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

Hon. Bobbi Weiler

APPELLANTS' BRIEF

Douglas J. Nill, PLLC, on behalf of the Petitioners
Douglas Nill & Steven Leibel, Attorneys

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INTRODUCTION

This appeal challenges the Public Service Commission's ("PSC") use of N.D.C.C. ch. 49-03 to grant a Certificate of Public Convenience and Necessity (CPCN) for a new 345-kV transmission line from Jamestown to Ellendale (Nov. 20, 2024), and the PSC's June 18, 2025 order denying Appellants' petition to vacate that CPCN.

The threshold statutory question is straightforward: For high-voltage lines (115-kV and above), may the PSC proceed outside the exclusive siting framework of N.D.C.C. ch. 49-22 by first issuing a "need" certificate under 49-03 and then relying on that order in a later 49-22 docket? The statutes say no. Chapter 49-22 is the Legislature's exclusive, integrated process. A utility may not begin construction without a route/site permit "pursuant to this chapter," and the Commission's decision must rest on a record that includes the applicant's statement of need and reasoned findings tied to statutory criteria. *See* N.D.C.C. §§ 49-22-05.1, 49-22-08(6), 49-22-08.1(5), 49-22-09. Importing a prior "need" determination under 49-03 bypasses these safeguards and is incompatible with the framework the Legislature enacted.

The practical stakes explain the procedural detour. The Utilities faced a difficult showing: a genuine North Dakota public need for a new 345-kV

corridor, when the record indicates the project primarily facilitates eastbound export of privately developed wind generation. *See* Certificate of Record ("CR") Ex. 14 (PSC analyst memorandum: the line "creates additional capacity for more wind [generation] to be transmitted from North Dakota eastward"). North Dakota ratepayers bear costs while out-of-state markets benefit—precisely the circumstance 49-22 was designed to test through mailed notice to affected landowners and townships with retained zoning authority, a hearing in the project area, and a reasoned "finding with reasons" tied to statutory criteria.

How 49-03 differs from 49-22: At oral argument (Sept. 8, 2025), the Court asked how the statutes differ. 49-03 authorizes general CPCNs and permits "informal disposition" (N.D.C.C. § 28-32-22); it contains no siting-specific notice, local-hearing, or reasoned-finding requirements tied to siting criteria. 49-22, by contrast, exclusively governs siting of high-voltage lines and requires (i) mailed notice and meaningful participation by affected landowners and local governments (including notice to townships with retained zoning authority and county-level participation); (ii) a hearing in the project area; and (iii) a decision "in accordance with the evidence" with a "finding with reasons" addressing statutory criteria and considerations. *See*

N.D.C.C. §§ 49-22-05.1 (criteria); 49-22-08(6) and 49-22-08.1(5) (finding with reasons based on the evidentiary record); 49-22-09 (considerations); 49-22-16(2)(d) (township notice; hearing no sooner than 45 days after notice); 49-22-19 (judicial review).

Against that framework, the Utilities urge *Matter of Nebraska Pub. Power Dist.*, 330 N.W.2d 143, 148–49 (N.D. 1983), to suggest that the PSC must look outside 49-22 to assess "need." But 49-22 itself requires an applicant's statement explaining the need for the facility and directs the PSC to apply criteria that inherently address need (system configuration, alternatives, consumer demand). Properly read, *Nebraska* does not authorize a separate 49-03 "need" certificate to predetermine or substitute for the 49-22 record; it confirms that 49-22 supplies the governing framework and findings for this type of project.

Beyond the statutory mismatch, the November 20, 2024 order is legally insufficient and nonfinal: it lacks explicit findings of fact and separate conclusions of law tying the evidence to the governing criteria and was not properly served under § 28-32-39(2). The PSC also erred in denying intervention to directly affected landowners, townships with retained zoning authority, and North Dakota ratepayers, and the record does not contain

substantial evidence of a genuine public necessity even assuming 49-03 applied.

Because any one of these errors warrants relief, the Court should vacate the CPCN, reverse the denial of intervention, and remand with instructions to proceed under 49-22 with the notice, local hearing, environmental review/alternatives analysis, and reasoned findings the statute requires, and to refrain from using the vacated CPCN as evidence of "need" or as a substitute for the 49-22 siting record.

ISSUES PRESENTED

1. Whether the PSC lacked statutory authority to approve a new 345-kV transmission line under 49-03, because 49-22 provides the exclusive siting and permitting framework for such facilities.

2. Whether the November 20, 2024 order is a final, reviewable agency action when it lacks explicit findings of fact and separate conclusions of law tying the record to the governing criteria and was not properly served under § 28-32-39(2).

3. Whether the Commission erred by denying intervention to directly affected landowners, townships with retained zoning authority, and North Dakota ratepayers, thereby prejudicing substantial rights.

4. Even assuming 49-03 applied, whether the record fails to establish public convenience and necessity for this project where the order contains no analysis of need and the record indicates the project primarily serves private wind generation and out-of-state markets.

5. Whether the Commission's procedures violated due process under the North Dakota and United States Constitutions.

STATEMENT OF THE CASE

This appeal arises under N.D.C.C. ch. 28-32 from the PSC's November 20, 2024 order granting Otter Tail Power Company (Otter Tail Power) and Montana-Dakota Utilities Co. (MDU) a Certificate of Public Convenience and Necessity for a proposed 345-kV transmission line under N.D.C.C. ch. 49-03 (PSC Case No. PU-24-91). The Commission issued a notice of opportunity for hearing on March 27, 2024 and published that notice in multiple newspapers (CR Exs. 3, 4). On May 21, 2025, Appellants filed a petition to rescind the November 20, 2024 order and to reopen the proceeding, and sought intervention (CR Ex. 19); the Commission denied those requests on June 18, 2025. Appellants served a Notice of Appeal and Specifications of Error on July 15, 2025 (CR Doc. 44-55).

