

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Wano Township, Willowbank Township,
Russell Township, Corwin Township,
Valley Township, Mike and Patty Bartel,
Richard and Susan R. Long, Steven and
Julia Nelson, Phyllis P. Otterness and
Patricia A. Vick, Brandon and Tausha
Schweigert, Shockman Farm Partnership,
LLLP, Debra Sue Wald, Lucas and Jill Wald,
Partnership, LLLP, Debra Sue Wald,
Tim Leppert, Orr Farms, Steve M. and
Sandra J. Rupp, David A. and Denette
M. Schweigert, Allen D. and Inna N. Swiontek,
David and Holly Wald, Weston Wald, and
Willowbank Hutterian Brethren Association,

Supreme Court No.:
20260059

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

Hon. Bobbi Weiler

Appellants,

v.

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

Appellees.

**APPELLANTS' RESPONSE TO MOTION TO DISMISS OR, IN THE
ALTERNATIVE, FOR EXTENSION**

[¶1] Appellants do not dispute that an appeal in an administrative
agency case is taken from the district court's judgment. Appellants are acting

promptly to cure the absence of a separately entered judgment consistent with the district court's February 2, 2026 dispositive order.

[¶2] Dismissal is unnecessary. The district court's February 2, 2026 order fully disposes of the appeal and specifies the relief. The remaining step, entry of a separate consistent judgment, is a correctable ministerial omission. This Court has held that "an administrative agency appeal from an order is properly before this Court if the record contains a judgment consistent with the order," and it will treat a notice of appeal filed from the order as being from the subsequently entered consistent judgment. *Schlittenhart v. N.D. Dep't of Transp.*, 2015 ND 179, ¶¶ 8–9, 865 N.W.2d 825.

[¶3] Appellants are contemporaneously moving the district court for prompt entry of judgment consistent with the February 2, 2026 order under N.D.R.Civ.P. 58. Upon entry, Appellants will promptly file an amended notice of appeal from that judgment to eliminate any possible procedural dispute.

[¶4] Appellants therefore request that the Court deny the motion to dismiss and hold the motion in abeyance pending prompt entry of a consistent judgment, treating the appeal as taken from that judgment consistent with *Schlittenhart*. In the alternative, Appellants request any procedural directive the Court deems appropriate to facilitate immediate

entry of judgment without requiring dismissal and refiling.

[¶5] Appellees alternatively request a seven-day extension, through March 10, 2026, to respond to Appellants' Motion for Stay. Appellants oppose that request because the stay motion seeks time-sensitive interim protection to preserve meaningful appellate relief while the Commission continues to process the related siting docket, PU-25-236. The requested stay is narrow. It does not ask to halt the siting docket. It asks only that the disputed Chapter 49-03 Certificate of Public Convenience and Necessity not be treated as a settled need determination or as predicate authority in PU-25-236 while appellate review is pending. Further delay risks rendering the requested interim relief effectively moot. Appellees have already litigated the stay issues in the district court and can respond on the existing schedule.

Dated: February 23, 2026

Respectfully submitted,

By: /s/ Douglas J. Nill
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