

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

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 BRETHERN
ASSOCIATION,

Appellants,

-vs-

NORTH DAKOTA PUBLIC SERVICE COMMISSION,
OTTER TAIL POWER COMPANY, AND
MONTANA-DAKOTA UTILITIES, CO.,

Appellees.

Supreme Ct. 20260059

District Ct. 08-2025-CV-0268
South Central Judicial District

**NORTH DAKOTA PUBLIC SERVICE COMMISSION’S RESPONSE TO THE
MOTION TO DISMISS OF OTTER TAIL POWER COMPANY AND
MONTANA-DAKOTA UTILITIES, CO.**

[1] The North Dakota Public Service Commission (“Commission”) files its response joining the February 20, 2026, Motion to Dismiss of Otter Tail Power Company and Montana-Dakota Utilities, Co. (“OTP-MDU”). If our rules and case law are followed, the appeal is improper and should be dismissed for the reasons stated in the motion to dismiss. The notice of appeal served and filed by the purported Appellants does not appeal from a final judgment, as required by N.D.R.App.P. 4. *See also* N.D.C.C. § 28-32-49 (setting forth an appeal of a district court’s “judgment” on the review of an administrative agency’s order must be noticed within sixty days of “notice of entry of judgment in the district court.”). No judgment has been entered.

[2] The purported Appellants have attempted to cure this deficiency by filing a proposed judgment with the district court. *See* Response to Motion to Dismiss, dated February 23, 2026, at ¶ 3. This, however, begs the question of which court, this one or the district court, has jurisdiction over this matter at present. The Commission takes the position this Court has jurisdiction, given an appeal (albeit defective) was noticed and a motion was filed under N.D.R.App.R. 27. *See Larson v. Jon Tonneson*, 2019 ND 230, ¶ 38, 933 N.W.2d 84 (quotation omitted) (reminding us “[g]enerally” once a notice of appeal is filed with the North Dakota Supreme Court the district court “loses jurisdiction.”).

[3] From the practical and technical standpoint, this Court should grant the motion to dismiss. It lacks jurisdiction as a matter of law. Doing so will make it clear that the district court has the jurisdiction to act. If the district court acts on the proposed judgment that was filed with it on Odyssey on February 23, 2026, and this issue is left unaddressed, it is not outside the realm of probability that this Court would dismiss the appeal, even after oral argument has been heard on the merits, because of the relatively minor, but important, defect in the appeal that currently exists. And no one wants that to happen. After this motion is granted, the district court will have the “green light” from above to know it has jurisdiction to issue a judgment. And then notice of entry of judgment can be served and filed. Then, if a party so chooses, an appeal can be properly noticed.

[4] As to the alternative request of OTP-MDU to grant additional time to file a response to a motion for a stay that has been filed if this Court denies the motion to dismiss or remands the matter to the district court, the Commission also joins in this request. Given the uncertainty that exists surrounding the procedural deficiencies that exist in the attempted appeal, additional time is appropriate to respond to the motion to stay. Further, this deficiency is not the fault of the Commission or OTP-MDU. Any claimed delay should be borne by the party causing the delay.

In the event the motion to dismiss is denied, or if remand to the district court is ordered, the Commission requests it be given until March 10, 2026, or ten days after this Court's decision on the pending motion to dismiss is issued, whichever is greater, to file a response to the motion for stay.

CONCLUSION

[5] While form over substance has a place, at the present stage with the current procedural defect that exists, and given the rules are well-established and known, the appropriate course is dismissal of the appeal. This will have the practical effect of allowing the matter to be finalized at the district court, with the entry of judgment. And then any appeal can be noticed within sixty days of notice of entry of judgment. Alternatively, if the motion to dismiss is denied, or a remand to the district court is ordered, the Commission requests additional time to respond to the pending motion for stay until March 10, 2026, or 10 days after a decision is issued on the motion to dismiss, whichever is later.

Dated: February 24, 2026.

/s/ Zachary E. Pelham
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Commission*