

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 OTTER TAIL POWER COMPANY
AND MONTANA-DAKOTA UTILITIES CO.'S REQUEST FOR
EXTENSION OF TIME AND INCORPORATION BY REFERENCE
OF PRIOR OPPOSITION**

INTRODUCTION

Appellants oppose the separate “Request for Extension” filed by Appellees Otter Tail Power Company (“OTP”) and Montana-Dakota Utilities Co. (“MDU”) and incorporate by reference their September 23, 2025 Opposition to the PSC’s motion to modify the briefing schedule and the two alternative proposed orders filed with that opposition.

I. Rule 9.1 and the Court’s expedited order govern.

After the September 8 hearing, the Court issued an expedited schedule on September 10 under N.D.R.Ct. 9.1. The Utilities’ suggestion that the Notice was merely a “form” schedule does not overcome the Court’s exercise of discretion to expedite this appeal. Nothing material has changed to justify departure from that order.

II. Prejudice is concrete; Utilities’ timing underscores it.

The Utilities filed their 49-22 Notification on September 16, which—by statute—sets the siting docket on a clock toward a hearing no sooner than October 31. *See* N.D.C.C. § 49-22-16(2)(d). With statutory preemption risks for political subdivisions tied to that hearing timeline, enlarging Appellees’ briefing time now would tilt the siting docket forward while the CPCN appeal remains undecided. That is precisely the prejudice the Court sought to avoid

by expediting.

III. “Completeness” and “no hearing set” are beside the point.

The Utilities’ own September 16 Notification is what triggers the statutory timing framework. Whether the PSC has formally noticed a hearing or deemed the application “complete” yet does not eliminate the imminent deadlines and resulting prejudice if this appeal is slowed.

IV. Ten days is ample for well-resourced Appellees on a closed record.

The Utilities have staffed this matter alongside the PSC for months, the administrative record is closed, and issues have been briefed in various forms. Their equity argument (seeking “the same time as Appellants”) ignores the Court’s expedition under Rule 9.1 and the disproportionate prejudice to Appellants given the running 49-22 timelines.

V. If any extension is granted, identical protective relief must apply to all Appellees.

For the reasons already briefed, any enlargement should be conditioned on: (a) a stay of PSC Docket PU-25-236 pending decision here; or, at minimum, (b) an order that Appellees may not rely on the disputed November 20, 2024 CPCN in PU-25-236 and that all PSC-set deadlines are held in abeyance pending this Court’s ruling. Appellants’ alternative

proposed order already provides that framework; it should apply equally to the Utilities.

RELIEF REQUESTED

Deny the Utilities' request. In the alternative, grant any extension only with the protective conditions set out in Appellants' previously-filed alternative proposed order.

Dated: September 24, 2025

Respectfully submitted,

By: /s/ Douglas J. Nill

Douglas J. Nill (ND # P00392)

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