

<p>Wano Township, et al., Appellants, v. North Dakota Public Service Commission, et al., Appellees.</p>	<p>Case No. 08-2025-CV-02068</p> <p>ORDER ON ADMINISTRATIVE APPEAL</p>
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I. INTRODUCTION

[¶1] This matter is an administrative appeal from two orders issued by the North Dakota Public Service Commission (“Commission”) arising out of a certificate of public convenience and necessity (“CPCN”) proceeding for a proposed transmission line project: an order granting the CPCN (the “*CPCN Order*”) and a later order denying post-order requests for intervention, reconsideration, and reopening (the “*Petition Order*”).

[¶2] Appellants contend the Court has appellate jurisdiction to review both orders. They argue the *CPCN Order* was not final and assert the Commission’s denial of their post-order requests rendered the *CPCN Order* reviewable. Appellants further contend the Commission committed procedural and substantive error in issuing and maintaining the CPCN.

[¶3] Appellees contend Appellants lack standing to challenge the merits of the Commission’s orders because no timely appeal was taken from the *CPCN Order* and Appellants were not parties to the underlying adjudicative proceeding. Appellees further argue the Commission acted within its statutory authority in denying Appellants’ post-order requests and that the appeal should be dismissed or, alternatively, the Commission’s decision affirmed.

[¶4] After reviewing the record and applicable law, the Court concludes it lacks appellate subject-matter jurisdiction to review the *CPCN Order* and **DISMISSES** that portion of the appeal.

[¶5] The Court further concludes it has limited appellate jurisdiction to review the *Petition Order* only to the extent Appellants challenge the denial of intervention, and the Court **AFFIRMS** the Commission on that issue. Accordingly, the appeal is **DISMISSED IN PART** and **AFFIRMED IN PART**.

II. FACTS

[¶6] Otter Tail Power Company (“Otter Tail”) and Montana-Dakota Utilities Co. (“MDU”) jointly filed an *Application* with the Commission seeking a CPCN for a proposed 345-kilovolt transmission line project. *Docket No. 63*. On March 27, 2024, the Commission issued a *Notice of Opportunity for Hearing* regarding the *Application*. *Docket No. 65*.

[¶7] The Commission provided notice of the CPCN *Application* and opportunity for hearing by publication in the official newspapers serving the affected counties. *Docket No. 68*. The published notices identified the proposed project, described the nature of the proceeding, and informed interested persons of their right to request a hearing or otherwise participate within the prescribed time. The *Affidavit of Publication* was signed on April 15, 2024. *Id.*

[¶8] The Commission held an informal hearing on July 8, 2024. *Docket No. 71*. The Midcontinent Independent System Operator submitted *Written Comments* during the Commission’s consideration of the application. *Docket No. 75*. The Commission conducted work sessions on August 19, 2024 and October 17, 2024 to discuss the *Application*. *Docket Nos. 73, 77*.

[¶9] On November 20, 2024, the Commission issued the *CPCN Order*. *Docket No. 79*. Appellants did not participate in this process and were not listed as parties in the *CPCN Order*. *See id.* Two of three commissioners approved the *Application*, while one commissioner dissented. *Id.*

[¶10] The Commission served the *CPCN Order* on the parties to the proceeding on November

25, 2024, by United States mail using certified postage with return receipt requested, postage prepaid, and securely sealed. *Docket No. 80*. No appeal from the *CPCN Order* was filed within 30 days of service. *Docket Nos. 1–4, 11–15*.

[¶11] On May 27, 2025, Appellants filed an *Amended Petition* with the Commission seeking to intervene, rescind the *CPCN Order*, and reopen the proceeding. *Docket No. 81*. Appellants asserted they are landowners, townships, ratepayers, or otherwise directly affected by the project and alleged deficiencies in the Commission’s process and findings. *Id.* Otter Tail and MDU filed a joint *Response* opposing the *Amended Petition* on June 6, 2025. *Docket No. 83*.

