

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.

[PROPOSED] RESPONSE TO APPELLEES' SUR-REPLY

Appellants submit this short response to address two new points and

clarify the relief sought.

I. Appellants' Position and Remedy

Chapter 49-22's text and history embed a need inquiry within the siting process, including the required "statement explaining the need," the policy of efficient use of resources, and the statutory factors guiding route findings. As briefed, ch. 49-22 is the governing framework for this 345-kV siting proceeding; a separate ch. 49-03 CPCN cannot supply, constrain, or predetermine the 49-22 record. Even if *Nebraska Public Power* is read to exclude "need" as a 49-22 factor, that reading does not authorize importing a ch. 49-03 CPCN into the docket. Either way, the record must be built on ch. 49-22's statutory footing, not on a contested certificate now on appeal.

II. Chapter 49-03 CPCN Cannot Predetermine 49-22 Record

Appellees' examples show only that utilities sometimes sequence filings. Sequencing does not answer the statutory question. Chapter 49-22 governs siting of all lines above 115-kV, requires its own record and findings, and cannot be short-circuited by a separate 49-03 certificate—especially one under appellate challenge.

Without preservation, the contested CPCN will become the siting docket's premise, risking practical mootness through administrative

momentum.

III. *Nebraska Public Power* Confirms the 49-22 Record Must Stand on Its Own

Even if “need” is not a ch. 49-22 factor, as Appellees argue through *Nebraska Public Power*, the case reinforces Appellants’ point: the 49-22 record must be developed on its own statutory footing. A contested 49-03 CPCN cannot be imported as conclusive evidence of “need” or “benefit” in that process. Put simply, Appellees cannot disclaim “need” as a 49-22 factor while simultaneously using a 49-03 certificate to supply and predetermine it.

IV. Relief Requested

Under N.D.C.C. § 28-32-48 and the Court’s equitable authority, Appellants request an order that:

1. Stays enforcement of the PSC orders under appeal and stays PSC proceedings under ch. 49-22 for the Jamestown–Ellendale 345kV line pending disposition of this appeal;
2. In the alternative, directs that in PU-25-236:
 - a. the November 20, 2024 CPCN has no preclusive, presumptive, persuasive, or evidentiary effect;
 - b. no party, the PSC, staff, or consultants may cite or rely on the CPCN, directly or indirectly, to establish “need” or “benefit,” to shift burdens, or to limit the scope of evidence;

- c. the PSC shall state on the record that any findings are based solely on ch. 49-22 and the evidence developed in that docket, independent of the CPCN; and
 - d. submissions that reference the CPCN shall be struck or disregarded, except to note its existence and the pendency of this appeal.
- 3. Determines that no bond is required under § 28-32-48; and
 - 4. Grants such other relief as the Court deems just and proper.

This relief preserves the statutory ch. 49-22 process, avoids practical mootness, and imposes no prejudice beyond the consequences of the Utilities' two-track path.

Dated: September 5, 2025

Respectfully submitted,

By: /s/ Douglas J. Nill

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