

STATE OF NORTH DAKOTA
IN SUPREME COURT

Case No.: _____

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,

Appellants,

v.

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

Appellees.

Burleigh County No.:
08-2025-CV-02068

Hon. Bobbi Weiler

**DECLARATION OF DOUGLAS J. NILL IN SUPPORT OF
APPELLANTS' MOTION FOR STAY PENDING APPEAL**

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SC APPEAL - Declaration of Douglas J. Nill ISO Appellants' Motion for
Stay Pending Appeal

Douglas J. Nill, PLLC on behalf of Appellants
Douglas J. Nill, Attorney

I, Douglas J. Nill, declare as follows:

1. I am counsel of record for Appellants in this appeal. I am licensed to practice law in North Dakota pro hac vice as attorney number P00392. I make this declaration in support of Appellants' Motion for Stay Pending Appeal under N.D.R.App.P. 8.

2. The facts set forth in this declaration are based on my personal knowledge, my review of filings and orders in Public Service Commission Docket Nos. PU-24-91 and PU-25-236 and in Burleigh County District Court Case No. 08-2025-CV-02068, and communications I have received in the course of representing the Appellants. If called as a witness, I could and would testify competently to these matters.

3. Attached as Exhibit 1 is a true and accurate copy of the Burleigh County District Court's February 2, 2026 Order Denying Administrative Appeal.

4. Attached as Exhibit 2 is a true and accurate copy of the Burleigh County District Court's November 30, 2025 Order denying Appellants' Motion to Reconsider the court's prior denial of a stay.

5. Attached as Exhibit 3 is a true and accurate copy of the Burleigh

County District Court's October 8, 2025 Order Denying Motion to Stay Enforcement of Order Pending Appeal.

6. Attached as Exhibit 4 is a true and accurate copy of the Public Service Commission's June 18, 2025 Order in PU-24-91 denying Appellants' petition to intervene, to rescind the CPCN, and to reopen.

7. Attached as Exhibit 5 is a true and accurate copy of the Public Service Commission's November 20, 2024 Order in PU-24-91 granting Otter Tail Power Company and Montana-Dakota Utilities Co. a Certificate of Public Convenience and Necessity for the Jamestown–Ellendale 345-kV transmission line.

8. Attached as Exhibit 6 is a true and accurate copy of the Appellants' February 4, 2026 Petition to Intervene, Motion to Accept Township Filings as Late-Filed Exhibits, and, in the Alternative, Petition to Reopen for Limited Additional Evidence in PSC Siting Docket PU-25-236.

9. Attached as Exhibit 7 is a true and accurate copy of the Wano Township Limited Objection to Reliance on PU-24-91 CPCN as Proof of Need and Reservation of Rights filed in PU-25-236.

10. Attached as Exhibit 8 is a true and accurate copy of the Wano Township Statement Regarding Applicants' Request to Declare Local Land

Use and Zoning Ordinances and Regulations Superseded and Preempted filed in PU-25-236.

11. Attached as Exhibit 9 is a true and accurate copy of the Wano Township Questions for the Record filed in PU-25-236.

12. Attached as Exhibit 10 is a true and accurate copy of PSC staff's January 7, 2026 email communications to the townships acknowledging receipt of their three township filings (limited objection, preemption statement, and questions for the record) and describing how such submissions may be treated in the public-input file rather than the formal evidentiary record.

13. Attached as Exhibit 11 is a true and accurate copy of excerpts of the Edgeley public hearing transcript in PSC Case No. PU 25 236 dated January 14, 2026. The excerpts include the discussion of township objections and participation, and the Applicants' invocation of *Matter of Nebraska Public Power Dist.* as a basis to treat need related submissions as irrelevant in this siting proceeding.

14. Attached as Exhibit 12 is a true and accurate copy of excerpts from the Utilities' siting application in PSC Case No. PU 25 236 showing the

Utilities' citations to the November 20, 2024 CPCN as part of their benefit and need showing.

15. Attached as Exhibit 13 is a true and accurate copy of Appellants' August 6, 2025 motion and memorandum in the district court seeking a stay pending appeal.

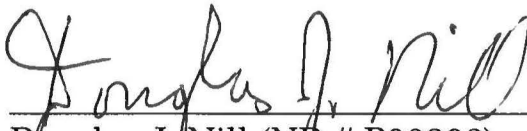
16. Attached as Exhibit 14 is a true and accurate copy of Appellants' August 27, 2025 reply in support of that motion.

17. Attached as Exhibit 15 is a true and accurate copy of Appellants' October 16, 2025 motion to reconsider the district court's decision to deny a stay and memorandum in support.

I declare under penalty of perjury under the laws of the State of North Dakota that the foregoing is true and correct.

Dated: February 17, 2026

Minneapolis, Minnesota



Douglas J. Nill (ND # P00392)

Exhibit 1

Burleigh County No.:
08-2025-CV-02068

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

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

Exhibit 2

Burleigh County No.:
08-2025-CV-02068

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

Appellants,

v.

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

Appellees.

**ORDER ON APPELLANTS' MOTION TO
RECONSIDER OR, IN THE ALTERNATIVE, TO MODIFY
ORDER DENYING STAY**

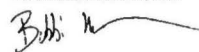
The Court has considered Appellants' Motion to Reconsider or, in the Alternative, to Modify the October 8, 2025 Order Denying Motion to Stay Enforcement Pending Appeal, any responses, and the existing record.

IT IS ORDERED:

1. Motion is DENIED.

Dated: _____

BY THE COURT:
10/31/2025 7:55:40 AM



The Honorable Bobbi Weiler
Judge of the District Court

Exhibit 3

Burleigh County No.:
08-2025-CV-02068

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

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 that reads "Bobbi" followed by a stylized flourish.

Bobbi Weiler, District Judge
South Central Judicial District

Exhibit 4

Burleigh County No.:
08-2025-CV-02068

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Otter Tail Power Company/Montana-Dakota Utilities Co.
345kV Transmission Line-Jamestown to Ellendale
Public Convenience & Necessity**

Case No. PU-24-91

ORDER ON PETITION

June 18, 2025

Preliminary Statement

On February 29, 2024, Otter Tail Power Company (OTP) and Montana-Dakota Utilities Co. (MDU) filed a joint application for a Certificate of Public Convenience and Necessity to construct, own, and operate approximately 85 miles of 345kV transmission line and expand four substations located in Stutsman, LaMoure, and Dickey Counties In North Dakota.

On March 27, 2024, the Commission issued a Notice of Opportunity for Hearing (Notice) allowing until May 10, 2024, for receiving comments or requests for hearing.

On November 20, 2024, the Commission issued its Order granting OTP and MDU certificates of public convenience and necessity.

On May 21, 2025, Douglas J. Nill filed on behalf of a group of landowners, townships and other interested parties (Petitioners) a petition to intervene, to rescind the Commission's November 20, 2024, Order, and to reopen the proceedings (Petitions).

On May 27, 2025, Douglas J. Nill filed an amended petition to intervene, to rescind the Commission's November 20, 2024, Order, and to reopen the proceedings on behalf of the Petitioners.

On June 6, 2025, OTP and MDU filed a response to the Petitions.

On June 13, 2025, Douglas J. Nill filed a supplemental response to OTP and MDU's response.

On June 16, 2025, OTP and MDU filed a proposed order.

On June 17, 2025, Douglas J. Nill filed an objection to OTP and MDU's June 16, 2025, filing.

Discussion

North Dakota Administrative Code Section 69-02-06-02 provides:

69-02-06-02. Petition for reconsideration.

1. Time for filing. A petition for reconsideration must be filed within fifteen days after notice of the decision has been given under North Dakota Century Code section 28-32-13.

2. Content. The petition must state the specific grounds upon which the petition rests or a statement of any further showing to be made. The petition must also state if a rehearing or oral argument is requested.

3. Service. A petition must be served by the petitioner upon all parties and a certificate to that effect must be attached to and filed with the commission at the time the petition is filed. The original and seven copies must be filed with the commission.

4. Responses. Within ten days after the service of the petition, any party to the proceeding may file with the commission an original and seven copies of the party's response. Failure is a waiver of any objection to the granting of the petition.

North Dakota Century Code Section 28-32-42 (1) provides:

Any party to any proceeding heard by an administrative agency, except when the order of the administrative agency is declared final by any other statute, may appeal from the order within thirty days after notice of the order has been given as required by section 28-32-39. If a reconsideration has been requested as provided in section 28-32-40, the party may appeal within thirty days after notice of the final determination upon reconsideration has been given as required by sections 28-32-39 and 28-32-40. If an agency does not dispose of a petition for reconsideration within thirty days after the filing of the petition, the agency is deemed to have made a final determination upon which an appeal may be taken.

North Dakota Administrative Code Section 69-02-02-05 (2) provides:

A petition to intervene in any proceeding must be filed at least ten days prior to the hearing, but not after except for good cause shown.

North Dakota Century Code Section 28-32-22 provides:

Unless otherwise prohibited by specific statute or rule, informal disposition may be made of any adjudicative proceeding, or any part or issue thereof, by stipulation, settlement, waiver of hearing, consent order, default, alternative dispute resolution, or other informal disposition, subject to agency approval. Any administrative agency may

adopt rules of practice or procedure for informal disposition if such rules do not substantially prejudice the rights of any party. Such rules may establish procedures for converting an administrative matter from one type of proceeding to another type of proceeding.

Petitioners could have timely requested reconsideration 15 days after the Order was issued. It should be noted that the reference to North Dakota Century Code (NDCC) in North Dakota Administrative Code (NDAC) section 69-02-06-02 should be updated since that is no longer the original cite as NDCC 28-32 has been amended since the rule went into effect in 1992. The updated section should read NDCC 28-32-39.

Petitioners have asked for the Order to be rescinded and reopened. Reopening the case is very untimely as reopening can only occur between the hearing and issuance of the final order as per NDAC Section 69-02-06-02-01. It is unclear where the petitioners find authority for the Commission to rescind the Order.

Petitioners have also missed the time allowed to appeal the Commission's decision to a district court as it is also very untimely. The Petitioners had 30 days from the issuance of the Order as allowed under NDCC 28-32.

The Petitioners petition to intervene was filed more than one year after the expiration of the Notice issued by the Commission. Since NDAC Section 69-02-02-05 (2) requires petitions to intervene to be filed at least ten days prior to the hearing, the petition to intervene is clearly not timely and should be denied.

The Petitioners request to rescind the Commission's November 20, 2024, Order and reopen the proceedings based upon its lack of inclusion of findings of fact or conclusions of law is not founded in the appropriate section of law. While the Commission's Order lacked specific title headings of finding of fact, and conclusions of law, the discussion section does contain the facts the Commission relied upon and the conclusions of law used in reaching its decision. Under NDCC Section 28-32-22 the Commission may make an informal disposition of any adjudicative proceeding. In this instance informal disposition was made only after publishing the Notice in fourteen separate North Dakota newspapers, including those that are local to the Petitioners. Similarly, while the Commission retains continuing jurisdiction, the petition to rescind and reopen proceedings was filed more than one year after opportunity to provide comments or requests for hearing had expired.

The Petitions cite sections of NDCC and NDAC which are entirely appropriate for a proceeding involving an application for a certificate of corridor compatibility and route permit; however, it does not provide a sufficient basis for the reconsideration of the Order concerning public convenience and necessity. The Petitioners will have an opportunity to raise these concerns when the Commission receives the application for a certificate of corridor compatibility and route permit from OTP and MDU if and when it is filed. For

clarification, the line may not be constructed without obtaining a certificate of corridor compatibility and route permit from the Commission.

The Commission followed all laws regarding notices and opportunity for hearing, which is the procedure to ensure Due Process. The petitioners were not denied Due Process, they missed their opportunity to exercise it in a timely manner that is fair to all parties involved.

The Petitions do not provide any new evidence for the Commission to consider but rather rely upon arguments relating to the evidence already received and considered by the Commission on the record in this proceeding.

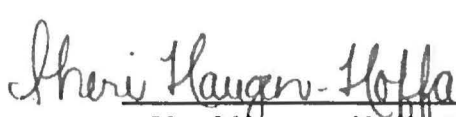
The Petitioners objected to OTP and MDU filing a proposed order. The Commission is under no obligation to use the proposed order and will give it the appropriate weight.

