

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' EXPEDITED MOTION FOR LEAVE
TO FILE REPLY BRIEF**

Appellants respectfully move this Court on an expedited basis for leave to file the attached Reply Brief in Support of Appeal.

1. On September 30, 2025, Appellants filed their Opening Brief.
2. On October 21, 2025, the Commission and the Utility Appellees filed their response briefs pursuant to the Court's Scheduling Order, which extended their response time to twenty-one (21) days after Appellants' Opening Brief.

3. The Scheduling Order did not address reply briefing. North Dakota Rule of Court 9.1 contemplates that briefing deadlines in an administrative appeal are set by the district court. The Rule does not prohibit a reply; it entrusts structure to the Court's discretion. Given the stakes here, including overlapping statutes (Chapters 49-03 and 49-22), questions of finality and timing under Chapter 28-32, intervention and standing, and the scope of review, a short reply will help narrow the issues.

4. Appellees' October 21 briefs raise several arguments that merit a focused reply, including:

- (a) that Appellants' claims are jurisdictionally barred because they did not appeal within 30 days of the PSC's November 20, 2024 CPCN order, even though that order lacks explicit

findings, separate conclusions of law, and proper service, and is therefore not a final, reviewable decision under N.D.C.C. § 28-32-39;

- (b) that Appellants lack standing to challenge the CPCN and denial of intervention because they were not “parties,” even though the June 18, 2025 denial of intervention is itself the order on appeal and directly adjudicated Appellants’ request to participate;
- (c) that Chapter 49-03, not Chapter 49-22, authorizes a front-end “public convenience and necessity” determination for a new 345-kV transmission line, even though Chapter 49-03 involves only newspaper notice (no direct notice to the affected townships and landowners), and Appellees now seek to carry that “need” finding into the Chapter 49-22 siting docket that would otherwise require mailed notice, a local hearing, and a contemporaneous showing of need in that record; and

- (d) that any procedural defect and exclusion of Appellants is harmless because they can “participate later” in the separate Chapter 49-22 siting docket.

5. The proposed Reply Brief (attached hereto as Exhibit A) addresses only those discrete issues. It is intended to assist the Court by clarifying (i) finality and timing, (ii) statutory exclusivity under Chapter 49-22, (iii) due process and participation, and (iv) remedy.

6. No prejudice will result. The Reply does not change the requested relief and is materially shorter than the Opening Brief. Allowing it now will promote a clean record, give the Court both sides of the jurisdictional and statutory questions (finality under § 28-32-39, Chapter 49-03 vs. Chapter 49-22, and participation/standing), and efficiently complete the merits briefing.

WHEREFORE, Appellants respectfully request that the Court enter an Order:

- (a) granting this Motion;
- (b) accepting the attached Reply Brief (Exhibit A) for filing instant; and
- (c) deeming briefing on the merits complete.

Dated: October 28, 2025

Respectfully submitted,

By: /s/ Douglas J. Nill

Douglas J. Nill (ND # P00392)

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