[¶12] On June 18, 2025, the Commission issued the *Petition Order* denying the request to intervene, rescind, and reopen. *Docket No. 91*. The Commission concluded the *Amended Petition* was untimely because it was filed after the statutory period for appeal and reconsideration had expired, determined *the CPCN Order* was final and unappealable, and found no basis to reopen a closed adjudicative proceeding. *Id.* The Commission further explained that Appellants were not parties to the original proceeding and that their asserted objections and alleged harms did not warrant post-final intervention or reconsideration. *Id.* Notice of *Petition Order* was served on June 19, 2025. *Docket No. 92*.

[¶13] Appellants served the *Notice of Appeal* and related appellate filings on the Commission, Otter Tail, and MDU (referred together as the “Appellees”) on July 15, 2025. *Docket Nos. 11, 15*. The Burleigh County Clerk of Court accepted the filings on July 16, 2025. *See also Docket Nos. 31–34*.

[¶14] The administrative record for the appeal was filed. *Docket Nos. 62–95*. Appellants filed their *Appellate Brief* on October 10, 2025. *Docket No. 124*. Otter Tail and MDU filed their *Appellees’ Brief* on October 21, 2025. *Docket No. 130*. The Commission filed its *Appellee’s Brief*

the same day. *Docket No. 132*.

[¶15] The matter is fully briefed and ripe for decision.

III. LAW AND DECISION

A. *CPCN Order*

[¶16] The Court lacks appellate subject-matter jurisdiction over the *CPCN Order*.

[¶17] A district court exercises appellate jurisdiction over administrative agency decisions only as authorized by statute or by rule of the North Dakota Supreme Court. N.D. Const. art. VI, § 8. Although N.D.C.C. § 49-22-19 authorizes judicial review of Commission decisions, such review must be taken in the manner prescribed by the Administrative Agencies Practice Act. N.D.C.C. § 49-22-19; *see also Matter of Nebraska Pub. Power Dist.*, 330 N.W.2d 143, 146 (N.D. 1983).

[¶18] Under N.D.C.C. ch. 28-32, a district court acquires appellate subject-matter jurisdiction only if the appellant strictly complies with the statutory requirements for perfecting an appeal. *Benson v. Workforce Safety Ins.*, 2003 ND 193, ¶ 5, 672 N.W.2d 640 (citation omitted). These requirements are mandatory and jurisdictional and cannot be waived or extended by the court. *Id.*

[¶19] To perfect an appeal, a party must initiate the appeal within 30 days after notice of the order has been given. § 28-32-42(1). An appeal is initiated by serving a notice of appeal and specifications of error on the administrative agency, the attorney general or an assistant attorney general, and all parties to the agency proceeding, and by filing those documents—together with proof of service and the required undertaking—with the clerk of the district court. § 28-32-42(4). Accordingly, to determine whether this Court has appellate subject-matter jurisdiction, the Court must assess whether the *CPCN Order* was final, whether notice of the *CPCN Order* was given, and whether the *Notice of Appeal and Specifications of Error* were timely served and filed.

(1) Finality

[¶20] The *CPCN Order* is a final, appealable order because it resolved the merits of the Commission's adjudicative proceeding and terminated the agency's consideration of the *Application*.

[¶21] North Dakota law provides that "only final orders are appealable." § 28-32-42(3)(a). An "order" is defined as "any agency action of particular applicability which determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons." § 28-32-01(8). Generally, an order is final if it "terminates the issue, leaving the agency with nothing more to decide." *Henry v. Securities Com'r for State*, 2003 ND 62, ¶ 7, 659 N.W.2d 869 (quotations and citation omitted).

[¶22] Here the *CPCN Order* resolved the merits of the Commission's adjudicative proceeding and determined the legal rights and obligations of the applicants. The *CPCN Order* granted Otter Tail and MDU a CPCN, thereby concluding the Commission's consideration of the *Application*. *Docket No. 79*. Nothing in the record indicates the Commission contemplated further proceedings on the merits following issuance of the *CPCN Order*. The *CPCN Order* therefore left nothing further for the Commission to decide with respect to the *Application* and marked the completion of the agency's decision-making process.

[¶23] An order's finality may also turn on whether it was issued by the agency head or an authorized presiding officer. *See* N.D.C.C. § 28-32-39. When the agency head presides over and issues a decision, the resulting order constitutes the agency's final order. § 28-32-39(2). Subsection 28-32-39(3) applies when agency action is taken without the participation of the agency head or an authorized presiding officer.

