting or modifying the application, the Commission must find a basis of need for the facility [and] the nature of the probable environmental impact…." Legislative Council Staff, *Background Information on Power Transmission Lines and Land Disturbing Operations* 4 (Jan. 1974) (emphasis added).

This history demonstrates that the Legislature intended public need to be central to the ch. 49-22 process, and that no high-voltage line could be approved without it. Appellants' appeal therefore raises a threshold issue of statutory construction: whether the PSC acted ultra vires in granting a CPCN under the inapplicable Territorial Integrity Act. That issue must be resolved by this Court before the PSC proceeds under ch. 49-22 in reliance on a legally defective CPCN.

F. If the Utilities believe the CPCN has no bearing on the 49-22 process, they should stipulate to rescind it.

If Appellees truly believe the November 20, 2024 CPCN is irrelevant to the ch. 49-22 application they filed on August 8, 2025, the obvious remedy would be to stipulate to rescind it. They have not. Instead, they pursue a two-track theory with no basis in statute, while continuing to rely on the CPCN as the foundation of their current ch. 49-22 application. That is precisely why a stay is necessary.

Under N.D.C.C. § 28-32-48, this Court may stay the enforcement or effect of an administrative order pending appeal. The Utilities' siting application cites the CPCN ten times, including for "benefit and need." This is telling: on the one hand, the Utilities invoke *Nebraska Pub. Power Dist.* to argue that ch. 49-22 excludes any need determination; on the other, they rely on the CPCN as proof of need in the very 49-22 proceeding. Because that order remains contested, the Court should stay its effect and prevent it from being relied upon in the 49-22 docket until this threshold legality is resolved.

The Utilities have an easy remedy. They should stipulate to rescind the November 20, 2024 CPCN under ch. 49-03 and proceed solely under ch. 49-22 with their August 8, 2025 application. That would allow the siting process to move forward correctly while this appeal proceeds. If, however, the Utilities refuse to abandon their improper CPCN, the Court should grant Appellants' motion to stay the ch. 49-22 proceedings until the appeal is resolved.

II. This Court has authority to stay the PSC's 49-22 proceeding until the legality of the CPCN is resolved on appeal.

North Dakota's Administrative Agencies Practice Act authorizes a stay "upon application and after a hearing or the submission of briefs," and permits the Court to impose "terms and conditions" as appropriate. N.D.C.C. § 28-32-48. The statute allows the Court to stay "the enforcement of the

order"—and, critically, the order's effect. Staying the effect of the CPCN means the PSC cannot use that order as a predicate in the ch. 49-22 docket while this appeal is pending.

Courts also retain inherent equitable authority to grant interim relief necessary to preserve the integrity of judicial review. See, e.g., *Nodak Mut. Ins. Co. v. Ward County Farm Bureau*, 676 N.W.2d 752, 761 (N.D. 2004) (recognizing equitable power to preserve the status quo); *Vorachek v. Citizens State Bank*, 461 N.W.2d 580, 585 (N.D. 1990).

The PSC's argument that the Court lacks jurisdiction to "stay a separate proceeding" misreads § 28-32-48. This Court is not asked to stay a docket; it is asked to stay the effect of the CPCN order now under appeal. Because the Utilities' ch. 49-22 filing repeatedly relies on that CPCN, staying its effect necessarily pauses further steps in the 49-22 process until the CPCN's legality is resolved. That is precisely what § 28-32-48 contemplates. *See* Prayer for Relief ¶¶ 1–4 for the specific relief requested.

III. Standing and ripeness are satisfied.

Appellants are parties to the PSC's June 18, 2025 order denying intervention and reconsideration, and they timely appealed under N.D.C.C. § 28-32-42(1). The present stay request targets the effect of the CPCN at

issue in that same docket, in order to preserve meaningful appellate relief.

Even the Utilities' own authority confirms that a denied intervenor may immediately appeal. *Energy Transfer LP v. N.D. Private Investigative & Sec. Bd.*, 2022 ND 85, ¶ 10, 973 N.W.2d 394, 399 (recognizing that a failed intervenor may immediately appeal a denial of intervention). The stay simply preserves this Court's jurisdiction to grant effective relief on the legal question squarely presented.

