

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.

**APPELLANTS' OPPOSITION TO PUBLIC SERVICE COMMISSION'S
MOTION TO MODIFY BRIEFING SCHEDULE; IN THE
ALTERNATIVE, CONDITIONAL NON-OPPOSITION TIED TO STAY**

INTRODUCTION

Appellants oppose the PSC's request for a 21-day response period. On September 10, 2025, following the September 8 hearing, the Court expedited this administrative appeal under N.D.R.Ct. 9.1 and set Appellants' brief for October 1, with Appellees' briefs due 10 days thereafter. Five business days later, on September 16, the Utilities commenced the 49-22 siting docket (PU-25-236) by filing the statutory Notification of Application, *see* Third Nill Decl., Ex. 5A, which starts a 45-day minimum to hearing (no sooner than October 31). *See* N.D.C.C. § 49-22-16(2)(d). That same day, the PSC asked to extend briefing. *See* Fourth Nill Decl., Ex. 6 (email exchange). With the 49-22 docket now running on statutory timelines, any delay here will prejudice Appellants by allowing the siting case to advance on the strength of the disputed 49-03 CPCN while this appeal remains undecided.

I. No changed circumstances; Rule 9.1 controls.

The PSC identifies no changed circumstances that warrant departing from the Court's September 10 expedited order under N.D.R.Ct. 9.1. The only post-order developments are of the agencies' own making: the Utilities filed the 49-22 Notification on September 16, starting the statutory hearing clock, and the PSC asked that same day for more time. Counsel's workload,

generalized complexity, and analogies to Rule 56 response periods or N.D.R.App.P. 31 briefing windows are not good cause in a district-court administrative appeal and do not displace Rule 9.1. The Court has already balanced the equities and set an expedited schedule; with the 49-22 timelines now running, each day of enlargement increases concrete prejudice to Appellants and risks mooted relief in this appeal. If any extension is contemplated, it must be paired with protective relief that preserves the status quo in PU-25-236.

II. Rule 9.1 and the existing order control; the Court already found good cause to expedite.

In an administrative appeal “based exclusively on a record,” the district court “fix[es] a time for filing briefs” and “may permit or require oral argument.” N.D.R.Ct. 9.1. The Court has already exercised that discretion and found expedition warranted. The PSC’s motion offers no change in circumstances that overcomes the Court’s prior judgment or the concrete prejudice now sharpened by the 49-22 timelines.

III. The PSC’s equity argument misfires.

The PSC invokes 30-day response periods in Rule 56 and the Supreme Court’s Rule 31. Those rules do not govern district-court administrative appeals and are in tension with the Court’s express expedition under Rule

9.1. Ten days is ample where (a) the record is closed, (b) the issues have been briefed in various forms for months, and (c) Appellees include well-resourced agencies/utilities that have staffed this matter throughout.

IV. Real prejudice outweighs PSC’s scheduling preferences.

The Utilities’ September 16 Notice (PU-25-236) sets statutory deadlines that will force a hearing no sooner than October 31 and trigger preemption risks for local rules unless filings occur 10 days before hearing. *See* Third Nill Decl., Ex. 5A. Allowing a 21-day response here would push merits resolution closer to, or past, those 49-22 milestones—functionally mooted or tilting the siting proceeding with an unresolved CPCN dispute. That is the opposite of what the Court intended on September 10.

V. If the Court is inclined to grant any extension, it must be paired with protective relief.

Appellants respectfully request that any enlargement be conditioned on a stay of PU-25-236 or, at minimum, (i) an order that the PSC and Utilities may not rely on the disputed CPCN in PU-25-236, and (ii) that all PSC-set deadlines are held in abeyance pending this Court’s decision. Appellants have already sought that relief; the Court can incorporate it here to preserve its jurisdiction and the status quo. *See* Amended Proposed Order Granting Motion to Stay (No New Relief Requested), filed Sept. 18, 2025.

VI. Oral argument.

Appellants are content to submit on the briefs under Rule 9.1. If the Court desires argument, Appellants will make themselves available on the earliest date the Court selects, consistent with the expedited posture.

CONCLUSION

Deny the PSC's motion. In the alternative, grant the PSC 21 days only with the protective conditions above. Appellants request entry of the attached proposed order(s).

Dated: September 23, 2025

Respectfully submitted,

By: /s/ Douglas J. Nill

Douglas J. Nill (ND # P00392)

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