[¶24] Here, the record reflects the Commission acted through its members in issuing the *CPCN*

Order. The *CPCN Order* was signed by all three commissioners, with two commissioners concurring and one dissenting. *Docket No. 79*. Because the Commission members presided over and issued the decision, the *CPCN Order* constitutes the agency's final order for purposes of N.D.C.C. § 28-32-39(2).

[¶25] Because the Commission, acting through its members as the agency head, issued and signed the *CPCN Order*, and because the order conclusively determined the rights of the applicants and left nothing further for the Commission to decide, the *CPCN Order* constitutes a final, appealable order under the Administrative Agencies Practice Act.

(2) Notice of Final Order

[¶26] The Commission gave proper notice of the final *CPCN Order*.

[¶27] Under § 28-32-42(1), the 30-day period to initiate an appeal begins only after notice of a final order has been given. Notice of a final order must comply with § 28-32-39. Subsection 28-32-39(1) requires an agency to issue a written order that sets forth its findings of fact, separate conclusions of law, and the resulting agency action.

[¶28] Here, Appellants contend the Commission failed to comply with N.D.C.C. § 28-32-39(1) because the *CPCN Order* did not contain separate, concise, and explicit findings of fact and conclusions of law, and therefore was not a final order that triggered the 30-day appeal period. *Docket No. 124*, pp. 29–32. The Court is not persuaded.

[¶29] The North Dakota Supreme Court has recognized that deficiencies in an agency's findings may constitute a procedural defect affecting the adequacy of judicial review, but has distinguished such defects from jurisdictional errors that prevent an order from becoming final. *See Northwestern Bell Tel. Co. v. Hagen*, 234 N.W.2d 841, 846 (N.D. 1975). Accordingly, the Court considers whether the remaining requirements of § 28-32-39 were satisfied.

[¶30] Under § 28-32-39(2), when the agency head issues the final order, the agency must serve the final order and its supporting findings and conclusions on all parties to the proceeding within 30 days after the close of the record, or as soon thereafter as practicable, using a method of service authorized by the North Dakota Rules of Civil Procedure. Rules 5 and 6, N.D.R.Civ.P., apply, and service by mail is complete upon mailing. *See Reliance Ins. Co. v. Pub. Serv. Comm'n*, 250 N.W.2d 918, 924 (N.D. 1977); *see also City of Casselton v. N.D. Pub. Serv. Comm'n*, 307 N.W.2d 849, 852 (N.D. 1981).

[¶31] Here, the *CPCN Order* was issued by a majority of the Commission and constituted the Commission's final order when it was signed. *Docket No. 79*. The Commission thereafter served the *CPCN Order* on Otter Tail and MDU, which were the parties to the administrative proceeding. *Docket No. 80*. Service was made on November 25, 2024 by United States mail using certified postage with return receipt requested, postage prepaid, and securely sealed. *Id.* Service by mail is an authorized method of service under the North Dakota Rules of Civil Procedure. N.D.R.Civ.P. 5(b)(3)(C); *see also Ellis v. North Dakota Workforce Safety & Ins.*, 2020 ND 14, ¶ 8, 937 N.W.2d 513.

[¶32] Because the Commission issued a written final order and served the *CPCN Order* on the parties to the administrative proceeding in compliance with N.D.C.C. § 28-32-39, notice of the final order was properly given on November 25, 2024. Therefore, the 30-day period to initiate an appeal began to run on November 25, 2024 under § 28-32-42(1).

(3) Perfecting Appeal

[¶33] “The statutory requirements for filing a notice of appeal from an administrative agency order are jurisdictional.” *Benson*, 2003 ND 193, ¶ 5 (citation omitted). “If the appellant does not serve the notice of appeal as required by the statute, the district court lacks subject matter

jurisdiction and the appeal must be dismissed.” *Id.* at ¶ 6 (citing *Pederson v. North Dakota Workers Comp. Bureau*, 534 N.W.2d 809, 810 (N.D. 1995)).