While this appeal has been pending, Otter Tail and MDU filed a separate joint application on August 8, 2025, under N.D.C.C. ch. 49-22 for a Certificate of Corridor Compatibility and Route Permit (PSC Case No. PU-25-236). Appellants moved the district court to stay that 49-22 siting proceeding pending resolution of this appeal (CR 63-64). The Commission opposes a stay, asserting authority to consider the 49-22 application independently of the challenged CPCN order and noting that Appellants were not parties in the underlying CPCN docket.

STATEMENT OF FACTS

The dispute is whether the PSC may approve a high-voltage transmission line by relying on projections tied to future wind development while bypassing the statutory safeguards the Legislature enacted for projects of this magnitude. The proposed 345-kV line from Ellendale to Jamestown was advanced under ch. 49-03 by a November 20, 2024 order that issued a CPCN without explicit findings of fact or separate conclusions of law, and without the siting-specific procedures required by ch. 49-22. Appellants contend the record shows the project primarily facilitates eastbound export of privately developed wind generation, not a verified North Dakota public need.

This case concerns where and how the need and routing determinations for high-voltage lines must be made: within 49-22's integrated process (notice to affected landowners and townships with retained zoning authority, a hearing in the project area, environmental review/alternatives analysis, and a "finding with reasons"). *See* N.D.C.C. §§ 49-22-05.1, 49-22-08(6), 49-22-08.1(5), 49-22-09, 49-22-16(2)(d). Treating a 49-03 CPCN as proof of "need" in a later 49-22 docket distorts the required siting record and sidesteps local participation.

A. Overview of the transmission line project and the approval process.

On February 29, 2024, Otter Tail Power and MDU filed a joint application for a Certificate of Public Convenience and Necessity to construct, own, and operate approximately 85 miles of 345-kV transmission line from Ellendale to Jamestown (JETx), along with the expansion of four substations located in Stutsman, LaMoure, and Dickey Counties in North Dakota.

On March 27, 2024, the Commission issued a Notice of Opportunity for Hearing, published in local newspapers, inviting written comments or requests for a hearing by May 10, 2024. The Commission states that no responses were received. Based on subsequent discussions with residents and township officials, affected landowners did not recognize the Notice as

pertaining to a major electric transmission line project and were not aware of its significance at the time.

The March 27 notice outlined two main issues for consideration:

1. Whether public convenience and necessity will be served by construction and operation of the facilities.

2. Are [Otter Tail Power/MDU] technically, financially, and managerially fit and able to provide the service?

On July 8, 2024, the Commission discussed these issues in an informal hearing, which was electronically recorded (CR Ex. 8). On August 19, 2024, the Commission held a work session, also electronically recorded (CR Ex. 11). On October 14, 2024, the Commission received comments from the Midcontinent Independent System Operator, Inc. (MISO) (CR Ex. 13).[1] Following this, on October 17, 2024, the Commission held another work session, which was electronically recorded (CR Ex. 15). On November 20, 2024, the Commission issued an Order granting the certificate in a 2-1 vote, with the majority finding that "public convenience and necessity" would be served (CR Ex. 17). However, the majority decision lacked any rationale or explanation to support this conclusion. In dissent, Commissioner Randy

[1] MISO is a non-profit organization that manages the electric grid and wholesale electricity markets across a large portion of North America. Utilities like Otter Tail Power and MDU are members of MISO.

Christmann criticized the responses to the Commission's questions as "vague," stating that Otter Tail Power and MDU had multiple opportunities to provide more detailed answers, but failed to do so. *Id.*

As noted, the responses from Otter Tail Power and MDU were considered vague because there is no clear evidence that the transmission line serves a public necessity**.** The Utilities' own documents suggest that the line serves private interests, rather than the public. Specifically, MISO's October 14, 2024, letter indicated that the transmission line would "allow for the continued interconnection of new generation resources in areas with higher capacity factors for intermittent resources, such as wind generation." In simpler terms, the transmission line would enable companies with wind towers in the Missouri Coteau, a significant part of the North Dakota duck flyway, to transmit electricity out of North Dakota.

The resulting cost to customers is an additional $0.123 per month for MDU customers and $0.117 per month for Otter Tail Power residential customers, as noted in the November 20 Order. This means that North Dakota customers would be funding a transmission line that primarily benefits wind energy companies looking to export electricity out of the state. This clearly represents a private need, not a public necessity.

B. Petitioners' interests and how they are affected by the project.

As detailed in the Petition to Intervene, Appellants include landowners, local governments, and ratepayers whose distinct and directly affected interests warrant intervention under N.D.A.C. § 69-02-02-05.

C. The Commission's majority provides no rationale to support its finding of public convenience and necessity.

The November 20 Order largely recites procedural background, including the roles of Otter Tail Power and MDU, their participation in MISO's Long-Range Transmission Planning, and cost allocations. However, the Commission stated without explanation that "the public convenience and necessity will be served" by the proposed transmission line. The Order contains no findings of fact or legal analysis to support this assertion, as required by N.D.C.C. § 28-32-39 and due process principles. *See* Order at 1–2. Critically, the Order fails to identify a specific public need within North Dakota, assess the adequacy of existing transmission infrastructure, evaluate reasonable alternatives, address land use, environmental, or community impacts, or provide a rational connection between the asserted facts and the Commission's conclusion. This lack of reasoning renders the decision arbitrary and deprives Appellants of a meaningful opportunity to respond.

