

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,
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.

MOTION FOR LEAVE TO FILE SUPPLEMENTAL RESPONSE

[¶1] Appellants move, under N.D.R.App.P. 27, for leave to file the attached Supplemental Response (Exhibit A) addressing a new jurisdiction argument raised in the Public Service Commission's February 24, 2026

joinder in the Utilities' motion to dismiss. The Utilities' motion did not raise the argument that the district court may lack jurisdiction to enter a judgment consistent with the February 2, 2026 order after Appellants filed a notice of appeal. Appellants seek leave to respond narrowly to that new point so the Court may resolve the pending motion to dismiss efficiently and without uncertainty.

[¶2] Appellants submitted the attached Supplemental Response promptly on February 26, 2026. The clerk rejected it as an unauthorized reply and directed Appellants to request leave. Exhibit A is limited and does not reargue issues already presented. Granting leave will assist the Court and will not prejudice Appellees.

[¶3] Appellants respectfully request an order granting leave and directing the clerk to file Exhibit A.

Dated: March 2, 2026

Respectfully submitted,

By: /s/ Douglas J. Nill
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EXHIBIT A

**APPELLANTS' SUPPLEMENTAL RESPONSE TO NORTH DAKOTA
PUBLIC SERVICE COMMISSION'S JOINDER IN MOTION TO
DISMISS**

[¶1] Appellants file this supplemental response to the Commission's

February 24, 2026 joinder in the Utilities' motion to dismiss. The Commission raises a new argument not addressed in the Utilities' motion, namely that the district court may lack jurisdiction to enter a judgment consistent with the district court's February 2, 2026 dispositive order because Appellants filed a notice of appeal.

[¶2] Dismissal is unnecessary to cure the absence of a separate, consistent judgment. This Court has held an administrative agency appeal noticed from an order may be properly before the Court if the record contains a judgment consistent with the order, and it will treat the notice of appeal 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] The Commission argues dismissal is the safest course to avoid a later jurisdictional problem. Appellants agree the goal is to eliminate uncertainty. The least disruptive remedy is not dismissal, but a procedural order that facilitates prompt entry of a consistent judgment.

[¶4] N.D.R.Civ.P. 58 provides the mechanism to enter a separate judgment consistent with the February 2, 2026 order. Rule 58(a)(1) places the initial duty on the prevailing party to submit a judgment form, but Rule 58(a)(2) prevents any party from being held hostage to that submission by

allowing any party to submit an appropriate form if the prevailing party does not do so within 30 days. Appellants have already moved the district court for entry of a consistent judgment and submitted a proposed judgment. The remaining step is for the clerk to sign, file, and enter the judgment in the register of civil actions, at which point it becomes effective.

[¶5] The Commission relies on a general proposition that the district court loses jurisdiction upon the filing of a notice of appeal. That general proposition does not require dismissal here. Even if this Court concludes the safest course is to clarify jurisdiction, the Court can do so without dismissal by issuing a limited remand for entry of a consistent judgment while retaining jurisdiction in the interests of justice. N.D.R.App.P. 35(a)(3)(B); *see also O'Hara v. Schneider*, 2017 ND 53, ¶ 29, 890 N.W.2d 831 (remanding and retaining jurisdiction under N.D.R.App.P. 35(a)(3)).

[¶6] Appellants therefore request that the Court deny dismissal and instead enter an order that either:

(a) Holds the motion to dismiss in abeyance pending prompt entry of a judgment consistent with the district court's February 2, 2026 order; upon entry, Appellants will promptly serve and file a notice of entry of judgment and will promptly file an amended notice of appeal; and the Court will treat

the appeal as taken from the consistent judgment under *Schlittenhart*, or

(b) Alternatively, issues a limited remand to the district court for the sole purpose of entry of a judgment consistent with the February 2, 2026 order, while retaining jurisdiction under N.D.R.App.P. 35(a)(3)(B) in the interests of justice.

[¶7] The Commission's separate request for an extension to respond to the stay motion has now been granted by clerk action. This Supplemental Response is directed solely to the new jurisdiction point raised in the Commission's joinder in support of dismissal.

[¶8] For these reasons, the Court should deny dismissal and adopt a procedural directive that facilitates prompt entry of a consistent judgment without requiring dismissal and refiling.

Dated: March 2, 2026

Respectfully submitted,

By: /s/ Douglas J. Nill

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