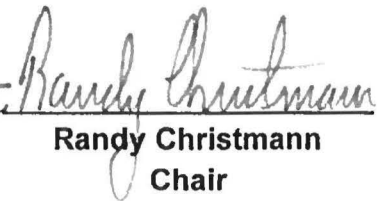
Order

The Commission Orders:

1. The June 17, 2025, objection is **overruled**.
2. The Petitioners petition to intervene in this proceeding is **denied**.
3. The Petitioners petition to rescind the Commission's November 20, 2024, Order is **denied**.
4. The Petitioners petition to reopen the proceedings is **denied**.

PUBLIC SERVICE COMMISSION


Sheri Haugen-Hoffart
Commissioner


Randy Christmann
Chair

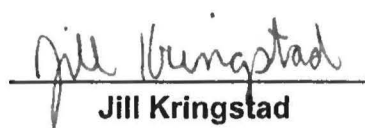

Jill Kringstad
Commissioner

Exhibit 5

Burleigh County No.:
08-2025-CV-02068

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Otter Tail Power Company/Montana-Dakota Utilities Co.
345kV Transmission Line-Jamestown to Ellendale
Public Convenience & Necessity**

Case No. PU-24-91

ORDER

November 20, 2024

Preliminary Statement

On February 29, 2024, Otter Tail Power Company (OTP) and Montana-Dakota Utilities Co. (MDU) filed a joint application for a Certificate of Public Convenience and Necessity to construct, own, and operate approximately 85 miles of 345kV transmission line and expand four substations located in Stutsman, LaMoure, and Dickey Counties in North Dakota.

On March 27, 2024, the Commission issued a Notice of Opportunity for Hearing. The notice provided until May 10, 2024, for receiving written comments or requests for hearing. No responses were received. The notice identified the following issues to be considered:

1. Whether public convenience and necessity will be served by construction and operation of the facilities.
2. Are OTP/ MDU technically, financially, and managerially fit and able to provide the service?

On July 8, 2024, the Commission discussed these matters with the applicants and Commission staff in an informal hearing.

Discussion

OTP and MDU are the regional electric utilities providing generation, transmission and distribution services in North Dakota under the regulatory jurisdiction of this Commission. OTP and MDU are fit, willing, and able to provide services.

Both OTP and MDU are members of the Midcontinent Independent System Operator (MISO), which is a Regional Transmission Organization (RTO) responsible for overseeing and managing the electric power transmission grid across 15 U.S. states as well as the Canadian province of Manitoba.

In July 2022, MISO approved the first phase or "tranche" of its Long-Range Transmission Planning (LRTP) which includes this project. Tranche 1 consists of 18 projects, with a total of more than 2,000 miles of lines totaling over \$10 billion in investments. As noted above, this specific project is comprised of 85 miles of 345kV lines

with a total estimated investment of \$440 million and is expected to be in service by the end of 2028. Ownership of the facilities is roughly 50/50 with some facilities being owned and operated by one or the other company and some facilities being jointly owned.

Costs for all projects approved under MISO's LRTP Tranche 1 will be recovered on a prorata basis utilizing each company's energy use as a proportion of the MISO Subregion total. For MDU this prorata basis is 0.67% and for OTP it is 1.57%. This results in a combined net cost to MDU's and OTP's North Dakota customers of an estimated \$469k annually or roughly \$235k each. That is an additional cost of \$0.123 per month for MDU and \$0.177 per month for OTP residential customers consuming 1000 kWh per month.

OTP and MDU intend to jointly construct and own the Jamestown to Ellendale 345 kV transmission line and the expansion of the Twin Brooks 345 kV substation. MDU will construct, own and operate the expansion required at the Ellendale 345 kV substation. OTP will construct, own and operate the expansion required at the Jamestown and Maple River 345 kV substations.

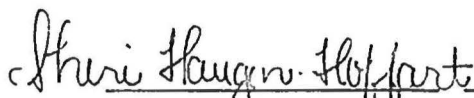
Having considered this matter, the Commission finds that public convenience and necessity will be served by the construction and operation of the facilities and that OTP and MDU are technically, financially, and managerially fit to be able to provide the service.

Order

The Commission Orders

1. The Application of Otter Tail Power Company and Montana-Dakota Utilities Co. for certificates of public convenience and necessity to construct and operate the Jamestown to Ellendale 345 kV electric transmission line and associated facilities is APPROVED.
2. Certificate of Public Convenience and Necessity No. 5998 is issued to Montana-Dakota Utilities Co. for the jointly owned Jamestown to Ellendale 345 kV transmission line and the expansion of the Twin Brooks 345 kV substation as well as the Ellendale substation that will be owned exclusively by Montana-Dakota Utilities Co.
3. Certificate of Public Convenience and Necessity No. 5999 is issued to Otter Tail Power Company for the jointly owned Jamestown to Ellendale 345 kV transmission line and the expansion of the Twin Brooks 345 kV substation as well as the Jamestown and Maple River substations that will be owned exclusively by Otter Tail Power Company.

PUBLIC SERVICE COMMISSION



Sheri Haugen-Hoffart
Commissioner

"Nay"

Randy Christmann
Chair



Julie Fedorchak
Commissioner

**PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA**

Certificate of Public Convenience and Necessity

Certificate Number 5998

This is to certify that public convenience and necessity require, and permission is granted for Montana-Dakota Utilities Co., to jointly construct, own and operate with Otter Tail Power Company approximately 85 miles of 345 kV electric transmission line from Jamestown in Stutsman County to Ellendale in Dickey County as well as associated facilities.

This permit is issued in accordance with the Order of this Commission dated November 20, 2024, in Case No. PU-24-91, and is subject to the conditions and limitations noted in the Order.

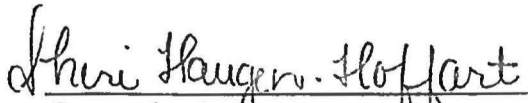
This certificate is conditioned upon Montana-Dakota Utilities Co. securing the franchise or other authority of the proper municipal or other public authority for the exercise of these rights and privileges.

Bismarck, North Dakota, November 20, 2024.

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Secretary


Commissioner

**PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA**

Certificate of Public Convenience and Necessity

Certificate Number 5999

This is to certify that public convenience and necessity require, and permission is granted for Otter Tail Power Company, to jointly construct, own and operate with Montana-Dakota Utilities Co. approximately 85 miles of 345 kV electric transmission line from Jamestown in Stutsman County to Ellendale in Dickey County as well as associated facilities.

This permit is issued in accordance with the Order of this Commission dated November 20, 2024, in Case No. PU-24-91, and is subject to the conditions and limitations noted in the Order.

This certificate is conditioned upon Otter Tail Power Company securing the franchise or other authority of the proper municipal or other public authority for the exercise of these rights and privileges.

Bismarck, North Dakota, November 20, 2024.

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Secretary


Commissioner

DISSENT

Commissioner Randy Christmann

November 20, 2024

**Ottertail Power Co. / Montana-Dakota Utilities
Joint Application for CPCN
345 kV Transmission Line**

Case No. PU-24-91

The Certificate of Public Convenience and Necessity for Otter Tail Power Company's and Montana-Dakota Utilities Co.'s 345 kV transmission line from Ellendale to Jamestown should be denied. The applicants have not met their burden to show the necessity for this investment.

This project is one of eighteen being pushed by MISO, the Regional Transmission Organization where OTP and MDU hold membership. The original application (Docket #1) indicates the cost of this project to be approximately \$440 million. It is part of a combination of 18 projects throughout the Midwest known as MISO's Tranche #1. The combined costs for these projects are allocated throughout the region. Tranche #1 is estimated to total over \$10 billion.

Among the benefits emphasized in the application are improved reliability, congestion and fuel savings, improved distribution of renewable energy, and reduced carbon emissions.

Docket #13, filed June 26, 2024, indicates the cost for Tranche #1 will be about \$5.75 / month for the average OTP residential customer and about \$3.15 / month for the average MDU customer for forty years.

The joint application was received February 29, 2024. An Informal Hearing was held in July. Commission Work Sessions followed in August and October. During this entire time the applicants and MISO had opportunities to provide more and better information.

Throughout the last seven months the explanation has remained vague. MISO's long term transmission study is cited which shows dozens of voltage and thermal problems that this project would relieve. However, the vast majority of the problems are forward looking, meaning they do not exist yet. It will be future actions that will cause most of these problems. No clear information is provided that allows us to determine who will be causing these future actions, whether they are preventable, nor whether they are realistic. One of the few examples provided of the coming changes that would create the need for this transmission is 800 megawatts of solar electric generation, but much of that even appears to be conjecture because no information is provided regarding who would build these nor where they would be built.

One key factor that is known about the future of transmission in this area is a large new load near Ellendale, ND that is already partially operational and partially under development. We know this facility has already relieved congestion in this area of the state. MISO refuses to update their Tranche #1 study, which is more than two years old, or even take this new load into consideration.

Adding costs of this significance to North Dakota ratepayers deserves careful scrutiny. Perhaps this project is a necessity, but there have been multiple opportunities for the applicants to answer more questions and provide more detail. They have not done so. Until better justification is provided this Certificate should be denied.



Randy Christmann, Commissioner

Exhibit 6

Burleigh County No.:
08-2025-CV-02068

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Otter Tail Power Company/Montana-Dakota
Utilities Co. 345kV Transmission Line Siting
Application

Case No. PU-25-236

Wano Township, Willowbank Township,
Russell Township, Corwin Township,
and Valley Township

**PETITION TO INTERVENE; MOTION TO ACCEPT TOWNSHIP
FILINGS AS LATE-FILED EXHIBITS; AND, IN THE ALTERNATIVE,
PETITION TO REOPEN FOR LIMITED ADDITIONAL EVIDENCE
(N.D.A.C. §§ 69-02-02-05, 69-02-04-07(k), 69-02-06-01)**

Petitioners Wano Township, Willowbank Township, Russell Township, Corwin Township, and Valley Township (collectively, the “Townships”), by and through undersigned counsel, respectfully petition to intervene for the limited purpose of record preservation and to ensure the Townships’ formal filings are included in the formal evidentiary record considered by the Commission in its final findings with reasons and for purposes of judicial review.

The Townships further move for an order accepting and designating the Townships’ previously submitted captioned filings as late-filed exhibits to be

included in the formal evidentiary record. In the alternative, if the presiding administrative law judge concludes the filings cannot be made part of the formal record without reopening, the Townships petition the Commission to reopen this proceeding for the limited purpose of receiving those filings as additional evidence under a narrowly tailored, remote procedure.

At the January 14, 2026 public hearing in Edgeley, a Russell Township official appeared on behalf of Russell Township, identified that Russell Township had submitted the Township Filings (Limited Objections, Preemption Statements, and Questions for the Record) in this docket, and sought to read and summarize those positions for purposes of the Commission's consideration in PU-25-236. Applicants objected on the ground the Township "isn't a party," while the presiding administrative law judge stated the documents "will become part of the record" and would be reviewed by the Commission. Because Commission staff has also advised in writing that submissions made outside formal or technical hearing processes may be placed in a public-input file and not treated as part of the formal evidentiary record unless submitted under oath and subject to cross-examination, the Townships bring this limited petition and motion to eliminate uncertainty

and ensure compliance with N.D.C.C. § 28-32-24(2) in the Commission's final findings with reasons and for judicial review.

This submission is intended to be narrow, efficient, and record-preserving. The Townships are not re-submitting their underlying zoning ordinances, setback provisions, or moratoria that were previously filed in this docket; those materials are already part of the docket and have been addressed by Applicants' December 17, 2025 preemption memorandum.

The Townships seek party status and formal-record treatment for the Township Filings identified below (Limited Objections, Preemption Statements, and Questions for the Record). The Townships request this so the Commission's final findings with reasons address those filings and they are preserved for judicial review. The Townships do not seek to re-open merits hearings, conduct discovery, or impose undue burden on the Commission or other parties. The Townships' purpose is to preserve issues that the Commission must address in a lawful final order, including (1) the "need" showing and the Commission's findings with reasons under N.D.C.C. ch. 49-22, (2) the role and effect of any prior CPCN from PU-24-91 as asserted proof of need in this siting docket, and (3) Applicants' requested findings

regarding supersession or preemption of local land use and zoning ordinances and regulations.

To the extent the existing record reflects an earlier indication that the Townships did not intend to seek intervenor status, the Townships now respectfully request limited-purpose intervention as set forth herein.

I. PETITION TO INTERVENE (N.D.A.C. § 69-02-02-05)

A. Grounds for intervention.

1. The Townships are political subdivisions directly affected by the proposed 345 kV Jamestown-to-Ellendale transmission line, including route selection, permit conditions, construction impacts, drainage and restoration issues, local road and infrastructure impacts, and the Townships' retained land use and zoning interests.