D. The dissent identifies material omissions and unanswered questions.

Commissioner Randy Christmann, dissenting in the November 20 Order (CR Ex. 17), highlighted significant gaps in the Utilities' evidence and analysis. He stated (emphasis and paragraph breaks added):

> Throughout the last seven months *the explanation has remained vague.* MISO's long term transmission study is [cited] which shows dozens of voltage and thermal problems that this project would relieve. However, the vast majority of the problems are forward looking, meaning they do not exist yet. It will be future actions that will cause most of these problems. *No clear information is provided* that allows us to determine who will be causing these future actions, whether they are preventable, nor whether they are realistic.
>
> One of the few examples provided of the coming changes that would create the need for this transmission is 800 megawatts of solar electric generation, but much of that even appears to be conjecture because *no information is provided regarding who would build these nor where they would be built.*
>
> One key factor that is known about the future of transmission in this area is a large new load near Ellendale, ND that is already partially operational and partially under development. We know this facility has already relieved congestion in this area of the state. MISO *refuses to update their Tranche #1 study,* which is more than two years old, or even take this new load into consideration.
>
> Adding costs of this significance to North Dakota ratepayers deserves careful scrutiny. Perhaps this project is a necessity, but *there have been multiple opportunities for the applicants to answer more questions and provide more detail. They have not done so.* Until better justification is provided this Certificate should be denied.
>
> This candid assessment reflects what the record confirms: Otter Tail

Power and MDU have failed to meet their burden of proof. Their reliance on outdated studies and speculative projections cannot support a finding of public necessity.

E. The transmission line primarily serves private, rather than public, interests.

1. Project motivated by private generation, not public necessity.

The Utilities' July 8, 2024 PowerPoint presentation to the Commission explicitly identifies private development—not public need—as the driving force behind the proposed Ellendale to Jamestown transmission line. According to the presentation, the project is intended to:

- "Enable new commercial and industrial loads"
- "Accommodate new electric generation projects"
- "Reduce transmission constraints to export more North Dakota generation"

See CR Ex. 9.

Although the Utilities claim the existing 230 kV system is "heavily constrained" with "[e]xcessive loadings" and "voltage depressions," they acknowledged that these issues are caused by prospective surplus generation in the future from privately-owned wind projects west and north of Ellendale, CR Ex. 8 (PSC Informal Hearing, July 8, 2024, at 14:9-15 ("contingency

analysis of this *future condition*") (emphasis added); and the intent is to move that generation out of state. *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 to be transmitted from North Dakota eastward*." (Emphasis added). CR Ex. 14.

2. MISO's justification is generation-driven, not reliability-driven.

Otter Tail Power's spokesperson stated that MISO focused on the project because "the amount of generation being built in this region is far outpacing what's happening in other parts of MISO," and they are "try[ing] to get ahead of the transmission needs" associated with that private generation. CR Ex. 8 (PSC Informal Hearing, July 8, 2024) at 30:5-12.

3. Claimed public benefits are not part of the MISO case.

When asked about the public benefits used to justify the line, such as landowner easement payments and tax revenue, Otter Tail admitted these are not included in MISO's business case for the project:

> (Commissioner Fedorchak): "And the benefits that you mentioned in your discussion … those aren't part of the MISO business case, are they?"

(Speaker Weirs): "They are not actually [part of the MISO case]."

CR Ex. 8 at 34:5 and 35:1-6.

4. Cost burden on North Dakota ratepayers.

Despite the private nature of the need, the cost burden is placed on North Dakota residential customers:

> (Speaker Weirs): "Otter Tail residential customers are going to see a rate impact of 18 cents per month, MDU customers will see an impact of 12 cents per month for just the Jamestown to Ellendale project."

CR Ex. 8 at 39:1-4.

5. Admission: JETx enables private wind projects.

The Utilities themselves concede that the line is essential for enabling further private wind development:

> (Speaker Weirs): "…without projects like this, it's hard to develop additional generation within the state."

CR Ex. 8 at 46:2-4.

6. Commissioner concerns: benefits disproportionately favor developers.

PSC Commissioner Christmann clearly expressed concern that the project disproportionately benefits private developers:

> "So our ratepayers pay to build this and the benefits are … mostly to whoever the new developer is that comes in and builds another wind farm, … [a] few landowners, but not to most of these Otter Tail and MDU customers."

CR Ex. 8 (PSC Work Session, Aug. 19, 2024) at 18:4-10. He further emphasized:

> "If the issue is somebody else out-of-state's need for energy … fine, pay for it. Not our rates all the time." *Id.* at 19:1-5. And:
>
> "… among the project benefits are to accommodate new electric generation projects. That, to me, that's who out to be paying at least a good part of this, if not all of it … [b]ecause that, to me, is the key benefit in this, is to add the new generators." *Id.* at 24:2-7.

7. Transmission constraints are based on speculative future wind development.

According to a PSC memorandum dated October 16, 2024, prepared by analyst Hanson, the transmission constraints that the proposed line is intended to address are not present conditions, but rather projected issues based on long-term forecasts of load and generation growth. *See* CR Ex. 14 (Hanson Memo re: letter from Jeremiah Doner, Director of Cost Allocation, MISO) (emphasis added):

> "Specifically, he states that this project will remedy the N-1 and N-1-1 issues noted in the previous memo and he identifies the elements that are projected to be affected by thermal and voltage issues. These N-1 and N-1-1 events are *projected* based upon each company's long-term forecasts of load and generation growth."

Further, Hanson quotes Doner as stating:

> "These projects will allow for the continued interconnection of new generation resources in areas that offer higher capacity factors for intermittent resources, such as wind generation."