IV. Appellants are likely to succeed on the merits.

A. Chapter 49-22 is the exclusive statutory framework for high-voltage transmission lines.

The Legislature adopted a comprehensive siting regime for "electric transmission facilities," defined to include lines "in excess of one hundred fifteen kilovolts." N.D.C.C. § 49-22-03(7). A utility "may not begin construction" of such a facility "without first having obtained a certificate of site compatibility or a route permit from the commission pursuant to this chapter." § 49-22-07(1) (emphasis added). The Act requires the Commission to develop a full evidentiary record and to make a "finding with reasons" on the proposed route after weighing the statutory factors. *See* §§ 49-22-08(6), 49-22-08.1, 49-22-09.

That integrated design leaves no room for a back-door "need"

determination under ch. 49-03, a statute intended to govern territorial disputes between utilities. Using ch. 49-03 to predetermine need both predates and prejudges the ch. 49-22 process. The PSC's approach inverts the statute: it invites a rapid CPCN under ch. 49-03 and relegates the ch. 49-22 process to a post hoc formality. That is not what the Legislature enacted.

The inconsistency is also evident in practice. Basin Electric Power Cooperative, for example, recently filed a siting application for a 345-kV line under ch. 49-22 in PU-24-361, precisely as the statute requires. Yet Otter Tail Power and MDU were allowed to pursue a nearly identical project under ch. 49-03 alone, bypassing the procedural safeguards of ch. 49-22, including the public need determination. The PSC has offered no explanation for this discrepancy. If one utility must comply with the full siting statute at the outset, why were others permitted to avoid it?

B. The Jamestown–Ellendale line is a new 345-kV facility, not an extension subject to ch. 49-03.

The Territorial Integrity Act, ch. 49-03, simply does not apply to the Jamestown–Ellendale line. It is not an "extension" of an existing system, but a new high-voltage transmission facility subject to ch. 49-22. The Utilities used ch. 49-03 precisely because they knew their project would not withstand the scrutiny of a ch. 49-22 need analysis. They sought a CPCN under an

inapplicable statute in order to import that determination into the siting docket and shift the financial burden to North Dakota ratepayers.

As alleged in the petition, landowners and townships will show that the project does not serve a public necessity but instead represents an infrastructure giveaway to private wind developers seeking to export power out of state. That is not the purpose of a CPCN and it is not what the Legislature authorized under ch. 49-22.

C. The Utilities' own 49-22 application proves reliance on the disputed CPCN and the need for a stay.

The August 8, 2025 siting application expressly relies on the November 20, 2024 CPCN, citing it ten times, including in the "Benefit and Need Analysis":

> "An application for a CPCN was filed by the Applicants in February 2024 in Case No. PU-24-091. The Commission approved the CPCN on November 20, 2024. The Commission upheld their approval of the CPCN on June 18, 2025." (Siting App. § 2.1).

The application uses the CPCN—and the PSC's June 18, 2025 refusal to revisit it—to anchor its narrative of "need" and "benefit" under ch. 49-22. Proceeding now would embed the disputed CPCN inside the siting record, effectively bootstrapping an unlawful order into the new docket and undermining appellate review.

That is precisely what N.D.C.C. § 28-32-48 is designed to prevent. The statute authorizes the Court to stay the "enforcement … or … effect" of an administrative order pending appeal. A stay here is necessary to prevent the contested CPCN from shaping the ch. 49-22 process before this Court has determined whether the PSC had authority to issue it under ch. 49-03.

D. *Nebraska Pub. Power Dist.* does not bar consideration of need under ch. 49-22 and should not be followed.

Appellees' reliance on *Nebraska Pub. Power Dist.*, 330 N.W.2d at 148-49, is misplaced. That case does not authorize importing a need determination from an inapplicable statute. The suggestion that there is "no direction in the Siting Act or its legislative history giving the PSC the authority to determine if a need has been shown" is contrary to statutory text and history, and merits reconsideration.