2. The Townships are directly affected by the manner in which "need" is addressed in this docket. The Townships object to any attempt to treat PU-24-91 (CPCN under N.D.C.C. ch. 49-03) as conclusive proof of "need" in this siting docket or as a substitute for the record and findings with reasons required under N.D.C.C. ch. 49-22.

3. Applicants have requested Commission findings regarding supersession and preemption of local land use and zoning ordinances and

regulations. The Townships' local governmental interests are therefore directly and expressly implicated by issues raised in this proceeding.

B. Position and interest of Petitioners in the proceeding.

4. The Townships' limited-purpose position is that the Commission's final order must be supported by a complete formal evidentiary record and by findings with reasons as required under the Siting Act, including record-based findings addressing statutory criteria and considerations under N.D.C.C. ch. 49-22.

5. The Townships request that any treatment of supersession or preemption of local land use and zoning ordinances and regulations be addressed specifically and in a findings-based manner tied to the record, the approved route (if any), and permit conditions, rather than by generalized declarations not anchored to route-specific findings and conditions.

6. The Townships' interests are direct, substantial, and distinct from Applicants and Commission Staff. Applicants seek a permit. Staff serves an advisory and investigatory role. Neither represents the Townships' local governmental interests.

7. The Townships would contribute to the proceeding a discrete, governmental record on (a) the Townships' local land-use and zoning

interests implicated by Applicants' supersession and preemption request, and (b) the Townships' limited objections and questions directed to the "need" showing and the Commission's statutory findings with reasons—issues the Commission must address in a lawful final order and that must be preserved for judicial review.

C. Limited scope of participation.

8. The Townships request intervention on a limited-purpose basis: (a) inclusion of the Township Filings in the formal evidentiary record; (b) inclusion on the service list; and (c) the opportunity to submit any additional written filing only if the hearing officer requests it and limited to record status and issues the Commission must address in its findings with reasons (including Applicants' preemption request and any asserted reliance on PU-24-91 as proof of need). The Townships do not request discovery, do not request reopening merits hearings, and do not seek to call witnesses other than the limited remote sponsorship procedure described below if required for formal-record inclusion. Nothing in this limited-purpose intervention is intended to waive, concede, or limit any constitutional challenge to HB 1258 and N.D.C.C. § 49-22-16 as amended, or any other rights or arguments preserved for judicial review.

D. Support or opposition to relief sought.

9. The Townships oppose the requested certificate and permit. The Townships seek limited-purpose intervention for record preservation as described above.

E. Timing and good cause.

10. N.D.A.C. § 69-02-02-05(2) provides that a petition to intervene generally must be filed at least ten days prior to the hearing, but late intervention may be allowed for good cause shown. Good cause exists here because:

a. Applicants filed a memorandum on December 17, 2025 requesting Commission findings that local land use and zoning regulations are superseded and preempted under N.D.C.C. § 49-22-16 as amended. The Townships served and submitted their responsive Township Statements in January 2026 to preserve their governmental interests and objections, including preservation of rights regarding the interpretation and application of § 49-22-16 as amended. The Townships seek limited intervention now to resolve the record-status of those filings before the Commission issues its final order.

b. Commission staff responded in writing that written comments submitted outside formal or technical hearing processes would be placed in the public input file and would not be part of the formal evidentiary record unless submitted under oath and subject to cross examination. *See Exhibit 4.*

c. The Townships' governmental interests and the issues addressed in their filings are directly implicated by Applicants' preemption request and by the asserted use of PU-24-91 as proof of need in this siting docket. The Townships seek a narrow procedure to ensure these filings are included in the formal record and addressed in the Commission's findings with reasons.

d. The Townships did not retain counsel to attend and participate in person at the January hearings due to substantial cost burdens on the Townships and their constituents. The Townships seek to participate in a limited, written, record-preserving manner without travel, and any limited record sponsorship (if required) can be accomplished remotely in a short, efficient procedure.

e. The Edgeley public hearing record reflects that a Russell Township official appeared on behalf of Russell Township, identified

that Russell Township had already submitted three captioned Township Filings in PU-25-236 (a limited objection on “need,” a response to Applicants’ preemption request, and questions for the record), and sought to read and summarize those positions “for the record.” Applicants objected on “party status,” and the presiding administrative law judge stated the documents “will become part of the record” and would be reviewed—creating a concrete need for a narrow order confirming formal evidentiary-record status before final disposition. *See Exhibit 5.*

11. The Townships respectfully request that the hearing officer grant intervention for the limited purposes described above and include the Townships and undersigned counsel on the service list for PU-25-236.

II. MOTION TO ACCEPT TOWNSHIP FILINGS AS LATE-FILED EXHIBITS (N.D.A.C. § 69-02-04-07(k))

12. Upon granting this Petition to Intervene, the Townships move for an order accepting and designating the Townships’ formal filings identified below as late-filed exhibits to be included in the formal evidentiary record in this docket. For purposes of this motion, “Township Filings” means the Townships’ captioned submissions consisting of: (a) Limited Objections to

reliance on PU-24-91 as proof of need; (b) Township Statements responding to Applicants' preemption request; and (c) Questions for the Record.

13. N.D.A.C. § 69-02-04-07(k) authorizes the hearing officer to authorize any party to furnish and serve designated late-filed exhibits within a specified time after the close of the hearing. The Townships request that the hearing officer exercise that authority here to avoid prejudice to substantial rights through exclusion of the Township Filings from the formal evidentiary record.

14. The Townships request that the hearing officer enter an order that:

a. Accepts and designates the following as Township Exhibits for the formal record:

Township Filings; Email Service and PSC Acknowledgements

Exhibit 1A – Wano Township Limited Objection to Reliance on PU-24-91
CPCN as Proof of Need and Reservation of Rights

Exhibit 1B – Willowbank Township Limited Objection (same)

Exhibit 1C – Russell Township Limited Objection (same)

Exhibit 1D – Corwin Township Limited Objection (same)

Exhibit 1E – Valley Township Limited Objection (same)

Exhibit 2A – Wano Township Statement re Applicants' Preemption Request

Exhibit 2B – Willowbank Township Statement (same)

Exhibit 2C – Russell Township Statement (same)

Exhibit 2D – Corwin Township Statement (same)

Exhibit 2E – No separate Valley Township 'Statement' was submitted;

Valley's positions are reflected in Exhibits 1E and 3E.

Exhibit 3A – Wano Township Questions for the Record

Exhibit 3B – Willowbank Township Questions (same)

Exhibit 3C – Russell Township Questions (same)

Exhibit 3D – Corwin Township Questions (same)

Exhibit 3E – Valley Township Questions (same)

Exhibit 4A – Wano Township email transmittal to PSC and PSC
acknowledgment email chain (Jan. 7, 2026)

Exhibit 4B – Willowbank Township email transmittal to PSC
attaching Exhibits 1B–3B (PSC acknowledgment email not
located).

Exhibit 4C – Russell Township email transmittal to PSC and PSC
acknowledgment email chain (Jan. 7, 2026)

Exhibit 4D – Corwin Township email transmittal to PSC and PSC
acknowledgment email chain (Jan. 7, 2026)

Exhibit 4E – Valley Township email transmittal to PSC and PSC
acknowledgment email chain (Jan. 7, 2026)

Exhibit 5 – Excerpt of Edgeley public hearing transcript (Jan. 14, 2026)
(regarding Russell Township submission and record-status
discussion) (Tr. 24:32–34:03)

b. Sets a short schedule, if the hearing officer deems
appropriate, for Applicants and Staff to state whether they object to
inclusion of the Township Exhibits in the formal record and, if so, on
what grounds.

15. This motion does not request a new merits hearing or travel. It
requests only the formal designation and inclusion of the Township Exhibits
as late-filed exhibits in the evidentiary record so the Commission's final

findings with reasons can address them and meaningful judicial review can occur if necessary. Admission of the Township Exhibits will not prejudice any party because the Townships propose (and request, if required) a narrow remote sponsorship procedure and an opportunity for limited cross-examination solely on authenticity and foundation.

III. IN THE ALTERNATIVE, PETITION TO REOPEN FOR LIMITED ADDITIONAL EVIDENCE (N.D.A.C. § 69-02-06-01)

16. If the hearing officer concludes the Township Exhibits may not be accepted into the formal record without reopening, the Townships petition the Commission to reopen this proceeding for the limited purpose of taking additional evidence, namely receipt of the Township Exhibits.

17. N.D.A.C. § 69-02-06-01 provides that at any time after conclusion of a hearing, but before a final order is issued, any party may file a petition to reopen for the purpose of taking additional evidence. The Townships seek reopening solely to cure the record-status problem for the Township Exhibits.

18. Limited reopening requested. The Townships request that any reopening be limited as follows:

a. Additional evidence limited to receipt of the Township Exhibits identified above.

b. If the hearing officer requires a sworn sponsorship

procedure to place the Township Exhibits into the evidentiary record, the Townships request a short, remote technical session (Zoom or telephonic) at which a designated Township official for each Township will appear under oath solely to authenticate and adopt the Township Exhibits. No additional testimony beyond that authentication and adoption is requested.

c. Any cross-examination, if requested by any party, shall be limited to authenticity, foundation, and the limited scope of the Township Filings, and may occur remotely.

d. A short written response period for Applicants and Staff, if deemed appropriate, limited to admissibility and any response on the record-status request.

19. Grounds. The Township Exhibits address issues central to the Commission's final order and findings with reasons, including the need showing and record requirements in N.D.C.C. ch. 49-22, the relationship between PU-24-91 and PU-25-236 as it pertains to "need," and Applicants' preemption request. Excluding these filings from the formal record would substantially prejudice the Townships' governmental interests and impair meaningful judicial review.

IV. REQUESTED RELIEF

The Townships respectfully request that the hearing officer and Commission enter an order:

1. Granting the Townships' petition to intervene under N.D.A.C. § 69-02-02-05 for the limited purposes described above and adding the Townships and undersigned counsel to the service list;
2. Accepting and designating the Township Exhibits as late-filed exhibits under N.D.A.C. § 69-02-04-07(k) for admission into the formal evidentiary record; and
3. Declaring and ordering that Exhibits 1A–4E are admitted into the evidentiary record of PU-25-236 and will be treated as record evidence considered by the Commission in its final findings with reasons.
4. In the alternative, if necessary, ordering that the Commission reopen the proceeding under N.D.A.C. § 69-02-06-01 for the limited purpose of receiving the Township Exhibits as additional evidence under the limited, remote procedure described above.
5. Ultimately, after considering the complete evidentiary record (including the Township Filings), deny the requested certificate of corridor compatibility and route permit for the proposed 345 kV transmission line.

Dated: February 4, 2026

Respectfully submitted,

By: /s/ Douglas J. Nill

Douglas J. Nill (ND # P00392)

DOUGLAS J. NILL, PLLC

1850 Fifth Street Towers

150 South Fifth Street

Minneapolis, MN 55402

(612) 573-3669

dnill@farmlaw.com

Steven J. Leibel (ND # 07361)

KNOLL LEIBEL LLP

P. O. Box 858

1915 N. Kavaney Drive, Ste. 3

Bismarck, ND 58501

(701) 255-2010

steve@bismarck-attorneys.com

Attorneys for Petitioners

Exhibit 7

Burleigh County No.:
08-2025-CV-02068

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Otter Tail Power Company/Montana-Dakota
Utilities Co. 345kV Transmission Line Siting
Application

Case No. PU-25-236

**WANO TOWNSHIP LIMITED OBJECTION TO RELIANCE ON
PU-24-91 CPCN AS PROOF OF NEED AND RESERVATION
OF RIGHTS**

Wano Township submits this limited objection for the record in PSC
Docket PU-25-236.

1. The Commission previously issued a Certificate of Public Convenience and Necessity (“CPCN”) in Docket PU-24-91 under N.D.C.C. ch. 49-03 for this same 345 kV project. That CPCN was issued in a proceeding noticed by publication and without direct notice to the affected townships. The Commission’s June 18, 2025 order leaving that CPCN in place is now under review in Burleigh County District Court, Case No. 08-2025-CV-02068.