See also CR Ex. 8 (PSC Informal Hearing, July 8, 2024, at 14:9-15 (referring to "contingency analysis of this future condition"). In other words, the transmission line is being built to enable export capacity for wind projects that have not yet materialized; not to address any present reliability concerns.

F. Local township opposition.

Following public meetings in early 2025, townships along the proposed route took formal action:

- Wano Township — Conditional Use Permit (CUP) denied (Jan. 29, 2025); voted to join as Petitioner (Apr. 29, 2025). CR Ex. 19 (Nill Decl., Ex. 1; ¶ 2).
- Willowbank Township — CUP denied (Apr. 9, 2025); voted to join as Petitioner (Apr. 30, 2025). Nill Decl., ¶ 3.
- Russell Township — voted to join (Apr. 29, 2025). Nill Decl., ¶ 4.
- Corwin Township — voted to join (Apr. 28, 2025). Nill Decl., ¶ 5.
- Valley Township — voted to join (Apr. 29, 2025). Nill Decl., ¶ 6.

These actions post-date the Nov. 20, 2024 CPCN and are part of the record presented to the Commission in support of intervention and reopening.

STANDARD OF REVIEW.

Under N.D.C.C. § 28-32-46, the district court reviews only the agency record and "must affirm" unless one or more statutory grounds are met. The statute lists eight grounds, including: (1) not in accordance with law; (2) constitutional violations; (3) failure to comply with ch. 28-32; (4) unfair procedure / no fair hearing; (5) findings not supported by a preponderance of the evidence; (6) conclusions/order not supported by the findings; (7) findings that do not sufficiently address the appellant's evidence; and (8) conclusions/order that do not sufficiently explain the agency's rationale (including departures from a hearing officer/ALJ).

Questions of law (including statutory interpretation and the Commission's authority) are fully reviewable de novo. The court "does not substitute its judgment" on facts; it asks whether "a reasoning mind could reasonably conclude" the agency's factual findings are proved by the weight of the evidence.

Only final orders are appealable, and an agency's final order must contain findings of fact and separate conclusions of law, with service/notice as specified.

SUMMARY OF ARGUMENT

The Commission's November 20, 2024 order cannot stand. For a 345-kV transmission line, the Legislature made ch. 49-22 the exclusive, initial pathway. By proceeding under ch. 49-03 to issue a CPCN first, the Commission sidestepped the statutory siting framework and its safeguards. That legal error alone requires vacatur and remand with instructions to proceed under 49-22.

First, the Commission acted contrary to law by using 49-03 as the governing vehicle for this project. 49-22 is the comprehensive siting scheme for high-voltage lines. Treating a 49-03 CPCN as a substitute for the 49-22 process collapses distinct statutory roles, bypasses required showings, and distorts the later siting record. The CPCN must be vacated.

Second, the November 20 order is legally insufficient and nonfinal: it lacks explicit findings of fact and separate conclusions of law tying the evidence to the governing criteria, and it did not employ the siting-specific procedures 49-22 requires. This failure frustrates judicial review and independently warrants reversal or, at minimum, remand for a legally compliant final order.

Third, the Commission's denial of intervention was not in accordance with law and deprived directly affected landowners, townships with retained zoning authority, and North Dakota ratepayers of a fair opportunity to be heard. Appellants meet the standards for participation, and exclusion prejudiced substantial rights. The denial should be reversed or vacated and reconsidered under the correct legal criteria.

Fourth (alternative), even if 49-03 applied, the record does not contain competent evidence of a genuine public necessity. The order contains no analysis of need, and the record shows the project primarily advances private wind development and out-of-state markets. A reasoning mind could not find the statutory elements proved by a preponderance of the evidence.

Fifth, the Commission's conduct and procedures violated due process under the North Dakota and United States Constitutions by failing to provide the process the statutes and constitutions guarantee to those whose property, regulatory authority, and rates are affected.

Because any one of these errors requires relief, the Court should vacate the CPCN**,** reverse the denial of intervention, and remand with instructions to proceed under 49-22 with proper notice, environmental review, alternatives analysis, and reasoned findings. To prevent further reliance on

an unlawful foundation, the Court should also direct that the pending 49-22 docket not treat the vacated CPCN as evidence of need or as a substitute for the required siting record.

ARGUMENT

I. The Commission acted contrary to law by issuing a CPCN under ch. 49-03 for a 345-kV line that must proceed under the exclusive siting framework in ch. 49-22.

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.

A. Chapter 49-03 is intended to prevent utilities from 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 345-kV Jamestown-Ellendale line is a new transmission facility, not a territorial intrusion.

The 345-kV 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 49-03 and then importing that determination into a 49-22 route application—undermines the Legislature's scheme. The requirements of 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 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 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 49-03 to fix "need" before the 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 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 49-22 record, and that it cannot be predetermined under 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 49-22—enacted as an emergency measure effective April 9, 1975—confirms that route/site approval for high-voltage lines requires a showing of public need. *See* 1975 N.D. Sess. Laws ch. 436 (S.B. 2050) (eff. Apr. 9, 1975). For example, in testimony on S.B. 2050 before the House Committee on Natural Resources, Ken Ziegler of Basin Electric emphasized that robust public review was essential so that "the total public convenience and necessity can finally be met." *Hearing on S.B. 2050 Before the H. Comm. on Natural Resources* (N.D. Mar. 6, 1975) (statement of Ken Ziegler, Basin Electric). Legislative Council materials from the same period

echo the point: a January 1974 background report explained that construction of a "major utility transmission facility" may not begin absent a "certificate of environmental compatibility and public need," supported by a statement of need, alternatives, and findings on need and environmental impacts. N.D. Legis. Council Staff, *Background Information on Power Transmission Lines and Land Disturbing Operations* 4 (Jan. 1974) (emphasis added).

