

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Wano Township, Willowbank)	
Township, Russell Township, Corwin)	
Township, Valley Township, Mike)	Supreme Court No. 20260059
Bartel, Patty Bartel, Richard Long,)	
Susan R. Long, Steven Nelson, Julia)	Burleigh County District Court
Nelson, Phyllis P. Otterness, Patricia)	Civil No. 08-2025-CV-02068
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.)	

**MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR AN EXTENSION OF
THE TIME TO RESPOND TO MOTION FOR STAY**

[¶1.] Otter Tail Power Company and Montana-Dakota Utilities Co. move the Court, pursuant to N.D.R.App.P. 27, to dismiss the appeal of Appellants Wano Township, et al., for lack of jurisdiction. This Court lacks jurisdiction over the appeal, because no judgment has been entered by the district court.

[¶2.] In North Dakota, the right to appeal “is purely statutory,” and the Court “lack[s] jurisdiction over an appeal if the statutory requirements are not satisfied.” *Jassek v. N.D.*

Workforce Safety & Ins., 2013 ND 69, ¶ 6, 830 N.W.2d 582; *Yalartai v. Miller*, 2024 ND 3, ¶ 5, 1 N.W.3d 600. Section 49-05-15, N.D.C.C., governs appeals from orders of the Public Service Commission (the “Commission”) to the Court, and provides: “The commission, the public utility, the complainant, or any other interested person, **after the entry of judgment in the district court** upon an appeal from the order of the commission, may prosecute an appeal to the supreme court of this state. Such appeal shall be taken as prescribed in chapter 28-32.” N.D.C.C. § 49-05-15 (emphasis added). Under N.D.C.C. § 28-32-49, the Court has jurisdiction to review “[t]he **judgment** of the district court in an appeal from an order . . . [of] the commission,” and it provides that a party “may take an appeal **from the final judgment** of the district court to the supreme court.” N.D.C.C. § 28-32-49 (emphasis added). The Court has held that N.D.C.C. § 28-32-49 “governs administrative agency appeals to this Court and authorizes appeals only from judgments.” *Schlittenhart v. N.D. Dep’t of Transp.*, 2015 ND 179, ¶ 8, 865 N.W.2d 825 (treating appeal from order as an appeal from a consistent judgment). In other words, appeal from a judgment is a jurisdictional issue and not a mere procedural technicality.

[¶3.] Here, the Court lacks jurisdiction over the appeal, because Appellants, through their counsel, appealed from the district court’s order without waiting for entry of judgment. *See* Burleigh County Case No. 08-2025-CV-02068. As of the filing of this Motion to Dismiss, the district court has not entered judgment. *See id.* For these reasons, Otter Tail Power Company and Montana-Dakota Utilities Co. respectfully move the Court to dismiss Appellants’ appeal for lack of jurisdiction and deny Appellants’ motion for stay as moot. Appellants may file a new appeal and motion once the district court enters judgment. At minimum, if the appeal is not dismissed, the Court should remand for entry of judgment

and stay all pending deadlines in the appeal pending a notice of appeal from a final judgment.

[¶4.] In the alternative, should the Court decline to dismiss the appeal or remand to the district court, Otter Tail Power Company and Montana-Dakota Utilities Co. move under N.D.R.App.P. 26(b) for a seven-day extension of time, through March 10, 2026, for Appellees to respond to the Appellants' Motion for Stay Pending Appeal. Appellants filed the motion on February 17, 2026, resulting in a 14-day deadline, through March 3, 2026, for Appellees to respond, unless the Court orders otherwise. N.D.R.App. 27(b). The motion is 40 pages long in total, such that it would exceed the length limitation if it were a merits brief, and the motion argues merits issues at length. Appellees would have 30 days to respond if these arguments were raised in a merits brief, and Appellees should not be made to respond to such arguments in less than half that time. Moreover, the motion covers additional issues and is supported by a declaration and exhibits totaling 139 pages in length. A short extension will enable Appellees the time they need to review the voluminous filing and respond appropriately. Accordingly, good cause exists for a 7-day extension of the time to respond, through March 10, 2026, if the appeal is not dismissed or remanded.

DATED this 20th day of February, 2026.

/s/ Paul J. Forster
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CERTIFICATE OF COMPLIANCE WITH RULE 32

[¶1] I certify that this Motion complies with the typeface requirements of N.D.R.App.P. 32 and the type style requirements of that rule, because it has been prepared in a proportionally-spaced typeface using a Microsoft Word, Times New Roman, 12 point font.

By: /s/ Paul J. Forster
Paul J. Forster (#07398)

CERTIFICATE OF SERVICE

[¶1] I hereby certify that on February 20, 2026, I electronically filed the Motion to Dismiss or, in the Alternative, for an Extension of the Time to Respond to Motion for Stay with the Clerk of Court through the North Dakota Supreme Court E-Filing Portal, and electronically served through the North Dakota Supreme Court E-Filing Portal and/or by emailing a true and correct copy thereof as follows:

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By: /s/ Paul J. Forster
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