2. The Township understands that the Siting Act, N.D.C.C. ch. 49-22, requires an application that includes a statement explaining the need for the facility and requires the Commission’s decision in this docket to be supported by findings with reasons under the statutory criteria and

considerations. *See* N.D.C.C. §§ 49-22-05.1, 49-22-08(1)(c), 49-22-08(6), 49-22-08.1(5), 49-22-09; *accord Matter of Nebraska Pub. Power Dist.*, 330 N.W.2d 143 (N.D. 1983).

3. The Township objects to any reliance on the PU-24-91 CPCN as conclusive proof of “need” in this docket, including any attempt to treat a publication-notice CPCN under Chapter 49-03 as a substitute for the Siting Act’s record and decision requirements. The Township respectfully requests that the Commission require the Applicants to address any need-related showing within the PU-25-236 record and that any final order include the Commission’s own findings with reasons based on the evidence presented in this proceeding.

4. This is a limited objection. The Township does not waive, and expressly reserves, all rights and arguments regarding the lawfulness of the prior CPCN, the proper interpretation of Chapters 49-03 and 49-22, and the Township’s position in the pending district court appeal or any further judicial review.¹

¹ Prepared with assistance of counsel (Steven J. Leibel, ND counsel; Douglas J. Nill, MN counsel—pro hac vice application pending) for the limited purpose of assisting the Township with written submissions to preserve the record. No appearance is entered in this docket.

Dated: January 6, 2026

WANO TOWNSHIP

By: Wayne Wald
Wayne Wald, Supervisor, Township Board

Exhibit 8

Burleigh County No.:
08-2025-CV-02068

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Otter Tail Power Company/Montana-Dakota
Utilities Co. 345kV Transmission Line Siting
Application

Case No. PU-25-236

**WANO TOWNSHIP STATEMENT REGARDING APPLICANTS'
REQUEST TO DECLARE LOCAL LAND USE AND ZONING
ORDINANCES AND REGULATIONS SUPERSEDED
AND PREEMPTED**

Wano Township submits this statement for the record in PSC Docket PU-25-236 in response to Applicants' December 17, 2025 memorandum requesting findings regarding supersession and preemption of local land use and zoning regulations.

1. Township filings and record completeness.

Wano Township previously provided the Commission with its local land use and zoning materials in this docket. The Township submits these materials so the Commission has a complete record of local requirements and local concerns relevant to routing, siting considerations, and permit conditions, including the local requirements requested from political subdivisions for review and consideration in this proceeding.

2. No blanket preemption declaration detached from final findings and conditions.

Applicants ask the Commission to declare that all local land use and zoning ordinances and regulations “are automatically superseded and preempted” upon issuance of a route permit and to enter additional findings that certain local actions are “unreasonably restrictive.” The Township respectfully requests that the Commission address any supersession/preemption issues, if at all, only in the context of its final order, with specific findings and reasons tied to the statutory criteria, the route approved (if any), and any conditions imposed. If the Commission determines that any local provisions are superseded for this project, the Township further requests that the final order clearly identify (a) which provisions are affected, and (b) how compliance will be supervised and enforced during construction and restoration. The Township also requests that the Commission avoid any generalized, advance declaration that is not tied to specific identified local provisions and final permit conditions.

3. Local requirements remain relevant even if Applicants contend certain provisions are superseded.

Even where Applicants argue that local land use and zoning regulations will be superseded upon issuance of a permit, those local

materials still provide important evidence and context for the Commission's required analysis under the Siting Act, including routing alternatives, local land use patterns, and impacts on residences and existing development. The Township asks that the Commission explicitly acknowledge receipt and consideration of the Township's filings as part of the record.

4. Road use and infrastructure protections must be addressed through permit conditions.

The Township requests that the Commission ensure Applicants address, and the Commission's order address, road use and local infrastructure impacts, including heavy-haul/road damage issues, access points, drainage, and restoration obligations. The Township further requests that any permit conditions require coordination with affected political subdivisions, compliance with applicable road-use requirements and agreements, and clear, enforceable construction and restoration standards.

5. Preservation of rights.

This statement is submitted to preserve the Township's rights and to ensure the Commission has a complete record. The Township does not waive, and expressly reserves, all rights and arguments regarding the interpretation and application of N.D.C.C. § 49-22-16 as amended, including issues concerning retroactivity, due process, statutory construction, and the legality

and scope of any claimed supersession/preemption in this proceeding or on judicial review.¹

Dated: January 6, 2026

WANO TOWNSHIP

By: Wayne Wald
Wayne Wald, Supervisor, Township Board

¹ Prepared with assistance of counsel (Steven J. Leibel, ND counsel; Douglas J. Nill, MN counsel—pro hac vice application pending) for the limited purpose of assisting the Township with written submissions to preserve the record. No appearance is entered in this docket.

Exhibit 9

Burleigh County No.:
08-2025-CV-02068

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Otter Tail Power Company/Montana-Dakota
Utilities Co. 345kV Transmission Line Siting
Application

Case No. PU-25-236

WANO TOWNSHIP QUESTIONS FOR THE RECORD

Wano Township submits these questions for the record in PSC Docket PU-25-236. The Township requests that Applicants and Commission Staff address these questions in this proceeding to the extent applicable, and that the Commission address the relevant issues in its final findings and conclusions.

1. Need in this record. Where in the PU-25-236 application do Applicants present the Chapter 49-22 statement of need, and what evidence in this docket supports that need showing?

2. Findings with reasons. Will the Commission's final order in PU-25-236 include written findings with reasons addressing need and the statutory criteria, based on the evidence presented in this docket?

3. Relationship to PU-24-91. If Applicants contend the PU-24-91

CPCN resolves “need,” how do Applicants reconcile that position with Chapter 49-22’s record-based decision requirements in this siting proceeding?

4. **Present versus projected conditions.** What transmission constraints or reliability issues exist today that this project addresses, and what claimed benefits depend on projected future generation development?

5. **Ellendale-area load and updated studies.** What current studies or analyses account for material load changes near Ellendale (if any) and other major system changes since the earlier CPCN proceeding, and how do those updates affect the claimed need for this project?

6. **Benefit allocation.** What is the expected benefit to North Dakota consumers and ratepayers versus benefits to private generation developers or export transactions, and what evidence in this docket supports that allocation?

7. **Cost responsibility.** Who is expected to pay for this project (and through what mechanism), and what protections exist so North Dakota consumers are not bearing costs that primarily support private generation expansion decisions?

8. **Alternatives.** What alternatives were evaluated that could meet

any verified North Dakota need with less local impact, including upgrades to existing facilities, reconfiguration, or non-transmission alternatives?

9. Local impacts and mitigation. What route-level mitigation measures and permit conditions are proposed to address township concerns, including impacts to residences, farming operations, drainage, access, and restoration?

10. Road use and local infrastructure. What road use agreements are proposed or anticipated, and what specific conditions will ensure protection of local roads, approaches, culverts, drainage, and post-construction restoration and repair?

11. Treatment of township filings. Will the Commission acknowledge in its final order that it received and considered township filings in this docket and explain how local land use impacts were weighed in route selection and permit conditions?

12. Scope and preservation. Will the Commission confirm that townships and landowners may raise need-related issues in this siting docket and that the Commission will address the relevant issues in its final order, rather than treating need as conclusively resolved outside this record?¹

¹ Prepared with assistance of counsel (Steven J. Leibel, ND counsel; Douglas J. Nill, MN counsel—pro hac vice application pending) for the limited purpose of assisting the

Dated: January 6, 2026

WANO TOWNSHIP

By: Wayne Wald
Wayne Wald, Supervisor, Township Board

Township with written submissions to preserve the record. No appearance is entered in this docket.

Exhibit 10

Burleigh County No.:
08-2025-CV-02068

----- Original message -----

From: -Info-Public Service Commission <ndpsc@nd.gov>
Date: 1/7/26 2:20 PM (GMT-06:00)
To: Cody R <cmrupp44@gmail.com>
Subject: RE: PU-25-236 – Township filings for the record

Thank you for submitting comments to the Public Service Commission regarding the application for the JETx Transmission Line Project. We appreciate your interest in this case and we will place your comments in the public input file. Because this is an open case, the Commissioners cannot communicate directly with an interested party as it would be considered *ex parte* communication, which is prohibited.

It is important to note that because this is a formal case before the commission, both written and verbal comments submitted to the commission, including comments made at public input sessions, are not part of the formal evidentiary record on which the decision must be based. However, the comments that are not part of the formal record may form the basis for investigation resulting in testimony that becomes part of the formal record. Comments become part of the formal record when they are made or submitted at a formal or technical hearing, where they must be made under oath and subject to cross-examination.

Three public hearings have been scheduled for this case in Ellendale, Edgeley and Jamestown. Attached is a notice with all the details for each hearing. You are encouraged to attend one of the public hearings and share your comments at that time in order for your comments to be included in the formal record.

From: Cody R <cmrupp44@gmail.com>
Sent: Wednesday, January 7, 2026 9:21 AM
To: -Info-Public Service Commission <ndpsc@nd.gov>

Cc: Johnson, Brian L. <brijohnson@nd.gov>; zep@pearce-durick.com; cfurey@crowleyfleck.com;
ejedison@crowleyfleck.com
Subject: PU-25-236 – Township filings for the record

You don't often get email from cmrupp44@gmail.com. [Learn why this is important](#)

***** CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe. *****

Dear Executive Secretary:

Please file the attached documents in PSC Case No. PU-25-236:

1. Wano Township Limited Objection to Reliance on PU-24-91 CPCN as Proof of Need and Reservation of Rights
2. Wano Township Statement Regarding Applicants' Request to Declare Local Land Use and Zoning Ordinances and Regulations Superseded and Preempted
3. Wano Township Questions for the Record

Copies of this email and attachments have been served by email on counsel of record for the Applicants in this siting docket;

Thank you,

Cody M Rupp, Supervisor, Wano Township Board

701-709-0291

Wayne Wald, Supervisor, Wano Township Board

701-709-0037

----- Forwarded message -----

From: Jane <willowbanktownship@gmail.com>

Date: Wed, Jan 7, 2026, 12:49 PM

Subject: PU-25-236 Township filings for the record

To: -Info-Public Service Commission <ndpsc@nd.gov>, <brljohnson@nd.gov>, <zep@pearce-durick.com>, <cfurey@crowleyfleck.com>, <ejedison@crowleyfleck.com>

Dear Executive Secretary:

Please file the attached documents in PSC Case No. PU-25-236:

1. Willowbank Township Limited Objection to Reliance on PU-24-91 CPCN as Proof of Need and Reservation of Rights
2. Willowbank Township Statement Regarding Applicants' Request to Declare Local Land Use and Zoning Ordinances and Regulations Superseded and Preempted
3. Willowbank Township Questions for the Record

Copies of this email and attachments have been served by email on counsel of record for the Applicants in the siting docket;

Thank you,

Robert Senger, Supervisor, Willowbank Township Board
701-709-0122

Sent from my iPhone

Begin forwarded message:

From: -Info-Public Service Commission <ndpsc@nd.gov>
Date: January 7, 2026 at 2:20:51 PM CST
To: James leppert <jamesjleppert@gmail.com>
Subject: RE: PU-25-236 – Township filings for the record

Thank you for submitting comments to the Public Service Commission regarding the application for the JETx Transmission Line Project. We appreciate your interest in this case and we will place your comments in the public input file. Because this is an open case, the Commissioners cannot communicate directly with an interested party as it would be considered *ex parte* communication, which is prohibited.

It is important to note that because this is a formal case before the commission, both written and verbal comments submitted to the commission, including comments made at public input sessions, are not part of the formal evidentiary record on which the decision must be based. However, the comments that are not part of the formal record may form the basis for investigation resulting in testimony that becomes part of the formal record. Comments become part of the formal record when they are made or submitted at a formal or technical hearing, where they must be made under oath and subject to cross-examination.

Three public hearings have been scheduled for this case in Ellendale, Edgeley and Jamestown. Attached is a notice with all the details for each hearing. You are encouraged to attend one of the public hearings and share your comments at that time in order for your comments to be included in the formal record.