[¶34] To perfect an appeal, a party must both serve the notice of appeal and specifications of error on the required parties and file those documents with the clerk of the district court within 30 days after notice of the final order has been given. § 28-32-42(1), (4). Compliance with both service and filing requirements within the statutory period is mandatory and jurisdictional. *Benson*, 2003 ND 193, ¶ 5.

[¶35] Here, notice of the *CPCN Order* was given on November 25, 2024. *Docket No. 80*. Appellants did not serve the *Notice of Appeal and Specifications of Error* on the Commission until July 15, 2025. *See Docket Nos. 1, 11, 15*. The Clerk of Court accepted the *Notice of Appeal* and related filings on July 16, 2025. *See id.* Both service and filing occurred far beyond 30 days after notice of the *CPCN Order* was given.

[¶36] Because Appellants neither served nor filed the *Notice of Appeal* within the statutory 30-day period following notice of the *CPCN Order*, the appeal was not timely perfected as required by ch. 28-32. As a result, this Court did not acquire appellate subject-matter jurisdiction over the *CPCN Order*.

B. *Petition Order*

[¶37] The Court concludes it has limited appellate subject-matter jurisdiction over the *Petition Order*. That jurisdiction extends only to review of the Commission’s denial of Appellants’ request for intervention. The Court lacks subject-matter jurisdiction to review the denial of reconsideration because no timely petition for reconsideration was filed under N.D.C.C. § 28-32-40, and Appellants lack standing to obtain judicial review of the denial of reopening. The *Petition Order* does not reopen or revive appellate jurisdiction over the merits of the *CPCN Order* or over issues

that could have been raised in a timely appeal from that order.

(1) Appellate Jurisdiction

(a) Finality

[¶38] Appellate jurisdiction exists only if the challenged administrative action constitutes a final order. N.D.C.C. § 28-32-42(3)(a). An order is final if it conclusively determines the rights of the parties and leaves nothing further for the agency to decide with respect to the matter at issue. *Henry*, 2003 ND 62, ¶ 7 (quotations and citation omitted).

[¶39] The *Petition Order* resolved three distinct final requests: intervention, reconsideration, and reopening. Each must be examined separately to determine whether the Commission's disposition constitutes a final, appealable order.

[¶40] The denial of intervention is a final, appealable order. *See Energy Transfer LP v. N.D. Priv. Investigative & Sec. Bd.*, 2022 ND 85, ¶¶ 10-12, 973 N.W.2d 394. An order denying intervention conclusively determines whether a non-party may participate in an administrative proceeding and forecloses any further agency consideration of that request. *Id.* North Dakota authority recognizes that such an order is final because it ends the special proceeding for intervention and leaves the agency with nothing further to decide on that issue.

[¶41] The denial of reconsideration likewise constitutes a final order. Chapter 28-32 expressly contemplates judicial review of an agency's disposition of a petition for reconsideration. N.D.C.C. §§ 28-32-40, 28-32-42(1). When an agency denies reconsideration, that denial represents the agency's final determination on whether it will revisit its prior decision. Nothing remains pending before the agency as to reconsideration, rendering the denial final for purposes of appeal, even though review may ultimately be barred if the petition was not timely perfected.

[¶42] The denial of reopening presents a closer question. An agency's authority to reopen a

concluded proceeding is discretionary and preserved under N.D.C.C. § 28-32-40(5). Unlike intervention or reconsideration, reopening does not involve a statutory right to further proceedings. Nonetheless, where—as here—the agency expressly denies a request to reopen and thereby conclusively determines that it will not exercise its continuing jurisdiction, the order fully resolves that request and leaves nothing further for the agency to decide. In that posture, the denial of reopening constitutes a final disposition of the reopening request, even though judicial review of such discretionary determinations is narrow.

[¶43] Viewed collectively, the *Petition Order* fully and finally resolved Appellants’ post-judgment petition. The Commission denied intervention, denied reconsideration, declined to reopen the proceeding, and closed the matter. No aspect of Appellants’ *Amend Petition* remained pending before the agency. The *Petition Order* therefore constitutes a final agency disposition for purposes of appellate jurisdiction.

(b) *Notice of Order*

[¶44] Under N.D.C.C. § 28-32-42(1), the time to initiate an appeal begins only after notice of a final order has been given in compliance with N.D.C.C. § 28-32-39.