The prejudice here is not abstract. The Utilities' August 8, 2025 siting application cites the disputed CPCN ten times, including in § 2.1's "Benefit and Need Analysis." Proceeding on that footing would allow the ch. 49-03 order to shape the ch. 49-22 record and outcomes. N.D.C.C. § 28-32-48 squarely allows this Court to stay the effect of the order on appeal. Without a stay, the PSC can proceed under ch. 49-22 while the lawfulness of the CPCN remains unresolved, prejudicing Appellants' rights, creating jurisdictional

confusion, and risking mootness by treating the disputed determination of need as settled fact.

V. Irreparable harm, balance of harms, and public interest favor a stay, and no bond is warranted.

Irreparable harm. Without a stay, Appellants must expend scarce resources litigating a siting docket built on a disputed CPCN, face the compounding effect of administrative momentum, and risk practical mootness. These are classic grounds for interim relief to preserve meaningful judicial review.

Balance of harms. Any incremental delay is self-inflicted. The Utilities chose to pursue a CPCN under an inapplicable statute. They cannot now claim prejudice from pausing to resolve the statutory-authority question their own strategy created.

Public interest. The public has a compelling interest in ensuring the PSC follows the Legislature's exclusive siting framework for 115-kV-and-above facilities. That framework requires notice, hearings, and route findings "with reasons." N.D.C.C. §§ 49-22-02, 49-22-08, 49-22-08.1.

Bond. Section 28-32-48 authorizes a stay and permits the Court to impose conditions. In a public-law appeal of this nature, where the alleged harms are speculative and self-created, no bond is warranted.

VI. The PSC's record-based objection is meritless and does not bar a stay.

The Commission contends that the Court cannot consider a stay without a certified record. PSC Resp. ¶¶ 6–8. That is incorrect under N.D.C.C. § 28-32-48, which authorizes relief based on "an application and … hearing or the submission of briefs" and expressly permits the Court to stay not only enforcement but also the *effect* of the order. The objection fails for two independent reasons.

First, the stay statute imposes no record-certification requirement. Section 28-32-48 sets the standard: whether an application and supporting briefs demonstrate grounds for interim relief. Nothing in the text conditions relief on prior certification of the administrative record. Accepting the PSC's argument would effectively shield unlawful agency orders from temporary review whenever the agency delays record preparation.

Second, even if record status mattered, Appellants have complied with all obligations under N.D.C.C. § 28-32-44. The PSC issued its notice of estimated costs on August 13, 2025. Appellants remitted the $1,200 payment on August 19—well within the 14-day statutory window. *See* N.D. R. App. P. 10. The Commission's August 20 filing suggesting otherwise was inaccurate. *See* Second Declaration of Douglas J. Nill, Exs. 2–4 (August 14 email

exchange and August 19 transmittal letter).

Appellants have met their statutory obligations. Any delay in record certification rests solely with the Commission, and it provides no basis to deny interim relief. The absence of a certified record is no bar to this Court's authority to stay the effect of the CPCN now in order to preserve appellate jurisdiction.

CONCLUSION

This appeal presents a straightforward threshold question: may the PSC issue a stand-alone CPCN under ch. 49-03 for a 345-kV line and then rely on that order while commencing a ch. 49-22 siting docket? The statutory framework answers no. The Court should stay the effect of the CPCN and, as a necessary consequence, stay PSC proceedings under ch. 49-22 for this project until the CPCN's legality is resolved.

PRAYER FOR RELIEF

For these reasons, Appellants respectfully request that the Court:

1. Stay any proceedings by the Public Service Commission under N.D.C.C. ch. 49-22 relating to the proposed Jamestown–Ellendale 345-kV transmission line;

2. Alternatively, enjoin the PSC from acting on any 49-22 siting application for the project until this Court resolves Appellants' pending appeal;

3. Order that no bond is required under N.D.C.C. § 28-32-48; and

4. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: August 27, 2025

By: /s/ Douglas J. Nill

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