From: James leppert <jamesjleppert@gmail.com>
Sent: Wednesday, January 7, 2026 9:57 AM
To: -Info-Public Service Commission <ndpsc@nd.gov>
Cc: Johnson, Brian L. <brljohnson@nd.gov>; zep@pearce-durick.com; cfurey@crowleyfleck.com; ejedison@crowleyfleck.com
Subject: PU-25-236 – Township filings for the record

Sent from my iPhone

Begin forwarded message:

From: James leppert <jamesjleppert@gmail.com>
Date: January 7, 2026 at 9:57:24 AM CST
To: NDPSC@nd.gov
Cc: brljohnson@nd.gov, zep@pearce-durick.com, cfurey@crowleyfleck.com, ejedison@crowleyfleck.com
Subject: PU-25-236 – Township filings for the record

Dear Executive Secretary:

Please file the attached documents in PSC Case No. PU-25-236:

1. Russell Township Limited Objection to Reliance on PU-24-91 CPCN as Proof of Need and Reservation of Rights
2. Russell Township Statement Regarding Applicants' Request to Declare Local Land Use and Zoning Ordinances and Regulations Superseded and Preempted
3. Russell Township Questions for the Record

Copies of this email and attachments have been served by email on counsel of record for the Applicants in this siting docket;

Thank you,

Joel Leppert, Chair, Russell Township Board
701-709-0489

dnill@farmlaw.com

From: Jake Emo <jake_emo@hotmail.com>
Sent: Thursday, January 29, 2026 3:52 PM
To: Doug Nill
Cc: Susan Long
Subject: Fw: PU-25-236 – Township filings for the record
Attachments: Notice of Public Hearings PU-25-236.pdf

From: -Info-Public Service Commission <ndpsc@nd.gov>
Sent: Wednesday, January 7, 2026 2:21 PM
To: Jake Emo <jake_emo@hotmail.com>
Subject: RE: PU-25-236 – Township filings for the record

Thank you for submitting comments to the Public Service Commission regarding the application for the JETx Transmission Line Project. We appreciate your interest in this case and we will place your comments in the public input file. Because this is an open case, the Commissioners cannot communicate directly with an interested party as it would be considered *ex parte* communication, which is prohibited.

It is important to note that because this is a formal case before the commission, both written and verbal comments submitted to the commission, including comments made at public input sessions, are not part of the formal evidentiary record on which the decision must be based. However, the comments that are not part of the formal record may form the basis for investigation resulting in testimony that becomes part of the formal record. Comments become part of the formal record when they are made or submitted at a formal or technical hearing, where they must be made under oath and subject to cross-examination.

Three public hearings have been scheduled for this case in Ellendale, Edgeley and Jamestown. Attached is a notice with all the details for each hearing. You are encouraged to attend one of the public hearings and share your comments at that time in order for your comments to be included in the formal record.

From: Jake Emo <jake_emo@hotmail.com>
Sent: Wednesday, January 7, 2026 11:46 AM
To: -Info-Public Service Commission <ndpsc@nd.gov>
Cc: Johnson, Brian L. <brljohnson@nd.gov>; zep@pearce-durick.com; cfurey@crowleyfleck.com; ejedison@crowleyfleck.com
Subject: PU-25-236 – Township filings for the record

Some people who received this message don't often get email from jake_emo@hotmail.com. [Learn why this is important](#)

***** CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe. *****

Dear Executive Secretary:

From: Jake Emo <jake_emo@hotmail.com>
Sent: Wednesday, January 7, 2026 11:45 AM
To: NDPSC@nd.gov <NDPSC@nd.gov>
Cc: brljohnson@nd.gov <brljohnson@nd.gov>; zep@pearce-durick.com <zep@pearce-durick.com>; cfurey@crowleyfleck.com <cfurey@crowleyfleck.com>; ejedison@crowleyfleck.com <ejedison@crowleyfleck.com>
Subject: PU-25-236 – Township filings for the record

Dear Executive Secretary:

Please file the attached documents in PSC Case No. PU-25-236:

1. Corwin Township Limited Objection to Reliance on PU-24-91 CPCN as Proof of Need and Reservation of Rights
2. Corwin Township Statement Regarding Applicants' Request to Declare Local Land Use and Zoning Ordinances and Regulations Superseded and Preempted
3. Corwin Township Questions for the Record

Copies of this email and attachments have been served by email on counsel of record for the Applicants in this siting docket;

Thank you,

Jake Emo, Chair, Corwin Township Board

From: -Info-Public Service Commission <ndpsc@nd.gov>
Sent: Wednesday, January 7, 2026 9:51 PM
To: jasohild@drtel.net <jasohild@drtel.net>
Subject: RE: PU-25-236- Township filings for the record

Thank you for submitting comments to the Public Service Commission regarding the application for the JETx Transmission Line Project. We appreciate your interest in this case and we will place your comments in the public input file. Because this is an open case, the Commissioners cannot communicate directly with an interested party as it would be considered ex parte communication, which is prohibited.

It is important to note that because this is a formal case before the commission, both written and verbal comments submitted to the commission, including comments made at public input sessions, are not part of the formal evidentiary record on which the decision must be based. However, the comments that are not part of the formal record may form the basis for investigation resulting in testimony that becomes part of the formal record. Comments become part of the formal record when they are made or submitted at a formal or technical hearing, where they must be made under oath and subject to cross-examination.

Three public hearings have been scheduled for this case in Ellendale, Edgeley and Jamestown. Attached is a notice with all the details for each hearing. You are encouraged to attend one of the public hearings and share your comments at that time in order for your comments to be included in the formal record.

-----Original Message-----

From: jasohild@drtel.net <jasohild@drtel.net>
Sent: Wednesday, January 7, 2026 3:40 PM
To: -Info-Public Service Commission <ndpsc@nd.gov>
Cc: Johnson, Brian L. <brljohanson@nd.gov>; zep@pearce-durick.com; cfurey@crowleyfleck.com; ejedison@crowleyfleck.com
Subject: PU-25-236- Township filings for the record

----- Original Message -----

Subject: PU-25-236- Township filings for the record

Date: 2026-01-07 3:39 pm

From: jasohild@drtel.net

To: NDPSC@nd.gov

Cc: brljohanson@nd.gov, zep@pearce-durick.com, cfurey@crowleyfleck.com, ejedison@crowleyfleck.com

Dear Executive Secretary:

Please file the attached documents in PSC Case No. PU-25-236:

- 1.Valley Township Limited Objection to Reliance on PU-24-91 CPCN as Proof of Need and Reservation of Rights
- 2.Valley Township Questions for the Record

Copies of this email and attachments have been served by email on counsel of record for the Applicants in this siting docket;

Thank you,
Wyatt Beethe, Supervisor, Valley Township Board
701-710-5490

Exhibit 11

Burleigh County No.:
08-2025-CV-02068

Of course a company would deem these unreasonable if it doesn't work for them. They are coming into our townships, our land and our private property, but they want to tell us what we can and can't do. I believe the state recommendations for setbacks are to provide residents without zoning or or regulations some protection, not to override local regulations. Why have township boards and county commissioners if legislators like Mike Branburg introduce retroactive bills in mid session to override local control because he fears his personal gain is being jeopardized. Willowbank Township was the first township to deny the cup on January twenty second, twenty twenty five and Mike Brannenber amended House Bill twelve fifty eight on January twenty seventh, twenty twenty five to go retroactive January first twenty twenty five. He also tried to pass a law to take away Prairie Dog funding away from counties and townships hindering energy development.

Speaker 5 - 02:09:58

Mike Brandenburg and District twenty eight are representing corporate companies and corporate gains and they don't want to talk to their constituents that have elected them to office. Last time I checked, the highest level of local control starts with the lowest form of government. Thank you for your patience and time and I stand for any questions.

Speaker 1 - 02:10:19

All right, thank you miss Beery. Any questions?

Speaker 3 - 02:10:24

No questions, your honor, but I do just want to. Excuse me, sorry for doing that right into the mic. I apologize, but I do just want to object to two issues and I recognize that your comments are kind of all together in this single document, but I'm going to just kind of break down the two objections. It seems like a lot of the scope of the comments, at least that we've had thus far, and I anticipate that we may hear the remainder of the day really are attempting to get to the issue of need for this project. The North Dakota Supreme Court in a nineteen eighty three case Nebraska Public Power concluded that the PSE does not have authority or duty to determine need and further that the commission acted properly in that particular case by controlling the siting proceeding to suppress such evidence. So we would just ask that any discussion that really the underlying purpose is to get to the issue of need not be considered or addressed because it is not relevant to the determinations and considerations that the commission needs to make the Second objection is with respect to, I believe, in the packet further on, there's additional maps similar to what we.

Speaker 3 - 02:11:40

We saw from the. The prior individual that provided public comment, you know, asserting that there are various easements across the county related to other projects. It looks like there's, you know, additional maybe development information from. From other wind projects, other types of generation projects. We would object to that information even coming in through the. The public comment process and. And being docketed in the proceeding because it is irrelevant to the issues that the commission is to consider in this proceeding. It relates to other entities that are not a part of this proceeding and separate projects generally.

Speaker 1 - 02:12:24

All right, thank you. Your objections are noted for the record. As with the materials provided by mister Long, these will be included in. I think it's. Let's see. I think we're at exhibit twenty two, which will be the handouts that are received during public comments today.

Speaker 3 - 02:12:45

All right.

Speaker 1 - 02:12:45

Mister Pelham, any questions?

Speaker 2 - 02:12:47

I do. Good morning, Miss.

Speaker 4 - 02:12:50

Is it still morning?

Speaker 2 - 02:12:51

Oh, it's twelve noon. Good afternoon, mister Wald. Thanks for your testimony. As far as the conditional use permit.

Speaker 4 - 02:13:00

Denial letter and the explanation that you.

Speaker 2 - 02:13:03

Provided in your materials, I don't see a date on there. Do you know when that was sent?

Speaker 2 - 23:55

All right. Thank you.

Speaker 1 - 23:56

Thank you.

Speaker 2 - 24:12

Thank you.

Speaker 1 - 24:16

Van or something.

Speaker 2 - 24:19

Teacher's helper.

Speaker 1 - 24:20

Yeah.

Speaker 2 - 24:25

I'll have you start by stating your name for the record and spelling your last name.

Speaker 1 - 24:32

My name is Tim Leppard. L, E P P E R T.

Speaker 2 - 24:37

Mister Lippert, did you hear me go through the penalties for perjury earlier?

Speaker 1 - 24:41

Yes, I did.

Speaker 2 - 24:42

And do you understand what perjury is?

Speaker 1 - 24:43

Yes, I do.

Speaker 2 - 24:44

And being advised of the potential penalties for perjury, do you promise to tell the truth in this case today?

Speaker 1 - 24:49

Yes, I do.

Speaker 2 - 24:50

All right. Thank you. Go ahead.

Speaker 1 - 24:52

Okay. Gotta get my paperwork sorted out here. Well, I'm here today representing. Here it is Russell Township. So I'll say, I guess. Good afternoon. My name is Tim Leppert, Russell Township Zoning Administrator. I'm here on behalf of Russell Township. What I presented to you there is part of docket. This is PSC docket PU twenty five two hundred thirty six, the chapter four thousand nine hundred and twenty two siting docket for the proposed three hundred and forty five K fee. Jamestown to Ellendale line. Russell Township has submitted written filings in this docket, including a limited objection on need, a response to the applicant's HB twelve fifty eight zoning preemption request and questions. For the record, the Commission previously issued a CPCN for this same project in docket PU two thousand four hundred ninety one under chapter four thousand nine hundred and three.

Speaker 1 - 26:12

That CPCN was noticed by publication and Russell Township did not receive direct notice. The Commission's June eighteenth, twenty twenty five order leaving the CPCN in place is now under judicial review in Burley County District Court. Case zero eight two zero two five, CV zero two zero six eight Russell Township's request today is straightforward. In this four thousand nine hundred twenty two citing document, the commission should not treat the prior CPCN as conclusive proof of need. The Commission should require any need related showing in this record and issue a final decision with findings and reasons based on the evidence presented here. Russell Township's limited objection to reliance on PU two thousand four hundred ninety one CPCN as proof of need and reservation of rights.

Russell Township submits this limited objection for the record in the PSE docket PU.

Speaker 2 - 27:31

Twenty five, your honor, and Sorry to interrupt, mister Leppard. I guess I would just state that, you know, since the township isn't a party to this proceeding, they don't have the ability to lodge objections in this proceeding. To the extent that the Commission wants to accept these what I would consider to be public comments in the record as it has done for the other entities and individuals that have come up and provided them, that's one thing. But we would. We, number one, don't believe they need to be read into the record and second, would object to them because the entity does not have party status in this proceeding. Mister Lippard, you passed out these documents and they will become part of the record and the Commission's going to review them and read through them. Perhaps you could maybe just kind of summarize the township's objections rather than reading through these documents.

Speaker 2 - 28:32

I think that would be more helpful for the commissioners.