This history underscores the Legislature's design: public need is central to the 49-22 process, and no high-voltage line may be approved without reasoned findings tied to that requirement. The appeal therefore presents a threshold question of statutory construction—whether the PSC acted ultra vires in issuing a CPCN under the Territorial Integrity Act (49-03) rather than proceeding under 49-22. That question should be resolved before the PSC proceeds under 49-22 in reliance on a legally defective CPCN.

F. If Appellees say the CPCN is irrelevant to 49-22, they should stipulate to rescind it.

If Appellees truly believe the November 20, 2024 49-03 CPCN has no bearing on the 49-22 siting application they filed on August 8, 2025, the obvious step is to stipulate to rescind it. They have not. Instead, they pursue a two-track theory with no basis in statute while citing the CPCN

repeatedly— including for "benefit" and "need"—in the 49-22 docket, using it as a predicate for their siting case. That inconsistency underscores Appellants' central point: a 49-03 CPCN cannot predetermine "need" inside the exclusive 49-22 process or supply the 49-22 record.

G. Remedy.

The Commission lacked statutory authority to approve this new 345-kV transmission line under 49-03 because high-voltage transmission facilities are subject to the exclusive siting and permitting scheme in 49-22. Treating a 49-03 CPCN as a substitute for the 49-22 process collapses distinct statutory roles, bypasses required showings, and distorts the later siting record. The Court should:

1. Reverse and vacate the November 20, 2024 CPCN as ultra vires under 49-03.

2. Remand with instructions that any "public convenience and necessity" determination for this 345-kV line be adjudicated exclusively within a 49-22 siting docket, with mailed notice and meaningful participation for affected landowners and townships with retained zoning authority, a hearing in the project area, and explicit findings of fact and separate

conclusions of law addressing §§ 49-22-05.1, 49-22-08(6), 49-22-08.1(5), and 49-22-09, and proper service under § 28-32-39(2).

3. Direct that the vacated CPCN may not be relied on in any other proceeding—including corridor/route filings, right-of-entry, or condemnation—and may not be cited in the 49-22 docket as evidence of need or as a substitute for the required siting record.

II. The November 20, 2024 Order is not a final, reviewable agency action because it lacks the findings, conclusions, and reasoned analysis the law requires.

North Dakota law ties the running of any deadline for reopening, reconsideration, or appeal to issuance and service of a *final* order. *See* N.D.A.C. §§ 69-02-06-01, -02; N.D.C.C. § 28-32-42. Although the Public Service Commission is generally exempt from portions of the Administrative Agencies Practice Act, N.D.C.C. § 54-57-03(1), the finality principles codified in N.D.C.C. § 28-32-39 remain the touchstone for what makes an order judicially reviewable: (1) explicit findings of fact and *separate* conclusions of law and (2) service of those findings, conclusions, and the order on all parties. N.D.C.C. § 28-32-39(1)–(2).

The November 20 order meets none of these requirements. It contains no findings, no conclusions of law, and no reasoned explanation—only a bare

statement that "public convenience and necessity will be served." That is legally inadequate. "[A]n agency's findings are adequate when they enable a reviewing court to understand the agency's decision." *State v. Sandberg*, 956 N.W.2d 342, 347 (N.D. 2021). Without findings and rationale, neither the parties nor a reviewing court can discern the basis for the agency's action, so statutory clocks do not run.

A. The PSC's June 18 order confirms—not cures—this defect.

It asserts that although the November 20 order "lacked specific title headings" for findings and conclusions, its "discussion section" contains the facts and legal conclusions the Commission relied on, and that the case was resolved by "informal disposition" under N.D.C.C. § 28-32-22. But § 28-32-39(1) requires *explicit findings* and *separate conclusions of law*; a narrative that recites background and announces a result is not enough. Findings must tie specific, record-based facts to the governing statutory criteria so that a reviewing court can follow the agency's reasoning. *Sandberg*, 956 N.W.2d at 347. Nor may a court supply a rationale the agency did not articulate. *See SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943). And § 28-32-22 authorizes informal disposition only if it does *not* "substantially prejudice the rights of any party"—it cannot be used to dispense with findings where another

statute independently requires them. Here, proceeding informally while omitting findings and conclusions *did* substantially prejudice directly affected landowners, townships, and ratepayers by foreclosing meaningful review.

B. The Siting Act independently compels the same result.

For high-voltage transmission facilities, the Commission must decide in accordance with the hearing record and must issue a "finding with reasons" for any designation. N.D.C.C. §§ 49-22-08(6), 49-22-08.1(5) (requiring decisions grounded in the evidence, the application, § 49-22-05.1 criteria, and § 49-22-09 considerations). Judicial review under § 49-22-19 presupposes a decision containing enough findings and legal reasoning to permit meaningful appellate scrutiny, and rehearings must be conducted pursuant to Chapter 28-32. The Commission's bare conclusion falls short of these statutory commands.

C. Finality and timing follow from § 28-32-39—just as the PSC itself recognized.

The June 18 order acknowledges that the outdated reference in N.D.A.C. § 69-02-06-02 should be "updated" to § 28-32-39. That concession underscores Appellants' point: § 28-32-39(1)–(2) is the trigger for finality and notice. Because the November 20 order did not satisfy those requirements, no deadline to seek reopening, reconsideration, or appeal began to run.