[¶45] The *Petition Order* was issued on June 18, 2025, and notice of that order was given to Appellants the following day. *Docket No. 92*. Appellants do not dispute receipt of notice, nor do they assert any defect in the manner or timing of service. The Court therefore concludes notice of the *Petition Order* was properly given for purposes of triggering the appeal period.

(c) *Perfecting Appeal*

[¶46] Notice of the *Petition Order* was given on June 19, 2025. Appellants served the *Notice of Appeal and Specifications of Error* on July 15, 2025, and the Clerk of Court accepted the filings on July 16, 2025. *See Docket Nos. 11, 15*. As to the Commission’s denial of intervention and

reopening, the appeal was timely perfected within 30 days after notice of that final determination.

[¶47] The timing analysis differs with respect to reconsideration. Under N.D.C.C. § 28-32-40(1), a petition for reconsideration must be filed within 15 days after notice of the final order. Only when reconsideration is timely requested does N.D.C.C. § 28-32-42(1) permit an appeal within 30 days after notice of the agency's final determination on reconsideration.

[¶48] Here, Appellants did not file a petition for reconsideration within 15 days after notice of the *CPCN Order*. They also did not file a notice of appeal within 30 days after notice of the *CPCN Order*. Both statutory deadlines expired months before Appellants filed their *Amended Petition*. Because the statutory prerequisites for reconsideration were not satisfied, the Commission's denial of reconsideration does not provide a new or independent basis for appellate jurisdiction over the merits of the *CPCN Order* as it relates to reconsideration.

[¶49] An appellant may not renew or revive the merits of a final administrative order by filing an untimely petition for reconsideration after the statutory appeal period has expired. Chapter 28-32 does not permit a party to circumvent the jurisdictional deadlines of N.D.C.C. §§ 28-32-40 and 28-32-42 by characterizing a late collateral challenge as reconsideration. Once both the 15-day reconsideration period and the 30-day appeal period have lapsed, the underlying order is final and unreviewable.

[¶50] Accordingly, the Court has appellate subject-matter jurisdiction to review the *Petition Order* only as it relates to the Commission's denial of intervention and reopening. The Court lacks jurisdiction to review the denial of reconsideration.

(2) *Standing*

[¶51] Having determined that appellate subject-matter jurisdiction exists to select portions of the *Petition Order*, the Court next considers whether Appellants have standing to pursue the appeal.

[¶52] Ordinarily, standing to appeal an administrative agency decision requires that a person: (1) participated in the agency proceeding; (2) was directly interested in the proceeding; and (3) was factually aggrieved by the agency’s decision. *In re Juran & Moody, Inc.*, 2000 ND 136, ¶ 17, 613 N.W.2d 503. This three-part test applies when a party seeks judicial review of an adjudicative determination or discretionary relief affecting the merits of a proceeding. *Energy Transfer*, 2022 ND 85, ¶ 8.

[¶53] The North Dakota Supreme Court has clarified, however, that standing to appeal a procedural order denying intervention is distinct from standing to appeal the merits of an underlying agency action. *Id.* at ¶¶ 10–12. In *Energy Transfer*, the Court held that when an appeal challenges only the denial of intervention, the appellant need only demonstrate that it is aggrieved by that specific procedural order, even if the appellant did not participate in the underlying adjudicative proceeding.

[¶54] Applying that standard here, Appellants are aggrieved by the Commission’s denial of intervention and therefore have standing to seek judicial review of that determination. Their standing to challenge the denial of intervention is limited to whether the Commission erred in refusing to grant party status and does not extend to review of the merits of the underlying *CPCN Order*.

[¶55] *Energy Transfer*, however, addressed standing only in the context of a denial of intervention and did not consider standing to appeal a denial of reopening. A petition to reopen differs in kind from a request to intervene. Reopening seeks to revive a concluded adjudicative proceeding as it previously existed—on the existing record and between the parties who participated in the original proceeding—rather than to determine whether a non-party may be permitted to enter an ongoing or newly initiated matter. Because reopening implicates the

continuation of an adjudicative proceeding rather than the threshold question of party participation, it is appropriate to apply the traditional three-part standing test when a non-party seeks judicial review of a denial of reopening, even though the denial itself is procedural in form. This standing determination is limited to the scope of judicial review and does not preclude a non-party from filing a combined petition to intervene and reopen before the agency or limit the agency's discretion to grant such relief in the first instance.

