

Wano Township, et al,
Appellants,

v.

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

Case No. 08-2025-CV-02068

**ORDER DENYING MOTION TO
STAY ENFORCEMENT OF
ORDER PENDING APPEAL**

I. INTRODUCTION

[¶1] Before the Court is Appellants' *Motion to Stay Public Service Commission Proceedings*. See *Docket No. 20*. This matter is an administrative appeal from an order of the North Dakota Public Service Commission (PSC) granting a Certificate of Public Convenience and Necessity (CPCN). The PSC, Otter Tail Power Co. (Otter Tail), and Montana-Dakota Utilities Co. (MDU) oppose the motion. See *Docket Nos. 35* (PSC Response), *37* (Otter Tail and MDU Response). A hearing on the motion was held on September 8, 2025.

[¶2] Appellants request a stay of all PSC proceedings related to the proposed 345-kV transmission line between Jamestown and Ellendale. This request extends to a separate administrative matter not currently before the Court—Case No. PU-25-236—which involves an application by MDU and Otter Tail for a Certificate of Corridor and Route Permit under N.D.C.C. ch. 49-22. For clarity, the Court refers to the present appeal as the “CPCN proceeding” and to Case No. PU-25-236 as the “siting proceeding.”

[¶3] Appellees contend the Court lacks jurisdiction to stay a separate administrative proceeding, that Appellants lack standing to seek such relief, and that Appellants fail to meet the requirements necessary for the issuance of a stay.

[¶4] The Court has reviewed the complete record in this matter, including the briefs, exhibits,

and the certified administrative record, and hereby **DENIES** Appellants' *Motion to Stay Public Services Commission Proceedings*.

II. FACTS

[¶5] The factual background is adequately set forth in the record; therefore, all facts will not be repeated in detail. Accordingly, the Court makes the following findings.

[¶6] In the CPCN proceeding, MDU and Otter Tail jointly filed an application for a CPCN under N.D.C.C. ch. 49-03. *See Docket No. 63*. The PSC complied with all procedural requirements of that Chapter, including publication, solicitation of comments, and public hearings. Appellants did not attend or otherwise participate in the proceedings. On November 20, 2024, the PSC issued an order granting the CPCN. *See Docket No. 79*. No appeal was taken from that order.

[¶7] Six months later, on May 21, 2025, Appellants filed a petition to rescind the November 20, 2024 order approving the 345-kV transmission line and to reopen the proceedings. *See Docket No. 94*. The PSC denied the petition on June 18, 2025. *See Docket No. 91*. Appellants served a *Notice of Appeal and Specification of Error* on July 15, 2025, and filed it with the Court the following day. *See Docket No. 1*.

[¶8] Following the filing of this appeal, MDU and Otter Tail initiated the siting proceeding by applying for a Certificate of Corridor and Route Permit under N.D.C.C. ch. 49-22. Appellants now request that the Court stay both the CPCN proceeding and the siting proceeding. They contend that the PSC lacked authority to issue a CPCN under N.D.C.C. ch. 49-03 for a high-voltage transmission line that, in their view, falls exclusively within the siting and permitting requirements of N.D.C.C. ch. 49-22. Appellants argue that chapter 49-03 applies only to territorial disputes between utilities and assert that MDU and Otter Tail filed their CPCN

application under that chapter to circumvent the more comprehensive notice and procedural requirements of chapter 49-22, including notice to affected landowners and townships.

III. LAW AND DECISION

[¶9] The North Dakota Century Code permits the Court to enter a stay in an appeal from an administrative proceeding. Section 28-32-48, N.D.C.C. provides:

An appeal from an order or the rulemaking action of an administrative agency or the commission does not stay the enforcement of the order or the effect of a published rule unless the court to which the appeal is taken, upon application and after a hearing or the submission of briefs, orders a stay. . . .

A. Jurisdiction

[¶10] Under N.D.C.C. § 28-32-48, the Court’s authority to issue a stay extends only to orders entered in the case presently before it. Appellants have not cited any binding authority granting this Court jurisdiction to stay proceedings in a separate administrative matter. Their arguments regarding the “effect” of the siting proceeding are unpersuasive.

[¶11] The Court lacks jurisdiction to stay Case No. PU-25-236, which is not before this Court. Accordingly, the Court will consider the *Motion to Stay* only as it pertains to the proceeding presently on appeal.

