

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Wano Township, et al,

Appellants,

vs.

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

Appellees.

Case No. 08-2025-CV-02068

**NORTH DAKOTA PUBLIC SERVICE COMMISSION'S RESPONSE IN OPPOSITION TO APPELLANTS' MOTION FOR RECONSIDERATION ON DENIAL OF MOTION TO STAY**

**ARGUMENT**

[¶1] The North Dakota Public Service Commission (“Commission”) responds in opposition to Appellants’ reconsideration motion. Dkt. No. 127. The Court properly denied the motion to stay in its Order dated September 26, 2025. Dkt. No. 123. The Commission, as well as MDU and Otter Tail, fully briefed the issues raised by Appellants in their motion. The Court considered the written arguments, and the oral arguments made by the parties, before issuing the Order. The reconsideration motion re-hashes what has been hashed.

[¶2] The Court did not “miss” anything. The Commission has jurisdiction under N.D.C.C. ch. 49-22 to fully consider the *wholly separate* siting and route permit application of MDU and Otter Tail that is pending before the Commission (PU-25-236). And that is exactly what the Commission will do. This appeal has to do with a *separate* case (PU-24-91) involving a *separate* issue (N.D.C.C. ch. 49-03).

[¶3] Appellants have appealed from a decision by the Commission to deny an intervention motion and a reconsideration motion. This has now been substantively briefed. Dkt. Nos. 124, 130, 132. The Commission will not repeat those arguments here. But, in large part, these arguments are all relevant to why the Court properly denied Appellants’ motion for a stay. The Court cannot stay, in whole or part, separate proceedings that are taking place before the Commission in a separate case. Indeed, the question of standing remains an issue for Appellees—whether they have standing to appeal the reconsideration denial of the Commission. This Court, acting as a reviewing appellate court of an administrative agency decision in PU-24-91, does not have the jurisdiction to stay a separate administrative proceeding (PU-25-236), in any respect.

[¶4] The Appellants’ “remedy” is to appeal the issuance of the CPCN. That issue has now been briefed. And that issue will be decided by this Court. Essentially, whether the Commission properly denied Appellants’ intervention motion that was made more than ten months after the hearing on the CPCN application was held. And if intervention was properly denied, the Appellants do not have standing to appeal from the merits of the CPCN that the Commission determined were met. If, alternatively, the merits of the CPCN issuance by the Commission are considered, the District Court must give deference to the Commission’s decision to issue the CPCN. These issues are now fully briefed.

[¶5] Reconsideration motions are important motions. Respectfully to Appellants, who believe their motion is worthy of reconsideration, their “battle” is not necessarily “lost.” Appellants have the ability to seek to intervene in the siting and route permit case (PU-25-236) that is operating separate from this appeal and is pending presently before the Commission. To date, they have not sought to intervene. *See* Docket, available at <https://apps.psc.nd.gov/cases/pscasedetail?getId=25&getId2=236#>. Indeed, it should not be lost

on any party that the CPCN's are explicitly contingent on MDU and Otter Tail "securing . . . other authority of the proper municipal or other public authority for the exercise of these rights and privileges." Dkt. No. 79 (Certificate No. 5998; Certificate No. 5999).

[¶6] There is no irreparable harm. The Appellants have appealed and that process is proceeding as deemed appropriate by the North Dakota Legislative Assembly. The Commission is proceeding with a separate siting and route permit case (PU-25-236), pursuant to N.D.C.C. ch. 49-22, to which proper notice of hearings will be issued and opportunity provided for public testimony. Indeed, one could even seek to intervene under the Commission's administrative rules—there is still time for Appellants to do so. No transmission line is being constructed at present. That Appellants believe that their course on this appeal, if unsuccessful, will result in irreparable harm is far from reality. The Appellants have options, they are apparently so set on one false reality that they cannot see the forest for the trees.

[¶7] The Commission is operating within its constitutional and statutory authority. Appellants disagree with the issuance of the CPCN to MDU and Otter Tail. But that disagreement does not give Appellants the right to upend the procedural hierarchy that has long existed for review of administrative agency decisions. Staying separate administrative proceedings because of a separate decision by an administrative agency, which happens to be currently on appeal, is not permitted. This Court properly denied the motion to stay.

### **CONCLUSION**

[¶8] The Court should deny Appellants motion for reconsideration. If ever there was an attempt to make an "end run" around separate proceedings that have not actually occurred yet, this is that case. And such is improper in every instance.

Respectfully submitted this 30th day of October, 2025.

/s/ Zachary E. Pelham  
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