[¶56] For purposes of administrative appeals under chapter 28-32, standing is closely tied to party status. A “party” includes not only persons formally named in the proceeding, but also those who were admitted as parties or who properly sought and were entitled as of right to be admitted as parties. N.D.C.C. § 28-32-01(9). North Dakota courts have recognized that party status may, in some circumstances, be determined functionally based on the record, including whether a person had a direct interest, was potentially factually aggrieved, and meaningfully participated in the proceeding. *See Minn-Kota Ag Prods., Inc. v. N.D. Pub. Serv. Comm’n*, 2020 ND 12, ¶¶ 16, 21-27, 938 N.W.2d 118. For the last prong, “minimal participation is sufficient to have adequately participated.” *Id.* at ¶ 21

[¶57] Measured against that framework, Appellants lack standing to challenge the Commission's denial of reopening. Appellants were not named parties to the original adjudicative proceeding, did not participate in that proceeding, and did not seek intervention until after the *CPCN Order* became final. Reopening would revive the adjudicative proceeding as it previously existed—on the existing record and between the original parties—and Appellants never attained party status or standing that would permit them to demand continuation of that proceeding or to obtain judicial review of the Commission's refusal to do so. Their asserted interests, while potentially affected by the project, do not substitute for participation or party status. Accordingly, Appellants lack

standing to appeal the denial of reopening, and the Court's review is limited to the Commission's denial of intervention.

(3) *Application*

[¶58] The Court reviews the Commission's denial of intervention under the Administrative Agencies Practice Act.

[¶59] The Court must affirm the Commission's decision unless it is not in accordance with law, violates constitutional rights, fails to comply with required procedure, is unsupported by a preponderance of the evidence, or is arbitrary, capricious, or an abuse of discretion. N.D.C.C. § 28-32-46.

[¶60] The Court finds no legal or procedural error. The Commission acted under N.D.C.C. § 28-32-28, which authorizes permissive intervention when a petitioner demonstrates a legal interest that may be substantially affected and when intervention will not impair the orderly and prompt conduct of the proceeding. The statute expressly permits agencies to adopt rules governing intervention, and the Commission applied its duly adopted rule, N.D.A.C. § 69-02-02-05. The Commission's decision therefore conformed to the governing statutory and regulatory framework.

[¶61] Under N.D.A.C. § 69-02-02-05, a petition to intervene generally must be filed at least ten days before the hearing, but late intervention may be allowed upon a showing of good cause. As the North Dakota Supreme Court has explained, good cause in this context does not turn solely on whether the petitioner can justify the timing of the filing. *Minn-Kota*, 2020 ND 12, ¶¶ 41–44. Rather, the inquiry focuses on whether, under the circumstances, allowing late intervention is justified in light of finality, prejudice, disruption of the proceeding, and the nature of the issues the petitioner seeks to raise. *Id.*

[¶62] Having correctly identified and applied those standards, the Commission did not abuse its

discretion in denying intervention. A decision constitutes an abuse of discretion only if it is arbitrary, unreasonable, or not the product of a rational mental process leading to a reasoned determination. *Energy Transfer*, 2022 ND 85, ¶ 15 (citing *Grand Forks Bean Co., Inc.*, 2017 ND 201, ¶ 16, 900 N.W.2d 255).

[¶63] North Dakota precedent recognizes several recurring grounds supporting denial of post-judgment intervention, including when the petitioner had notice of the proceeding, offered no explanation for the delay in seeking intervention, and attempted to relitigate issues resolved in the main action rather than raise distinct policy or procedural concerns. *See Minn-Kota*, 2020 ND 12, ¶ 7.

[¶64] The record supports the Commission’s determination that those circumstances are present here. Although there is no evidence the Appellants received actual notice, the Commission provided legally sufficient notice of the CPCN proceeding. Due Process “requires notice of a hearing, notice of the general nature of the issues to be heard, and an opportunity to prepare and to be heard.” *Hentz Truck Line, Inc., Roseville, Minn. v. Elkin*, 294 N.W.2d 774, 780 (N.D. 1980) (citation omitted).