B. Standing

[¶12] The issue of standing is central to the merits of this appeal. At this stage, the Court has not been provided with sufficient information to determine whether Appellants have standing to pursue the appeal or the extent of any limitations on that standing. The parties, however, agree that Appellants have standing to appeal the PSC’s denial of their *Petition to Rescind the November 20, 2024 Order Approving a 345-kV Transmission Line and to Reopen the Proceedings*. See *Docket No. 94*. The PSC denied that petition by order dated June 18, 2025. See *Docket No. 91*. Accordingly, the Court will address the stay factors only as they relate to the

PSC's June 18, 2025, order.

C. Stay Factors

[¶13] The North Dakota Supreme Court has established guidelines for district courts to apply when evaluating a motion for a stay. *See Cass County Electric Cooperative, Inc. v. World Properties, Inc.*, 253 N.W.2d 323, 325 (N.D. 1977). Under these guidelines, the Court considers four factors: (1) whether the appellant has made a strong showing of likelihood of success on appeal; (2) whether the appellant will suffer irreparable injury absent a stay; (3) whether the issuance of a stay will substantially harm other parties; and (4) whether granting the stay will adversely affect the public interest. *See Bergstrom v. Bergstrom*, 271 N.W.2d 546, 549 (N.D. 1978). The Court weighs these factors when determining whether to grant or deny a stay. *See Access Indep. Health Servs., Inc. v. Wrigley*, 2025 ND 26, ¶¶ 37-38, 16 N.W.3d 902, as amended (Apr. 17, 2025)

[¶14] Here, Appellants' primary arguments concern their request to stay the siting proceeding. They assert that significant harm will result if the Court does not stay that proceeding. However, as discussed above, the Court lacks jurisdiction to stay the siting proceeding. Accordingly, whether the Court grants or denies a stay of the PSC's June 18, 2025, order will have no effect on the ongoing siting case. Even assuming the Court had jurisdiction to stay the siting proceeding, Appellants have not met their burden to justify a stay.

[¶15] First, Appellants have not demonstrated a likelihood of success on the merits. At this stage, the Court is not persuaded that Appellants had a right to intervene at such a late stage in the administrative process. The record suggests Appellants missed the applicable deadline to intervene. Moreover, the Court is not convinced that MDU and Otter Tail were required to file their CPCN application exclusively under N.D.C.C. ch. 49-22. This factor heavily favors

denying Appellants' motion.

[¶16] Second, Appellants have failed to show that they will suffer irreparable injury absent a stay. Denial of the stay does not prevent Appellants from seeking to intervene in the siting proceeding. Further, the siting proceeding is unlikely to conclude before this Court issues an order on the merits. Appellants have not identified any harm that would be irreparable if the stay were denied. This factor heavily favors denying Appellants' motion.

[¶17] The Court finds no indication that any party would suffer substantial harm if a stay were granted. Construction on the project is not expected to begin until at least the summer of 2026, depending on the duration of the siting proceeding. It is likely that this Court will issue a decision on the merits well before that time. Accordingly, this factor favors granting Appellants' motion.

[¶18] The Court finds no evidence that a stay would harm the public interest. As noted, any construction—and therefore any potential impact on the public—will not occur until after this Court issues its decision on the merits. Accordingly, this factor favors granting Appellants' motion.

[¶19] After weighing the four factors, the Court concludes that a stay is not warranted. Although the third and fourth factors—lack of substantial harm to other parties and absence of detriment to the public interest—tend to favor Appellants, those considerations are heavily outweighed by Appellants' failure to demonstrate either a likelihood of success on the merits or the prospect of irreparable harm absent a stay. Appellants' procedural posture and the speculative nature of the alleged harm all weigh strongly against granting extraordinary relief. Balancing all considerations, the Court finds the equities do not support issuance of a stay.

IV. CONCLUSION

[¶20] After careful consideration of the record and the arguments presented, the Court concludes that Appellants have not demonstrated that a stay is warranted. The Court lacks jurisdiction to stay the separate siting proceeding, and Appellants have failed to meet their burden to justify a stay of the PSC's June 18, 2025, order. Specifically, Appellants have not demonstrated a likelihood of success on the merits or a risk of irreparable harm sufficient to outweigh the limited equities in their favor. The balance of factors, as well as the procedural posture of this appeal, weigh decisively against granting a stay.

[¶21] Accordingly, the Appellants' *Motion to Stay Public Service Commission Proceedings* is DENIED.

[¶22] **IT IS SO ORDERED.**

[¶23] Dated this 8th day of October, 2025.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Bobbi Weiler", followed by a horizontal line.

Bobbi Weiler, District Judge
South Central Judicial District