Speaker 1 - 28:34

Madam Judge, if I might speak. Thank you. The townships have never had a say before this day. We've never had a say in front of the PSC or anybody. This is our opportunity as townships to represent the township's view. I will. Respectfully object and ask to read them, but I understand for time limit on this. But we've never had a say here. The townships have never had an opportunity. Not once. This is the problem with this whole process. We didn't get a notice before you guys voted on granting them the cpcn. The townships were never notified. There was a simple notice in the newspapers and I looked and I checked. Your office directed the newspaper to specifically not put it in the public notice section, but to put it in the news section. Most people in my township don't even get the local paper. This was never. We have no notice of this. There was mister Weirs the other day insinuated in his testimony under oath that Russell Township did not publish our june seventeenth meeting in the paper in the local record.

Speaker 1 - 30:45

I have copies of those newspaper notices here. Today, that is our invitation to them to come to the meeting. As much notice as they gave us, we gave to everybody. Also. We complied with the law. And I guess I'm kind of, I kind of resent the statement by mister Weirs insinuating that we didn't without them even checking.

Speaker 2 - 31:22

Probably.

Speaker 1 - 31:23

I don't know if they did or not. They just made the statement. This is our only say, the township's only say. And they object as our zoning being unreasonable. I brought our comprehensive plan and zoning ordinance today. This was established in twenty eleven. Most of the townships in Russell Township's zoning goes back that far. I checked in our adjoining townships in the adjoining counties. Some of theirs goes back to nineteen seventy nine. They claim our zoning is unreasonable. These ordinances have been in place sometimes for almost forty years or forty years plus. What's unreasonable here that the township people want to protect themselves? Yes. We placed two year moratoriums on these projects because we wanted questions answered about safety. We are updating our zoning ordinance as our comprehensive plan which is recorded in the local courthouse.

Speaker 1 - 32:35

It's a legal document. This is a certified copy. We are updating our ordinances as of right now. We've already had our first meeting here to start the process. It's to upgrade our zoning. So what is unreasonable about townships wanting to protect its citizens? Our comprehensive. I mean our zoning ordinance in the section back has a standard section under issuing conditional use permits. If those standards aren't met, we as township officers, and I'm just a zoning person, so it's the township board that actually makes those decisions. They can't issue a conditional use permit unless those standards are met. Well now, so here comes House Bill twelve fifty eight. We believe this law to be unconstitutional. It's going to be challenged in court. That's what's going to happen. You cannot take away townships rights to regulate industry.

Speaker 1 - 34:03

And these legislators that have done this, we have found out. And I'll be submitting testimony in Jamestown to prove that they've done this for financial gain. I have the proof. I have the easements. They've signed easements. And for Otter Tail to say that it's a separate issue. It isn't a separate issue. We've got a consent agreement and I'll be putting that out in Jamestown between Otter Tail MDU and Spirit Wood Solar llc. They have a consent agreement to take that power from that solar field and put it on the Jetix line. It's mentioned in the consent agreement. This is not a power line being built for connecting the Grid. It's ironic that there's a data center in Ellendale where the transmission line ends in a substation and a crypto mining facility north of Jamestown next to a substation there. And now you've seen the maps. And now I'm going to produce this document Friday.

Exhibit 12

Burleigh County No.:
08-2025-CV-02068



Jamestown to Ellendale

**Consolidated Application to the
North Dakota Public Service
Commission for a Certificate of
Corridor Compatibility and Route
Permit**

345-kV Electric Transmission Line


**Stutsman, LaMoure, and Dickey Counties,
North Dakota**

August 2025



 www.JamestowntoEllendale.com

 connect@JamestowntoEllendale.com

 (888) 794-6243

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2.0 Need for facility

2.1 Benefit and need analysis

An application for a CPCN was filed by the Applicants in February 2024 in Case No. PU-24-091. The Commission approved the CPCN on November 20, 2024. The Commission upheld their approval of the CPCN on June 18, 2025.

As discussed during the CPCN proceeding, the Project offers significant reliability benefits to the local area by introducing a new 345-kV transmission source into the Jamestown 345-kV Substation and the Ellendale 345-kV Trans Substation. OTP experienced an extreme weather event in the form of an ice storm in December 2023 that resulted in the only two 345-kV transmission lines serving the Jamestown area being out of service simultaneously. At that time, the capability of the transmission system was significantly reduced and as a result, large customers in the Jamestown area, including Cavendish Farms, Green Bison, Dakota Spirit Ag and Applied Digital, were forced to operate at reduced levels in order to keep the compromised transmission system operating within reliable limits. The Project will provide a new transmission line to serve the Jamestown area that will not only offer additional redundancy but also increase system capability to avoid a similar circumstance in the future. Likewise, the Ellendale 345-kV Trans Substation is at the end of a radial 345-kV transmission line today that can create voltage and reliability issues in the Ellendale area if the existing radial 345-kV line from Big Stone South is out of service, as shown in Figure 2.1-1.

Furthermore, the Project is one of eighteen (18) MISO-approved, high-voltage transmission projects that are planned to enable more reliable and economic energy delivery throughout the Midwest (as shown in Figure 2.1-2). The 18 projects are a part of MISO's Long-Range Transmission Planning (LRTP) Tranche 1 Portfolio detailed in the addendum to MISO's 2021 Transmission Expansion Plan (MTEP21 Addendum) (MISO 2021).

As outlined in the MTEP21 Addendum, the existing 230-kV system in eastern North Dakota, eastern South Dakota, and west-central Minnesota is heavily constrained for many different seasons of the year. This existing 230-kV system plays a key role in transporting energy across a large geographical area as generation is exported out of North Dakota to locations south and east. The 230-kV system is at capacity during many times of the year and has been shown to experience reliability concerns not only for N-1 contingencies (failure of a single generator or transmission facility), but also for system intact conditions (all facilities in-service).² In addition, voltage depressions have been identified by MISO for the Red River Valley Area along the South Dakota, North Dakota, and Minnesota border.³ MISO's LRTP study has shown that the Project, in combination with the Big Stone South – Alexandria – Big Oaks 345-kV project, most effectively addresses these reliability concerns as compared to any other alternative transmission solutions. According to MISO, the Project provides additional outlets for North and South Dakota by tying two existing, 345-kV systems together while simultaneously unloading the existing, 230-kV system that is already at capacity and shows reliability concerns for

² MTEP21 Report Addendum: Section 6, Page 23

³ MTEP21 Report Addendum: Section 6, Page 24

N-1 outages (failure of a single generator or transmission facility) and system intact situations. The Project also addresses thermal and voltage issues for western Minnesota and the eastern Dakotas and will improve reliability across the greater eastern Dakotas and Minnesota and will address voltage depression concerns identified by MISO for the Red River Valley Area along the South Dakota, North Dakota, and Minnesota border. More specifically, in a letter from MISO to the Executive Secretary of the Commission dated October 14, 2024,⁴ MISO had identified that the Project, along with the Big Stone South – Alexandria – Big Oaks 345 kV project, alleviates excessive thermal loading on 40 existing lines and transformers, as well as mitigates 100 voltage issues resulting from N-1 contingency events and that these two projects also relieve thermal overloads on 80 existing lines and transformers and mitigates 99 voltage issues caused by N-1-1 contingencies. MISO further indicated that the highest N-1 thermal overloads in North Dakota that were addressed by these two projects were the Wahpeton 230/115 kV Transformer, Forman 230/115 kV Transformer, and the Forman 115 kV Substation bus tie. Likewise, MISO stated that the highest N-1-1 thermal overloads in North Dakota that were addressed by these two projects were the Forman 230/115 kV Transformer, Forman 115 kV Substation bus tie, Mandan – Napoleon 230 kV line, Wahpeton 230/115 kV Transformer, East Bismarck – Linton 115 kV line, Ellendale 230/115 kV Transformer, and the Hankinson – Wahpeton 230 kV line.

The MTEP21 Addendum also outlines that the Project, in combination with the other seventeen (17) transmission projects in the Tranche 1 portfolio, will enable a more efficient delivery of energy from low-cost generators than the existing transmission system. The Tranche 1 portfolio provides for a more cost-effective regional build-out of generation resources that will not only better utilize the existing generation resources but also allow for the continued interconnection of new generation resources. In addition, the Tranche 1 portfolio alleviates congestion for a more efficient dispatch of the energy market by allowing lower cost generation resources to displace more costly resources to meet energy needs. MISO's analysis also identified additional economic value from the Tranche 1 portfolio by: (1) avoiding future transmission investment that would have been needed without the Tranche 1 portfolio, (2) reducing resource adequacy requirements that defers capital investment in new generation resources, and (3) avoiding load shedding that may arise due to severe weather events. When the economic benefits of the Tranche 1 portfolio are compared to the present value of the revenue requirements, the portfolio produces total benefits between 2.6 to 3.8 times greater than the costs across the MISO Midwest Subregion on a present value basis over 20 years.⁵ On a more granular level, the benefit to cost ratio for Zone 1⁶ was between 2.8 to 4.0 times greater than the present value of the LRTP Tranche 1 portfolio costs on a present value basis over 20 years.⁷

⁴ Case No. PU-24-091, Docket No. 19

⁵ *Id.*, Executive Summary, pg. 4.

⁶ Zone 1 is comprised of MISO member companies within Minnesota, eastern Montana, North Dakota, South Dakota, and western Wisconsin.

⁷ *Id.* The LRTP Tranche 1: Detailed Business Case Analysis located at: <https://www.misoenergy.org/planning/long-range-transmission-planning/> (> under "Tranche 1 – Approved July 2022" and > "LRTP Tranche 1: Detailed Business Case Analysis"), its "Waterfall" tab, provides the reader with the ability to peel back the sources of the benefits. For example, peeling back the decarbonization benefit metric for Zone 1 results in a benefit to cost ratio of between 2.6 and 3.0

Exhibit 13

Burleigh County No.:
08-2025-CV-02068

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

Appellants,

v.

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

Appellees.

**MOTION TO STAY PUBLIC SERVICE COMMISSION PROCEEDINGS
UNDER N.D.C.C. CH. 49-22**

TO: The North Dakota Public Service Commission, North Dakota Attorney General Drew Wrigley, Otter Tail Power Company, Montana Dakota Utilities Co., and their respective counsel of record:

PLEASE TAKE NOTICE that Appellants, by and through counsel, hereby move the Court for an Order staying further proceedings by the North Dakota Public Service Commission under N.D.C.C. ch. 49-22 relating to the 345kV transmission line project between Jamestown and Ellendale, pending resolution of this appeal challenging the Public Service Commission's statutory authority to issue a Certificate of Public Convenience and Necessity under N.D.C.C. ch. 49-03 for a high-voltage transmission line governed by N.D.C.C. ch. 49-22.

Pursuant to N.D.R.Ct. 3.2(a)(3), Appellants respectfully request oral argument on this motion and are available to appear by Zoom at the Court's convenience.

This motion is supported by the accompanying memorandum of law, the record in this case, and such additional argument or evidence as may be presented at hearing.

Dated: August 6, 2025

Respectfully submitted,

By: /s/ Douglas J. Nill

Douglas J. Nill (ND # P00392)

DOUGLAS J. NILL, PLLC

d/b/a FARMLAW

1850 Fifth Street Towers

150 South Fifth Street

Minneapolis, MN 55402

(612) 573-3669

dnill@farmlaw.com

Steven J. Leibel (ND # 07361)

KNOLL LEIBEL LLP

P. O. Box 858

1915 N. Kavaney Drive, Ste. 3

Bismarck, ND 58501

(701) 255-2010

steve@bismarck-attorneys.com

Counsel for the Appellants

Exhibit 14

Burleigh County No.:
08-2025-CV-02068

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.
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Wald, Weston Wald, and Willowbank
Hutterian Brethren Association,

Case No. 08-2025-CV-02068

Appellants,

v.

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

Appellees.

**APPELLANTS' REPLY IN SUPPORT OF MOTION TO STAY
PROCEEDINGS UNDER N.D.C.C. CHAPTER 49-22
PENDING APPEAL**

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INTRODUCTION

Despite extensive briefing by the PSC and the Utilities, neither addresses the threshold statutory question at the core of this appeal: whether the Commission may authorize a 345-kV electric transmission facility outside the exclusive siting framework of N.D.C.C. ch. 49-22 by first issuing a Certificate of Public Convenience and Necessity (“CPCN”) under ch. 49-03 and then relying on that order in a subsequent 49-22 docket.