Constitutional due process leads to the same place. Even where formal adjudicative rules are relaxed, due process requires notice, an opportunity to be heard, and a reasoned decision supported by the record. *Goldberg v. Kelly*, 397 U.S. 254 (1970). And Chapter 28-32 expressly authorizes courts to set aside decisions that are unlawful, unsupported by evidence, or issued without fair procedure. N.D.C.C. § 28-32-46. An order devoid of findings and reasoning is unreviewable and arbitrary.

Persuasive authority confirms that defective orders and deficient notice do not trigger appellate deadlines. *See Rued v. Commissioner of Human Services*, No. A22-1420, slip op. at 3 (Minn. Oct. 23, 2024) (appeal clock did not run absent proper notice); *First Minn. Bank v. Overby Dev., Inc.*, 783 N.W.2d 405, 409 (Minn. App. 2010) (time to appeal did not run with deficient notice); *Alford v. County of L.A.*, 51 Cal. App. 5th 742, 744 (2020) (judicial-review deadline not triggered by noncompliant decision); *Pan Am. Petroleum Corp. v. Wyo. Oil & Gas Conservation Comm'n*, 446 P.2d 550 (Wyo. 1968) (absence of adequate findings defeats review). The common principle is that statutory deadlines attach only to legally sufficient, noticed decisions.

The Commission's continuing jurisdiction underscores that this defect is not merely technical. Agencies retain authority to reopen where statutes

provide. N.D.C.C. § 28-32-40(5). The Siting Act preserves ongoing oversight, including revocation or suspension for false statements, noncompliance, or unfair land-acquisition tactics. N.D.C.C. § 49-22-20. That framework reflects legislative intent that the Commission issue reasoned, reviewable decisions and correct course when the record or the law requires it.

Finally, the North Dakota Supreme Court's recent summary of judicial-review obligations confirms the governing standard: courts examine whether the agency acted within the law, complied with ch. 28-32, afforded due process, and supported its conclusions with evidence and rationale. *Zent v. N.D. Dep't of Health & Human Servs.*, 2025 ND 50, ¶ 16. The November 20 order satisfies none of these criteria.

D. Even if the Court deems the November 20 order "final," it must be vacated as unlawful.

A final order that omits explicit findings and separate conclusions violates §§ 49-22-08(6), 49-22-08.1(5) and 28-32-39(1), and is arbitrary under § 28-32-46. The remedy is the same: vacatur and remand for issuance of a reasoned, served order grounded in the evidentiary and statutory criteria.

E. Remedy.

Primary remedy (statutory exclusivity). Because 49-22 is the exclusive pathway for siting high-voltage lines, the Commission acted ultra vires in

issuing a CPCN under 49-03. The Court should vacate the November 20, 2024 order and remand with instructions that any further action proceed under 49-22—with the notice, local hearing, environmental review/alternatives analysis, and "finding with reasons" required by §§ 49-22-05.1, -08(6), -08.1(5), and -09—and that the Commission properly serve any final order under § 28-32-39(2). The vacated 49-03 CPCN may not be cited or treated as evidence of public need or as a substitute for the 49-22 record.

Alternative remedy (if 49-03 applied). Even assuming arguendo that 49-03 could govern, the November 20 order is not final and is legally insufficient: it lacks explicit findings of fact and separate conclusions of law that tie the evidence to the governing criteria, and it was not properly served under § 28-32-39(2). The Court should vacate and remand for a legally compliant final order with reasoned findings and conclusions. Until a lawful final order issues, the November 20 action cannot serve as the foundation for further proceedings or for any property-affecting action.

III. The denial of intervention was not in accordance with law and deprived directly affected parties of a fair hearing.

A. Legal standard.

North Dakota applies a liberal standard to intervention where a person's substantial rights may be affected and existing parties will not

adequately represent those interests. *See* N.D.A.C. § 69-02-02-05; *Minn-Kota Ag Prods., Inc. v. N.D. Pub. Serv. Comm'n*, 938 N.W.2d 118, 130–31 (N.D. 2020) (recognizing the Commission's obligation to fairly accommodate participation consistent with due process). That standard governs even when the agency proceeds informally: under N.D.C.C. § 28-32-22 an "informal disposition" is permissible only if it does not "substantially prejudice the rights of any party," and any conversion from one procedure to another must preserve fair participation. *Id.*

B. The PSC's timeliness rationale collapses under its own premises.

1. The 10-day "before the hearing" rule presupposes a hearing.

The PSC denied intervention because the petition "was filed more than one year after the expiration of the Notice" and because N.D.A.C. § 69-02-02-05(2) requires intervention "at least ten days prior to the hearing." But the Commission chose not to hold an evidentiary hearing, instead disposing of the CPCN by "informal disposition." When there is no hearing, a deadline tied to "the hearing" does not bar intervention; the agency must instead ensure that the informal path does not extinguish participation by those whose property and governance rights are at stake. N.D.C.C. § 28-32-22.

2. No final order—no running clock.

Even if a hearing-based deadline could be imported into an informal disposition, the November 20, 2024 CPCN order was not "final" because it lacks explicit findings, separate conclusions of law, and a reasoned explanation. *See* N.D.C.C. § 28-32-39(1)–(2); Section II, *supra*. Statutory clocks for reconsideration, reopening, or appeal do not run until a legally sufficient, served final order issues. *Id.* The June 18 order's assertion that Appellants "missed the time allowed to appeal" simply assumes finality that does not exist.