[¶65] Here, notice of the *Application* and opportunity for hearing was published in newspapers serving the affected counties, and interested persons were informed of their right to request a hearing or otherwise participate within the prescribed period. *Docket No. 68*. That notice satisfied statutory and due-process requirements and provided Appellants with constructive notice of the proceeding.

[¶66] Despite that notice, Appellants did not seek intervention while the record was open, did not request a hearing, and did not attempt to participate until months after the *CPCN Order* became final and the statutory periods for appeal and reconsideration had expired. Critically, Appellants

offered no meaningful explanation for this delay. Appellants instead claim they are effected by the *CPCN Order*. The absence of any justification for waiting until after final disposition strongly supports the Commission's conclusion that post-final intervention was not warranted.

[¶67] The Commission also reasonably concluded that Appellants' *Amended Petition* sought to relitigate issues resolved in the CPCN proceeding rather than to raise distinct policy concerns or procedural defects incapable of earlier presentation. The *Amended Petition* challenged the Commission's findings and determinations underlying the *CPCN Order*—matters that could have been raised through timely participation or a timely appeal. The Commission viewed the *Amended Petition* as an attempt to reopen a closed adjudicative record rather than a request advancing new or unresolved issues.

[¶68] The Commission further acknowledged that denial of intervention did not foreclose Appellants from raising their concerns in subsequent proceedings. The *Petition Order* explained that issuance of a CPCN is only one step in the regulatory process and does not itself authorize construction or eliminate future regulatory oversight. *Docket No. 91*. The Commission noted that the Appellants “will have an opportunity to raise these concerns when the Commission receives the application for a certificate of corridor compatibility and route permit from [Otter Tail] and MDU if and when it is filed.” *Id.* at. p. 3. That finding undercuts any claim of immediate or irreparable harm and supports the Commission's conclusion that reopening party status was unnecessary.

[¶69] On this record, the Commission's denial of intervention reflects a rational mental process, proper application of the governing statutes and rules, and consideration of the relevant factors identified in North Dakota precedent. The decision was not arbitrary, capricious, or unreasonable and did not constitute an abuse of discretion.

[¶70] None of the grounds for reversal under N.D.C.C. § 28-32-46 are present. The Court therefore **AFFIRMS** the Commission's denial of Appellants' petition to intervene.

IV. CONCLUSION

[¶71] The Administrative Agencies Practice Act strictly limits judicial review to matters over which appellate jurisdiction has been properly invoked. Appellants did not timely perfect an appeal from the Commission's November 20, 2024 *CPCN Order*. As a result, the Court lacks appellate subject-matter jurisdiction to review that order, and the appeal must be dismissed to that extent.

[¶72] The Court has limited appellate jurisdiction to review the Commission's June 18, 2025 *Petition Order* only as it relates to the denial of intervention. Applying the standards set forth in N.D.C.C. §§ 28-32-28 and 28-32-46, the Court concludes the Commission acted within its statutory authority, complied with governing procedural requirements, and did not abuse its discretion.

[¶73] Accordingly, the appeal is dismissed in part for lack of jurisdiction and affirmed in part on the merits of the Commission's denial of intervention.

V. ORDERS

[¶74] **IT IS ORDERED** that the appeal from the North Dakota Public Service Commission's November 20, 2024 Certificate of Public Convenience and Necessity Order is **DISMISSED** for lack of appellate subject-matter jurisdiction.

[¶75] **IT IS FURTHER ORDERED** that the appeal from the North Dakota Public Service Commission's June 18, 2025 Order is **DISMISSED IN PART AND AFFIRMED IN PART**, consistent with this Order. The appeal challenging the orders denying reconsideration and reopening are **DISMISSED**. The order denying intervention is **AFFIRMED**.

[¶76] Dated this 2nd day of February, 2026.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Bobbi Weiler", is written over a horizontal line. The signature is stylized and cursive.

Hon. Bobbi Weiler, District Judge
South Central Judicial District