The statutes answer this question clearly. For 115-kV-and-above lines, ch. 49-22 is the Legislature’s exclusive, integrated process. A utility may not “begin construction” without a route or site permit “pursuant to this chapter,” and the Commission’s decision must be guided by a record that includes the applicant’s statement of need and detailed findings under § 49-22-09. A prior “need” determination under ch. 49-03 bypasses this required process and is fundamentally incompatible with the framework the Legislature enacted.

The present case illustrates why this matters. The Utilities faced a difficult task: to convince the PSC that there is a genuine public need within North Dakota for a new 345-kV transmission line running from Ellendale to Jamestown—when, in fact, no such need exists. The true purpose of the line is to serve private wind developers west and north of Ellendale and to

facilitate the export of electricity to out-of-state markets via Jamestown and eastern transmission corridors. *See* Oct. 16, 2024 Memorandum by PSC Public Utility Analyst Christopher C. Hanson addressing an October 14, 2024 letter from Jeremiah Doner, the Director of Cost Allocation with MISA: “it creates *additional capacity for more wind [generation] to be transmitted from North Dakota eastward.*” (Emphasis added). North Dakota ratepayers bear the cost, while out-of-state beneficiaries reap the reward. The supposed transmission constraints are speculative, contingent on future generation projects, and do not support a present showing of necessity. Even the project’s name—“Jamestown to Ellendale”—misrepresents its function, masking its true purpose: to evacuate power from western Dickey County toward Minnesota and beyond.

Faced with these realities, the Utilities developed a strategy: avoid the rigorous “need” showing required under ch. 49-22 by obtaining a CPCN under ch. 49-03, a statute historically concerned with territorial disputes between utilities and the extension of existing lines, not with new high-voltage transmission. Chapter 49-03 contains no meaningful protections for landowners or local governments and was never intended to authorize CPCNs for new 345-kV lines. The Utilities are now attempting to import the

ch. 49-03 CPCN, an order issued by the PSC on November 20, 2024 with the validity of that order challenged through this appeal, into their August 8, 2025 ch. 49-22 siting application; thus, short-circuiting the process the Legislature mandated.

That strategy cannot stand. The Jamestown–Ellendale line is a new “electric transmission facility” under ch. 49-22—not a territorial encroachment under ch. 49-03. These statutes are not two stages of a single process. A CPCN under ch. 49-03 cannot pre-determine “need” under ch. 49-22, and the Commission lacks authority to issue such a certificate for this type of project.

The Utilities’ argument rests on a misreading of *Matter of Nebraska Pub. Power Dist.*, 330 N.W.2d 143, 148-49 (N.D. 1983), which states that ch. 49-22 provides “no direction” for the Commission to assess need. From that, the Utilities extrapolate that they had no choice but to seek a CPCN under ch. 49-03, because the Commission allegedly lacks authority to determine need under ch. 49-22. That interpretation cannot be squared with the statutory text. Chapter 49-22 requires applicants to submit a “statement explaining the need for the facility” and directs the Commission to evaluate routing based on criteria that inherently implicate need, including system

configuration, alternatives, and consumer demand. The Legislature placed the need determination firmly within ch. 49-22—not outside it.

The legislative history confirms this. Chapter 49-22 was enacted in 1975 as an emergency measure—the Energy Conversion and Transmission Facility Siting Act—to ensure that large energy infrastructure projects were subject to a comprehensive and public-focused process, including an assessment of need.

To the extent *Nebraska* is read to prohibit the Commission from evaluating need as directed by ch. 49-22, it should be reconsidered and not followed.

This brings us to the present motion. On August 6, 2025, Appellants moved to stay proceedings under ch. 49-22 in light of the Utilities’ impending August 8 siting application, which now repeatedly cites and relies on the disputed November 20, 2024 CPCN. That citation alone underscores the danger: the Commission is being asked to presuppose the legality of an order that is under direct appellate review. N.D.C.C. § 28-32-48 permits this Court to grant stay relief “upon application and after a hearing or the submission of briefs.” The statute does not require prior certification of the administrative record, especially for a threshold question of statutory authority.

Because the Utilities' August 8, 2025 siting application under ch. 49-22 repeatedly references and relies upon the disputed November 20, 2024 CPCN, a stay is necessary to preserve the integrity of the statutory process. The 49-03 order cannot serve as the foundation for the 49-22 proceeding while its legality remains unresolved in this appeal. Judicial intervention is required to ensure that the siting record develops in accordance with the framework the Legislature enacted for high-voltage transmission projects, without distortion from a legally defective CPCN.

BACKGROUND

The controversy at the heart of this proceeding is whether the North Dakota Public Service Commission may approve a high-voltage transmission line based on speculative, future wind development while bypassing the statutory safeguards enacted for projects of this magnitude. Appellants contend that the proposed 345kV line from Ellendale to Jamestown is not driven by any verified public need within North Dakota, but by private developers and out-of-state energy exporters seeking to shift financial and environmental burdens onto North Dakota landowners and ratepayers. The November 20 Order enabling this infrastructure giveaway was issued without findings of fact, legal conclusions, or statutory compliance—making

it legally defective and not a final agency action.

This case is not about stopping energy development. It is about ensuring that the siting process for high-voltage transmission lines respects due process, local decision-making, and the plain requirements of ch. 49-22. Until the Commission's earlier Order is tested in court, allowing the 49-22 proceeding to move forward would distort the record, sideline township decisions, and entrench a project whose justification remains unproven. The stay motion seeks to prevent that outcome and preserve the integrity of the statutory process.

ARGUMENT

- I. **The Utilities improperly invoke ch. 49-03—a statute designed for territorial disputes—to short-circuit the public-need determination required by ch. 49-22.**
 - A. **Chapter 49-03 is intended to prevent utilities from unfairly interfering with the service areas of other utilities.**

N.D.C.C. ch. 49-03, known as the Territorial Integrity Act, was enacted to regulate competition among utilities by preventing unfair encroachments into each other's service territories. It requires a utility to obtain Commission approval before constructing or extending facilities outside municipal limits or to serve new customers. *See* N.D.C.C. § 49-03-01.

The purpose of a certificate under ch. 49-03 is not to establish the necessity of new transmission infrastructure, but to resolve disputes over overlapping service and avoid inefficient duplication. As the North Dakota Supreme Court explained, customer preference is only a “minor consideration” that “cannot prevail where economic factors, such as relative costs and wasteful duplication, provide other criteria for choice.” *Application of Otter Tail Power Co.*, 451 N.W.2d 95, 104 (N.D. 1990). Legislative history likewise confirms that “the primary purpose of the Act was to keep to a minimum wasteful duplication of capital-intensive utility services and conflicts between suppliers of electricity.” N.D. Legis. Council, *Territorial Integrity Act – History and Operation* (Oct. 1997).

B. The 345kV Jamestown-Ellendale line is a new transmission facility, not a territorial intrusion.

The 345kV Jamestown–Ellendale high-voltage line at issue here—a new line conceived by MISO to carry electricity from wind projects west of Ellendale to Jamestown and then eastward into Minnesota—is not a mere territorial intrusion into an existing system or an extension of an existing line. It is a brand-new transmission facility that falls squarely within the scope of ch. 49-22.

By statute, an “electric transmission facility” is “an electric

transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts.” N.D.C.C. § 49-22-03(7). Section 49-22-07(1) further provides that “[a] utility may not begin construction of an electric energy conversion facility or an electric transmission facility in the state without first having obtained a certificate of site compatibility or a route permit from the commission pursuant to this chapter.”

This framework is not discretionary. Chapter 49-22 establishes a mandatory, front-end process for high-voltage lines that exceed the statutory threshold. It requires the utility to obtain a route permit before construction begins and prescribes a comprehensive procedure: environmental review, landowner notice, public hearings, detailed application submissions under § 49-22-08, and explicit findings of fact under § 49-22-09.

C. Chapters 49-03 and 49-22 are not two parts of a single process.

The Utilities contend that because ch. 49-03 contains no express prohibition, they may seek a CPCN for a high-voltage transmission facility under that statute. But the absence of an express bar does not equate to legislative approval. The statutory framework and policy statement in § 49-22-02 make clear that ch. 49-22 was designed to govern both the initiation and completion of the siting process for new high-voltage lines. It is a

comprehensive, exclusive process—not a supplemental routing step to be layered onto a prior CPCN granted under a different statute.

Treating the process as bifurcated—first obtaining a CPCN under ch. 49-03 and then importing that determination into a ch. 49-22 route application—undermines the Legislature’s scheme. The requirements of ch. 49-22 are not mere formalities. They are substantive safeguards for landowners, local governments, and the public. Allowing a CPCN under 49-03 to predetermine “necessity” reduces the subsequent ch. 49-22 proceeding to a rubber stamp.

By statute, the route-permitting process expressly requires consideration of need in light of alternatives, environmental compatibility, and system configuration. *See* N.D.C.C. § 49-22-09(1)(a), (b), (e), (f), (h). That analysis cannot be meaningful if the Commission has already resolved the threshold question of necessity under ch. 49-03 before the siting process begins.

D. A CPCN issued under ch. 49-03 cannot predetermine need in a ch. 49-22 siting proceeding.

Even if ch. 49-03 may apply in other contexts, it cannot be used to resolve “need” for a new 345-kV line outside the integrated framework the Legislature established in ch. 49-22. By statute, a ch. 49-22 application must

include “[a] statement explaining the need for the facility.” N.D.C.C. § 49-22-08(c). The Commission is then required to make findings guided by the statutory factors, including alternatives, system configuration, and environmental compatibility. N.D.C.C. § 49-22-09.

Allowing a prior CPCN under ch. 49-03 to fix “need” before the ch. 49-22 hearing prejudices that evaluation. It strips the siting process of its substance and reduces it to a procedural formality. That outcome is irreconcilable with the text, structure, and purpose of ch. 49-22, which was enacted to ensure that high-voltage transmission lines are fully justified and publicly scrutinized before construction begins.

E. *Nebraska Pub. Power Dist.* should not control; to the extent it excludes a need determination from ch. 49-22, it should be reconsidered.

Nebraska Pub. Power Dist., 330 N.W.2d at 148-49, is cited by the Appellees for the proposition that the Siting Act contains “no direction” to assess need. That interpretation cannot be reconciled with the statute’s language. Chapter 49-22 requires an applicant to submit “a statement explaining the need for the facility.” N.D.C.C. § 49-22-08(c). It also directs the Commission to base its route decision on factors that inherently involve need, including alternatives, efficient use of resources, system configuration, and

consumer demand. N.D.C.C. § 49-22-09. These provisions place the need inquiry within the ch. 49-22 record, not outside it.

To the extent *Nebraska* is read to prohibit the Commission from considering need as the statute itself requires, it misreads the Legislature's design. Stare decisis does not entrench a construction that contradicts statutory text or renders express provisions superfluous. The Court should reaffirm that need is an essential component of the ch. 49-22 record, and that it cannot be predetermined under ch. 49-03 and then imported to constrain the 49-22 proceeding.

1. The statutory text of ch. 49-22 requires consideration of public need.

Chapter 49-22 itself makes clear that public need is part of the siting analysis. The Legislature's policy statement provides:

"[I]t is a policy of this state to site energy conversion facilities and to route transmission facilities in an orderly manner compatible with environmental preservation and the *efficient use of resources*." N.D.C.C. § 49-22-02 (emphasis added).

The "efficient use of resources" necessarily reflects a need inquiry, balancing demand against environmental and economic impacts. The statute reinforces this requirement in multiple provisions. Section 49-22-08(1)(c) requires an applicant to submit "[a] statement explaining the need for the

facility.” Section 49-22-09(1) directs the Commission to be guided by specific considerations in reaching its decision, including § 49-22-09(1)(e), which requires analysis of “[a]lternatives to the proposed site, corridor, or route which are developed during the hearing process and which minimize adverse effects.” And § 49-22-16(2)(c) identifies the “needs of consumers” as a factor to be considered.

Taken together, these provisions demonstrate that a ch. 49-22 proceeding necessarily entails an evaluation of public need, grounded in statutory text and not imported from any other chapter.

2. The legislative history confirms that public need is central to the siting process.

The legislative history of ch. 49-22, enacted as an emergency measure effective April 9, 1975 (1975 N.D. Sess. Laws ch. 436), underscores that route or site approval for high-voltage lines requires a showing of public need.

For example, in testimony on S.B. 2050 before the House Committee on Natural Resources, Ken Ziegler of Basin Electric emphasized that public review was essential so that “the total public convenience and necessity can finally be met.” Statement on S.B. 2050 (Mar. 6, 1975).