3. Continuing jurisdiction and good cause.

The Commission retains continuing authority to revisit its orders where provided by statute. N.D.C.C. § 28-32-40(5); *see also* N.D.C.C. ch. 49-22. And the Commission's own intervention rule contains a good-cause safety valve; the combination of (a) the Commission's choice to forego a hearing and (b) the emergence of material new facts (township CUP denials and formal votes to intervene in early 2025) constitutes good cause. Denying intervention despite those developments "substantially prejudice[d]" Appellants' rights and contravened § 28-32-22.

C. Appellants' interests are direct, substantial, and unrepresented.

Appellants fall into three concrete categories, none represented by the Utilities or any existing party:

- **Landowners in the line's path** (e.g., Bartel; Long; Nelson; Otterness & Vick; Brandon & Tausha Schweigert; Shockman Farm Partnership; Debra Sue Wald; Lucas & Jill Wald), facing imminent easements, takings risk, and construction impacts.

- **Townships exercising zoning authority** (Wano, Willowbank, Russell in LaMoure County; Corwin in Stutsman; Valley in Dickey) that have formally acted—after public process—to deny local permits and to intervene.

- **Ratepayers of OTP and MDU** (e.g., Leppert; Orr Farms; Rupp; David & Denette Schweigert; Swiontek; David & Holly Wald; Weston Wald; Willowbank Hutterian Brethren), who will bear rate consequences for what is, on this record, a private developer export build.

These are the classic "substantial interests" warranting intervention: property rights, local police-power/zoning authority, and nontrivial rate impacts. No existing party represents them.

D. The PSC's "you can raise it later in the route-permit case" rationale is legally mistaken.

The June 18 order says Appellants "will have an opportunity to raise these concerns" in a later corridor-compatibility/route-permit proceeding and that "the line may not be constructed without" that permit. That misses the

point. The CPCN determination of public convenience and necessity is an antecedent authorization that the Otter Tail Power and MDU themselves invoke as the foundation for their ch. 49-22 filings and as momentum in subsequent proceedings. Allowing a conclusory, unreasoned CPCN to stand while deferring hearing rights to a different docket deprives directly affected parties of a meaningful opportunity to contest "need" at the stage where the statute requires the Commission to make that determination "in accordance with the evidence" and to issue "a finding with reasons." N.D.C.C. §§ 49-22-08(6), -08.1(5). Due process is not satisfied by promising a hearing later on different statutory criteria after the core "necessity" conclusion has been announced without findings.

E. Material new evidence compelled, not foreclosed, participation.

Between January and April 2025, Wano and Willowbank Townships denied CUPs, and multiple townships voted to join the Petition. Those official acts are new and material and go to the heart of claimed public benefit and local compatibility. The Commission treated that evidence as irrelevant to the CPCN and told Appellants to wait for the route permit. That is arbitrary. When an agency opts for informal disposition and new facts emerge showing organized local opposition and permit denials, the lawful response is to admit

the parties most affected and develop the record—not to lock the file and wave the evidence away.

F. The PSC's reliance on "informal disposition" cannot cure the due-process problem it created.

The June 18 order invokes N.D.C.C. § 28-32-22 to justify an informal path, citing notice by publication and an opportunity to submit comments/requests for hearing in spring 2024. But § 28-32-22 authorizes informal disposition only if it does not "substantially prejudice" rights. Here, informal disposition became a shield against participation: there was no hearing; there were no findings and conclusions to make the decision reviewable; and those with the most at stake were denied entry when they sought to intervene after new developments. That is the definition of substantial prejudice. And because the November 20 order is not final under § 28-32-39, telling Appellants they "missed their opportunity" simply compounds the error. *See also* N.D.C.C. § 28-32-46 (courts set aside agency action that is unlawful, unsupported by the record, or issued without fair procedure); *Zent*, 2025 ND 50, ¶ 16 (courts review whether the agency acted within law, complied with ch. 28-32, afforded due process, and supported its conclusions with evidence and rationale).

G. Remedy.

Primary remedy (statutory exclusivity and participation): Because 49-22 is the exclusive pathway for siting high-voltage lines, the Commission's denial of intervention—while proceeding under 49-03—was unlawful and prejudicial. The Court should vacate the denial and remand with instructions that, in any further proceedings under 49-22, the Commission must: (1) grant intervention to Appellants (directly affected landowners, townships with retained zoning authority, and ratepayers); (2) provide a meaningful opportunity to be heard on public convenience and necessity, with mailed notice and a hearing in the project area; and (3) issue a legally sufficient, properly served final order containing explicit findings and separate conclusions of law grounded in §§ 49-22-05.1, -08(6), -08.1(5), and -09. The vacated 49-03 CPCN may not be cited or treated as evidence of need or as a substitute for the 49-22 siting record.

Alternative remedy (if 49-03 applied): Even assuming arguendo that 49-03 could govern, the denial of intervention was not in accordance with law and substantially prejudiced Appellants. The Court should vacate and remand with instructions to: (1) reconsider intervention under the correct legal standards; (2) admit and weigh the new township evidence and other

proffered participation materials; (3) provide a meaningful opportunity to be heard; and (4) issue a legally sufficient, properly served order with explicit findings and separate conclusions of law tied to the governing criteria. Pending a lawful final order, the November 20 action cannot serve as the predicate for subsequent proceedings or property intrusions.

IV. Even if ch. 49-03 applied, the record does not support the statutory elements by a preponderance of the evidence.

A. Standard.

Even under ch. 49-03, Applicants bore the burden to prove "public convenience and necessity" by a preponderance on a reasoned record; the Commission must connect specific record facts to the statutory criteria in explicit findings and separate conclusions, and courts set aside agency action that is unlawful, unsupported, or issued without fair procedure. N.D.C.C. §§ 28-32-39, -46; *Sandberg*, 956 N.W.2d at 347. The choice to proceed "informally" cannot dilute that burden or substitute narrative for findings.

