

STATE OF NORTH DAKOTA

IN 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, Timm 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,

vs.

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

Appellees.

Case No. 08-2025-CV-02068

**NORTH DAKOTA PUBLIC
SERVICE COMMISSION'S
BRIEF IN SUPPORT OF MOTION
FOR MODIFICATION OF
BRIEFING SCHEDULE AND
ORAL ARGUMENT REQUEST**

[¶1] Appellee North Dakota Public Service Commission, by and through its undersigned attorney, submits this brief in support of its motion for modification of the Court's briefing schedule. The Court Administrator's Office sent a letter dated September 10, 2025, stating that the Appellant's brief must be submitted on or before October 1, 2025 (21 days from the date of the letter), and Appellees' brief shall be served and filed 10 days after the Appellant's brief. The Commission respectfully requests the Court for 21 days to serve and file its brief after Appellant's brief.

[¶2] There is no rule providing for how a district court is supposed to act as an appellate court for an administrative appeal. The only rule of civil procedure that even references appeals from administrative agencies we have is N.D.R.Civ.P. Rule 81(b), which states:

These rules do not supersede the statutory provisions relating to appeals to or review by the district courts, but must govern procedure and practice relating to the extent these rules are not in conflict with the statutes.

Our rules of court reference administrative appeals at Rule 9.1, which states:

If an appeal in which the decision of the court will be based exclusively on a record made before an administrative agency . . . , after receipt of the record, the court shall fix a time for filing briefs. The court, in its discretion, may permit or require oral argument. A party desiring oral argument may so indicate on or before the time fixed for filing of that party's brief.

N.D.R.Ct. Rule 9.1.

[¶3] Giving one side more time to file their brief than the other is not equitable. The undersigned requires more than 10 days to address the issues that will be briefed by Appellants. Responses to summary judgment motions are afforded 30 days to respond. N.D.R.Civ.P. Rule 56. Responses to appellate briefs at the North Dakota Supreme Court are afforded 30 days to respond. N.D.R.App.P. Rule 31(a). The Commission should be afforded an appropriate amount of time to fully respond to arguments crafted by Appellants. Such is only fair. The undersigned has additional matters unrelated to this appeal with pending deadlines, including a North Dakota Supreme Court brief on another matter that will be due in the same period. Additional time is necessary for the undersigned to appropriately brief the issues in this appeal.

[¶4] The undersigned did request of opposing counsel for the courtesy of this short extension being requested here. This motion is necessary as counsel indicated Appellants oppose any extension request.

ORAL ARGUMENT REQUEST

[¶5] Finally, the Commission respectfully requests oral argument pursuant to N.D.R.Ct. 9.1. The issues involved are complex and merit oral argument. Rather than simply choosing a date without consulting with counsel, it is requested that the Court require the clerk's office to first consult with the parties in advance so that a mutually agreeable hearing date can be set.

Respectfully submitted this 22nd day of September, 2025.

/s/ Zachary E. Pelham
ZACHARY E. PELHAM (ND #05904)
Special Assistant Attorney General
Pearce Durick PLLC
314 E. Thayer Ave.
PO Box 400
Bismarck, ND 58502-0400
Phone: 701-223-2890
zep@pearce-durick.com

*Attorneys for Appellee,
North Dakota Public Service Commission*