Legislative Council materials from the same period confirm the same point. A January 1974 background report explained that:

“Construction of a major utility transmission facility cannot be commenced without obtaining a certificate of environmental compatibility and public need. Applications for the certificate are to contain ... a statement of need ... and a description of any reasonable alternative locations. Prior to granting or modifying the application, the Commission must find a basis of need for the facility [and] the nature of the probable environmental impact...” Legislative Council Staff, *Background Information on Power Transmission Lines and Land Disturbing Operations* 4 (Jan. 1974) (emphasis added).

This history demonstrates that the Legislature intended public need to be central to the ch. 49-22 process, and that no high-voltage line could be approved without it. Appellants’ appeal therefore raises a threshold issue of statutory construction: whether the PSC acted ultra vires in granting a CPCN under the inapplicable Territorial Integrity Act. That issue must be resolved by this Court before the PSC proceeds under ch. 49-22 in reliance on a legally defective CPCN.

F. If the Utilities believe the CPCN has no bearing on the 49-22 process, they should stipulate to rescind it.

If Appellees truly believe the November 20, 2024 CPCN is irrelevant to the ch. 49-22 application they filed on August 8, 2025, the obvious remedy would be to stipulate to rescind it. They have not. Instead, they pursue a two-track theory with no basis in statute, while continuing to rely on the CPCN as the foundation of their current ch. 49-22 application. That is precisely why a stay is necessary.

Under N.D.C.C. § 28-32-48, this Court may stay the enforcement or effect of an administrative order pending appeal. The Utilities' siting application cites the CPCN ten times, including for "benefit and need." This is telling: on the one hand, the Utilities invoke *Nebraska Pub. Power Dist.* to argue that ch. 49-22 excludes any need determination; on the other, they rely on the CPCN as proof of need in the very 49-22 proceeding. Because that order remains contested, the Court should stay its effect and prevent it from being relied upon in the 49-22 docket until this threshold legality is resolved.

The Utilities have an easy remedy. They should stipulate to rescind the November 20, 2024 CPCN under ch. 49-03 and proceed solely under ch. 49-22 with their August 8, 2025 application. That would allow the siting process to move forward correctly while this appeal proceeds. If, however, the Utilities refuse to abandon their improper CPCN, the Court should grant Appellants' motion to stay the ch. 49-22 proceedings until the appeal is resolved.

II. This Court has authority to stay the PSC's 49-22 proceeding until the legality of the CPCN is resolved on appeal.

North Dakota's Administrative Agencies Practice Act authorizes a stay "upon application and after a hearing or the submission of briefs," and permits the Court to impose "terms and conditions" as appropriate. N.D.C.C. § 28-32-48. The statute allows the Court to stay "the enforcement of the

order”—and, critically, the order’s effect. Staying the effect of the CPCN means the PSC cannot use that order as a predicate in the ch. 49-22 docket while this appeal is pending.

Courts also retain inherent equitable authority to grant interim relief necessary to preserve the integrity of judicial review. See, e.g., *Nodak Mut. Ins. Co. v. Ward County Farm Bureau*, 676 N.W.2d 752, 761 (N.D. 2004) (recognizing equitable power to preserve the status quo); *Vorachek v. Citizens State Bank*, 461 N.W.2d 580, 585 (N.D. 1990).

The PSC’s argument that the Court lacks jurisdiction to “stay a separate proceeding” misreads § 28-32-48. This Court is not asked to stay a docket; it is asked to stay the effect of the CPCN order now under appeal. Because the Utilities’ ch. 49-22 filing repeatedly relies on that CPCN, staying its effect necessarily pauses further steps in the 49-22 process until the CPCN’s legality is resolved. That is precisely what § 28-32-48 contemplates. See Prayer for Relief ¶¶ 1–4 for the specific relief requested.

III. Standing and ripeness are satisfied.

Appellants are parties to the PSC’s June 18, 2025 order denying intervention and reconsideration, and they timely appealed under N.D.C.C. § 28-32-42(1). The present stay request targets the effect of the CPCN at

issue in that same docket, in order to preserve meaningful appellate relief.

Even the Utilities' own authority confirms that a denied intervenor may immediately appeal. *Energy Transfer LP v. N.D. Private Investigative & Sec. Bd.*, 2022 ND 85, ¶ 10, 973 N.W.2d 394, 399 (recognizing that a failed intervenor may immediately appeal a denial of intervention). The stay simply preserves this Court's jurisdiction to grant effective relief on the legal question squarely presented.

IV. Appellants are likely to succeed on the merits.

A. Chapter 49-22 is the exclusive statutory framework for high-voltage transmission lines.

The Legislature adopted a comprehensive siting regime for “electric transmission facilities,” defined to include lines “in excess of one hundred fifteen kilovolts.” N.D.C.C. § 49-22-03(7). A utility “may not begin construction” of such a facility “without first having obtained a certificate of site compatibility or a route permit from the commission pursuant to this chapter.” § 49-22-07(1) (emphasis added). The Act requires the Commission to develop a full evidentiary record and to make a “finding with reasons” on the proposed route after weighing the statutory factors. *See* §§ 49-22-08(6), 49-22-08.1, 49-22-09.

That integrated design leaves no room for a back-door “need”

determination under ch. 49-03, a statute intended to govern territorial disputes between utilities. Using ch. 49-03 to predetermine need both predates and prejudices the ch. 49-22 process. The PSC's approach inverts the statute: it invites a rapid CPCN under ch. 49-03 and relegates the ch. 49-22 process to a post hoc formality. That is not what the Legislature enacted.

The inconsistency is also evident in practice. Basin Electric Power Cooperative, for example, recently filed a siting application for a 345-kV line under ch. 49-22 in PU-24-361, precisely as the statute requires. Yet Otter Tail Power and MDU were allowed to pursue a nearly identical project under ch. 49-03 alone, bypassing the procedural safeguards of ch. 49-22, including the public need determination. The PSC has offered no explanation for this discrepancy. If one utility must comply with the full siting statute at the outset, why were others permitted to avoid it?

B. The Jamestown–Ellendale line is a new 345-kV facility, not an extension subject to ch. 49-03.

The Territorial Integrity Act, ch. 49-03, simply does not apply to the Jamestown–Ellendale line. It is not an “extension” of an existing system, but a new high-voltage transmission facility subject to ch. 49-22. The Utilities used ch. 49-03 precisely because they knew their project would not withstand the scrutiny of a ch. 49-22 need analysis. They sought a CPCN under an

inapplicable statute in order to import that determination into the siting docket and shift the financial burden to North Dakota ratepayers.

As alleged in the petition, landowners and townships will show that the project does not serve a public necessity but instead represents an infrastructure giveaway to private wind developers seeking to export power out of state. That is not the purpose of a CPCN and it is not what the Legislature authorized under ch. 49-22.

C. The Utilities' own 49-22 application proves reliance on the disputed CPCN and the need for a stay.

The August 8, 2025 siting application expressly relies on the November 20, 2024 CPCN, citing it ten times, including in the “Benefit and Need Analysis”:

“An application for a CPCN was filed by the Applicants in February 2024 in Case No. PU-24-091. The Commission approved the CPCN on November 20, 2024. The Commission upheld their approval of the CPCN on June 18, 2025.” (Siting App. § 2.1).

The application uses the CPCN—and the PSC’s June 18, 2025 refusal to revisit it—to anchor its narrative of “need” and “benefit” under ch. 49-22. Proceeding now would embed the disputed CPCN inside the siting record, effectively bootstrapping an unlawful order into the new docket and undermining appellate review.

That is precisely what N.D.C.C. § 28-32-48 is designed to prevent. The statute authorizes the Court to stay the “enforcement ... or ... effect” of an administrative order pending appeal. A stay here is necessary to prevent the contested CPCN from shaping the ch. 49-22 process before this Court has determined whether the PSC had authority to issue it under ch. 49-03.

D. *Nebraska Pub. Power Dist.* does not bar consideration of need under ch. 49-22 and should not be followed.

Appellees’ reliance on *Nebraska Pub. Power Dist.*, 330 N.W.2d at 148-49, is misplaced. That case does not authorize importing a need determination from an inapplicable statute. The suggestion that there is “no direction in the Siting Act or its legislative history giving the PSC the authority to determine if a need has been shown” is contrary to statutory text and history, and merits reconsideration.

The prejudice here is not abstract. The Utilities’ August 8, 2025 siting application cites the disputed CPCN ten times, including in § 2.1’s “Benefit and Need Analysis.” Proceeding on that footing would allow the ch. 49-03 order to shape the ch. 49-22 record and outcomes. N.D.C.C. § 28-32-48 squarely allows this Court to stay the effect of the order on appeal. Without a stay, the PSC can proceed under ch. 49-22 while the lawfulness of the CPCN remains unresolved, prejudicing Appellants’ rights, creating jurisdictional

confusion, and risking mootness by treating the disputed determination of need as settled fact.

V. Irreparable harm, balance of harms, and public interest favor a stay, and no bond is warranted.

Irreparable harm. Without a stay, Appellants must expend scarce resources litigating a siting docket built on a disputed CPCN, face the compounding effect of administrative momentum, and risk practical mootness. These are classic grounds for interim relief to preserve meaningful judicial review.

Balance of harms. Any incremental delay is self-inflicted. The Utilities chose to pursue a CPCN under an inapplicable statute. They cannot now claim prejudice from pausing to resolve the statutory-authority question their own strategy created.

Public interest. The public has a compelling interest in ensuring the PSC follows the Legislature's exclusive siting framework for 115-kV-and-above facilities. That framework requires notice, hearings, and route findings "with reasons." N.D.C.C. §§ 49-22-02, 49-22-08, 49-22-08.1.

Bond. Section 28-32-48 authorizes a stay and permits the Court to impose conditions. In a public-law appeal of this nature, where the alleged harms are speculative and self-created, no bond is warranted.

VI. The PSC's record-based objection is meritless and does not bar a stay.

The Commission contends that the Court cannot consider a stay without a certified record. PSC Resp. ¶¶ 6–8. That is incorrect under N.D.C.C. § 28-32-48, which authorizes relief based on “an application and ... hearing or the submission of briefs” and expressly permits the Court to stay not only enforcement but also the *effect* of the order. The objection fails for two independent reasons.

First, the stay statute imposes no record-certification requirement. Section 28-32-48 sets the standard: whether an application and supporting briefs demonstrate grounds for interim relief. Nothing in the text conditions relief on prior certification of the administrative record. Accepting the PSC's argument would effectively shield unlawful agency orders from temporary review whenever the agency delays record preparation.

Second, even if record status mattered, Appellants have complied with all obligations under N.D.C.C. § 28-32-44. The PSC issued its notice of estimated costs on August 13, 2025. Appellants remitted the \$1,200 payment on August 19—well within the 14-day statutory window. *See* N.D. R. App. P. 10. The Commission's August 20 filing suggesting otherwise was inaccurate. *See* Second Declaration of Douglas J. Nill, Exs. 2–4 (August 14 email

exchange and August 19 transmittal letter).

Appellants have met their statutory obligations. Any delay in record certification rests solely with the Commission, and it provides no basis to deny interim relief. The absence of a certified record is no bar to this Court's authority to stay the effect of the CPCN now in order to preserve appellate jurisdiction.

CONCLUSION

This appeal presents a straightforward threshold question: may the PSC issue a stand-alone CPCN under ch. 49-03 for a 345-kV line and then rely on that order while commencing a ch. 49-22 siting docket? The statutory framework answers no. The Court should stay the effect of the CPCN and, as a necessary consequence, stay PSC proceedings under ch. 49-22 for this project until the CPCN's legality is resolved.

PRAYER FOR RELIEF

For these reasons, Appellants respectfully request that the Court:

1. Stay any proceedings by the Public Service Commission under N.D.C.C. ch. 49-22 relating to the proposed Jamestown–Ellendale 345-kV transmission line;
2. Alternatively, enjoin the PSC from acting on any 49-22 siting application for the project until this Court resolves Appellants' pending appeal;

3. Order that no bond is required under N.D.C.C. § 28-32-48; and
4. Grant such other and further relief as the Court deems just and proper.

Dated: August 27, 2025

Respectfully submitted,

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Exhibit 15

Burleigh County No.:
08-2025-CV-02068

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
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Inna N. Swiontek, David Wald, Holly
Wald, Weston Wald, and Willowbank
Hutterian Brethren Association,

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Hon. Bobbi Weiler

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North Dakota Public Service
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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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