B. "Public convenience and necessity" was not proven; the evidence is speculative and forward-looking.

The central showing in this record is not present reliability need but projected future wind generation build-out:

- **MISO's justification is generation-driven.** MISO's October 14, 2024 letter and the PSC analyst's Oct. 16, 2024 memo explain the project

"will allow for the continued interconnection of new generation … such as wind," and that the N-1/N-1-1 issues are *projected* from long-term load/generation forecasts—not existing conditions. CR Exs. 13, 14.

- **Applicants confirmed the future-case posture.** Otter Tail Power's spokesperson acknowledged they are "trying to get ahead of the transmission needs" tied to private generation growth. CR Ex. 8 (PSC Informal Hearing, July 8, 2024) at 30:5-12; *see also id.* at 14:9-15 (contingency analysis "of this future condition").

- **The dissent identified material gaps.** Commissioner Christmann emphasized that most cited problems are "forward looking," that key examples (e.g., 800 MW of solar) were conjectural as to who/where, and that MISO refused to update its Tranche #1 study to reflect a large new Ellendale load already relieving congestion. He concluded the Certificate "should be denied" until "better justification is provided." (Nov. 20, 2024 Dissent).

A preponderance requires more than conjecture about who might build future generation and when. On this record, the asserted need rests on anticipated private development and stale studies, not demonstrated present necessity within North Dakota.

C. The benefits run primarily to private developers, while the costs are socialized to North Dakota ratepayers.

The Utilities repeatedly framed "benefits" as enabling new generation and exports, and conceded those items are not even part of MISO's business case. *See* CR Ex. 8 at 34:5 and 35:1-6. Commissioner Christmann captured the core problem: the project's principal gains accrue to future wind developers, while North Dakota customers pay to create the export path. CR

Ex. 8 (Aug. 19, 2024 Work Session) at 18:4-10; 19:1-5; 24:2-7. Modest per-month bill impacts do not transform a private expansion into a public necessity. The statutory "public convenience and necessity" showing is not satisfied by creating capacity to accommodate speculative private generators.

D. The record lacks analysis of reasonable alternatives and present-system adequacy.

The Commission did not identify findings comparing the proposed 345-kV build to alternatives (targeted upgrades, operational fixes, or phased solutions) that would address existing constraints. Nor did it evaluate whether the current 230-kV system—alleged to be "heavily constrained"—is constrained by present conditions versus assumed future injections, or whether updated assumptions (including the new Ellendale load) change the calculus. Absent such analysis, the conclusion of necessity is *ipse dixit* (unsupported assertion or dogmatic opinion presented as fact).

E. Local land-use decisions and community opposition undercut the "public" showing.

After the CPCN, Wano and Willowbank Townships, directly on the route, denied Conditional Use Permits following public process, and five townships formally voted to participate as Petitioners. CR Ex. 19 (Nill Decl., Exs. 1–3; ¶¶2–6. Those official acts are material evidence that the

communities most affected do not view the line as serving their public interest. While township decisions do not control the Commission, they bear directly on whether Otter Tail Power and MDU met their burden to show *public* convenience and necessity by a preponderance.

F. Bottom line and remedy (even-if).

Assuming arguendo that ch. 49-03 applies, the record does not carry the Utilities' burden: the need case rests on prospective private generation and un-updated studies; the benefits flow chiefly to future developers; alternatives and present-system adequacy were not addressed; and substantial local opposition has since crystallized. Under §§ 28-32-39 and -46, the Court should vacate the CPCN and remand with instructions that any renewed application must be supported by explicit findings and separate conclusions grounded in current, North-Dakota-specific evidence of need (including updated MISO assumptions), a comparative analysis of reasonable alternatives, quantified ratepayer impacts, and consideration of local land-use determinations. Pending a lawful, reasoned order, the November 20 CPCN should have no precedential or evidentiary effect in any related proceeding.

V. The Commission's procedures violated due process under the North Dakota and United States Constitutions.

Appellants have protected interests in property, local land-use authority, and utility rates. Under *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), due process requires procedures appropriate to the nature of the case, including a meaningful opportunity to be heard *at a meaningful time* and a reasoned decision on the record. The PSC's "informal disposition" dispensed with any evidentiary hearing, denied intervention to those most directly affected, and issued a conclusory CPCN devoid of explicit findings or separate conclusions—exactly what N.D.C.C. § 28-32-39 requires and § 28-32-22 cannot waive where it would "substantially prejudice" rights. Promising participation later in a different 49-22 docket does not cure the deprivation after the core "necessity" determination has already been announced without reasons. See also *Goldberg*, 397 U.S. 254; *Zent*, 2025 ND 50, ¶ 16; N.D.C.C. § 28-32-46. Even if procedure were otherwise adequate, a decision that lacks a rational connection between the facts found and the choice made is arbitrary in the constitutional sense. The remedy is vacatur and remand for a reasoned, reviewable order with explicit findings and conclusions, after affording Appellants a meaningful opportunity to be heard.

CONCLUSION

The Commission issued a CPCN for a 345-kV transmission line under the wrong statute, without the procedures and reasoned findings North Dakota law requires, and while excluding parties entitled to be heard. The Court should vacate the CPCN, reverse the denial of intervention, and remand with instructions to proceed under N.D.C.C. ch. 49-22 with proper notice, environmental review and alternatives analysis, and reasoned findings. The Court should further direct that any pending ch. 49-22 docket not rely on the vacated CPCN as evidence of need or as a substitute for the siting record.

Dated: September 30, 2025

Respectfully submitted,

By: /s/ Douglas J. Nill

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