

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

Hon. Bobbi Weiler

Appellants,

v.

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

Appellees.

**APPELLANTS' MOTION TO RECONSIDER OR, IN THE
ALTERNATIVE, TO MODIFY ORDER DENYING MOTION TO STAY;
AND MEMORANDUM OF LAW IN SUPPORT**

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INTRODUCTION

Appellants respectfully move the Court to reconsider its October 8, 2025 Order Denying Motion to Stay Enforcement of Order Pending Appeal, or, in the alternative, to modify that order to enter a narrow stay of the enforcement of the agency order under review. Specifically, Appellants ask the Court to preclude the PSC and the Utilities from relying on the disputed November 20, 2024 CPCN as “need” or predicate authority in PSC Siting Docket PU-25-236 until this Court issues its decision on the merits of this appeal. *See* N.D.C.C. § 28-32-48 (court may stay the enforcement of the order pending appeal); N.D.R. Civ. P. 54(b) (interlocutory orders may be revised at any time before judgment).

This request does not seek to halt the siting docket. It seeks only to restrain the enforcement of the appealed June 18, 2025 PSC order to the limited extent that order leaves the CPCN in force and operative in PU-25-236 while judicial review is pending.

Reconsideration is warranted to correct two clear errors: (1) Jurisdiction: Section 28-32-48 authorizes a stay of enforcement of the appealed order; that includes preventing the agency and parties from giving that order operative force in the siting docket pending review. (2) Irreparable

harm: The order discounted immediate, process-based harms (statutory hearing clocks, compression of township authority, right-of-entry pressures, and record-locking via CPCN reliance) that arise now, not at construction. Likelihood of success (or, at minimum, serious questions) also favors preservation because Appellants' merits turn on finality and service under § 28-32-39, and on the text of the Siting Act placing the "need" inquiry within the 49-22 record with a "finding with reasons." *See* N.D.C.C. § 49-22-08(1)(c), § 49-22-08(6), § 49-22-08.1(5), § 49-22-09.

PROCEDURAL POSTURE AND RELIEF REQUESTED

Appellants appealed the PSC's June 18, 2025 order denying their petition to rescind the November 20, 2024 CPCN and to reopen. The Court denied a requested stay on October 8, 2025. Relief sought now: (1) Reconsideration and entry of a narrow stay of enforcement under § 28-32-48, precluding reliance on the CPCN as "need" or predicate authority in PU-25-236 pending this Court's merits decision; or (2) in the alternative, modification/clarification that, while PU-25-236 may proceed, the PSC and Utilities may not cite or rely upon the CPCN for "need" or predicate authority during the pendency of this appeal.

LEGAL STANDARD

Reconsideration of an interlocutory order is governed by N.D.R. Civ. P. 54(b); a district court may revise any non-final order at any time before entry of judgment to correct clear error, prevent manifest injustice, or reflect clarified legal analysis. Stays pending appeal of agency orders are authorized by N.D.C.C. § 28-32-48. Courts weigh the familiar factors (likelihood of success/serious questions, irreparable injury, balance of harms, public interest) and may tailor relief to preserve effective judicial review.

ARGUMENT

I. The Court may stay the enforcement of the appealed order by precluding CPCN reliance in PU-25-236.

Section 28-32-48 authorizes a stay of the enforcement of the order being appealed. The order under review (June 18, 2025) left the November 20, 2024 CPCN in force. A stay precluding the PSC and Utilities from relying on the CPCN as “need” or predicate authority does not stay the siting docket; it stays enforcement of the appealed order to the limited extent the agency/parties would otherwise give that order operative effect in PU-25-236. The prior ruling treated any relief touching the siting docket as categorically outside jurisdiction. Respectfully, § 28-32-48 permits this narrow enforcement stay.

II. Irreparable harm is process-based and immediate, and is shown on the current record.

The October 8 order emphasized distant construction and potential participation. But the record and governing statutes show present harms flowing from enforcement of the appealed order:

A. Statutory timing pressure.

The Utilities' filing in PU-25-236 triggers hearing-related timing under the Siting Act (e.g., N.D.C.C. § 49-22-16(2)(d)). Those clocks compress township/landowner preparation windows and constrain retained zoning authority—harms that occur before construction.

B. Record-locking and momentum.

Allowing the CPCN to be invoked as “need” in the siting docket skews the 49-22 record and undermines the statute’s requirement that “need” be proven within that record with a “finding with reasons.” *See* § 49-22-08(1)(c), § 49-22-08(6), § 49-22-08.1(5), § 49-22-09.

C. Property-process burdens.

Right-of-entry/survey demands, routing-study solicitations, and condemnation-threat communications typically begin well before construction. Those burdens are non-compensable when the foundational authority is disputed.

These process injuries are precisely what a limited enforcement stay prevents. The possibility of later participation does not cure them.

III. Appellants show likelihood of success—or, at minimum, serious questions—on statutory issues that favor preserving relief.

A. Finality and service under § 28-32-39.

Appellants contend the November 20, 2024 CPCN lacked explicit findings and separate conclusions of law and did not satisfy § 28-32-39. Without a compliant final, served order, intervention/appeal clocks did not run as Appellees suggest. That is a legal question grounded in statutory text, supporting at least serious questions.

B. 49-22 places the “need” inquiry in the siting record.

The Siting Act requires an applicant’s “statement explaining the need for the facility” and a “finding with reasons,” guided by enumerated considerations that inherently address need (alternatives, efficient use of resources, system configuration, consumer demand). N.D.C.C. § 49-22-08(1)(c), § 49-22-08(6), § 49-22-08.1(5), § 49-22-09. Whether a 49-03 CPCN may predetermine “need” and be imported is a pure legal question. At minimum, these are serious questions warranting preservation.

IV. The balance of harms and the public interest favor a narrow “no-reliance” enforcement stay.

The requested limitation imposes minimal burden: the PSC may continue processing PU-25-236, and the Utilities may advance their siting case—just not by invoking the disputed CPCN as a substitute for the statutorily required 49-22 “need” showing. The public interest favors an orderly, law-compliant record that withstands review and protects landowner and township participation without derailing the administrative calendar.

V. Alternatively, the Court should clarify that PU-25-236 may proceed, but without CPCN reliance pending the merits decision.

If the Court prefers not to revisit the stay analysis, it should clarify that its denial does not authorize use of the CPCN in PU-25-236 and that, to preserve the Court’s jurisdiction over the merits, the PSC and Utilities may not rely on the CPCN as “need” or predicate authority during the pendency of this appeal. This clarification requires no new evidence and supervises only the enforcement of the appealed order.

REQUEST FOR RELIEF

Appellants respectfully request that the Court enter an order:

1. Granting reconsideration and staying the enforcement of the PSC’s June 18, 2025 order to the limited extent it maintains the November 20, 2024 CPCN for use as “need” or predicate

authority in PSC Docket PU-25-236, pending this Court's decision on the merits; or, in the alternative,

2. Modifying/clarifying the October 8, 2025 order to state that, while PU-25-236 may proceed, the PSC and Utilities may not cite or rely upon the CPCN as evidence of "need" or as predicate authority in that docket during the pendency of this appeal; and
3. Granting such other and further relief as is just and proper.

Dated: October 16, 2025

Respectfully submitted,

By: /s/ Douglas J. Nill

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