

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.

**APPELLANTS' MOTION FOR LEAVE TO FILE REPLY IN FURTHER
SUPPORT OF MOTION FOR STAY PENDING APPEAL**

[¶1] Appellants move for leave to file Exhibit A, Appellants' Reply in
Further Support of Motion for Stay Pending Appeal.

[¶2] Rule 27 allows a response to a motion, but does not provide for a

reply as a matter of right. Appellants therefore seek leave to file the attached reply to address limited matters raised in the responses of the Public Service Commission and the Utilities, together with a recent development bearing directly on irreparable harm.

[¶3] The attached reply is limited to three points. First, it addresses the scope of the relief requested. Appellees recast that relief as an effort to halt all proceedings in PSC Case No. PU-25-236, but Appellants seek only limited relief preventing operative use of the disputed Chapter 49-03 CPCN while this appeal is pending. Second, it addresses this Court's authority under N.D.R.App.P. 8 and N.D.C.C. § 28-32-48 to grant limited interim relief preserving meaningful appellate review. Third, it addresses a recent development in PSC Case No. PU-25-236, namely the denial of the Appellant Townships' petition to intervene, which bears directly on the irreparable-harm analysis.

[¶4] The attached reply does not re-brief the merits generally. It is submitted only to correct material mischaracterizations of the relief sought and to address a significant intervening development occurring after the filing of Appellees' responses.

[¶5] Because the stay motion is time-sensitive, allowing the filing of

Exhibit A will assist the Court without materially delaying disposition.

[¶6] WHEREFORE, Appellants respectfully request leave to file Exhibit A, Appellants' Reply in Further Support of Motion for Stay Pending Appeal.

Dated: March 16, 2026

Respectfully submitted,

By: /s/ Douglas J. Nill

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EXHIBIT A

**APPELLANTS' REPLY IN FURTHER SUPPORT OF MOTION FOR
STAY PENDING APPEAL**

[¶1] Appellants submit this short reply solely to address two material
mischaracterizations in Appellees' responses and one recent development

bearing directly on irreparable harm.

I. Appellants do not seek to halt all of PSC Case No. PU-25-236.

[¶2] Appellees repeatedly recast the motion as an attempt to shut down a separate Chapter 49-22 siting case in its entirety. That is not the relief requested.

[¶3] Appellants seek a limited preservation order. Specifically, Appellants ask this Court to prevent the Commission and the Utilities from giving ongoing operative effect to the challenged Chapter 49-03 CPCN and the June 18, 2025 order leaving it in place, to the extent those orders are cited or relied upon as settled proof of need or as predicate authority in PSC Case No. PU-25-236 while this appeal is pending.

[¶4] That request tracks the motion as filed. It does not ask this Court to stop all proceedings in PU-25-236. It does not ask the Court to bar the Commission from receiving evidence, processing the siting docket, or deciding route-related issues under Chapter 49-22. It asks only that the appealed CPCN not be allowed to do present work in that separate docket while this Court decides whether the Commission had authority to issue it and whether the district court correctly dismissed review of it on threshold grounds.

[¶5] That distinction matters. Appellees oppose a broader request than the one Appellants actually made.

II. This Court has authority under Rule 8 and N.D.C.C. § 28-32-48 to grant limited interim relief preserving meaningful appellate review.

[¶6] Appellees argue this Court lacks power to grant any relief touching PU-25-236 because that docket is a separate proceeding. But the motion invokes this Court’s appellate stay authority, not a free-standing original action for injunctive relief.

[¶7] Rule 8 authorizes not only a stay pending appeal, but also an order “suspending, modifying, restoring, or granting an injunction while an appeal is pending.” N.D.R.App.P. 8(a)(1)(C). Appellants sought relief first in district court. That relief was denied. Rule 8 therefore permits Appellants to seek appropriate interim relief here.

[¶8] Section 28-32-48 likewise authorizes a stay upon application and after a hearing or submission of briefs. Appellants seek that relief here in limited form: to prevent Appellees, pending appeal, from treating the challenged Chapter 49-03 CPCN, left in place by the June 18, 2025 order, as settled proof of need or predicate authority in PSC Case No. PU-25-236.

[¶9] The Commission’s reliance on N.D.C.C. § 32-05-05 is misplaced. Appellants are not asking this Court to commence an original injunction action to restrain general execution of a public statute. Appellants are invoking the Court’s appellate authority under Rule 8 and § 28-32-48 to

preserve meaningful review of the appealed agency action and district court judgment.

III. Appellees' standing argument overstates *Energy Transfer* and does not defeat interim relief.

[¶10] Appellees argue Appellants lack standing to seek interim relief because, in their view, Appellants may pursue no issue beyond intervention. That reads *Energy Transfer* too broadly.

[¶11] This appeal is before the Court from a final district court judgment in an administrative appeal. N.D.C.C. § 28-32-49 authorizes Supreme Court review of that judgment, and any party of record may appeal.

[¶12] *Energy Transfer* confirms that a person has standing to appeal from an order denying intervention. Appellees' separate arguments concerning timeliness and the ultimate scope of appellate review may be addressed in the merits briefing. At this stage, those arguments should not defeat limited Rule 8 relief designed to preserve meaningful review while those threshold issues are being decided.

IV. The present harm is now more concrete, not less.

[¶13] Appellees argue that Appellants can protect themselves in PU-25-236. Recent developments show otherwise.

[¶14] After Appellees filed their responses, the presiding

administrative law judge denied the petition to intervene filed by the five Appellant Townships in PSC Case No. PU-25-236. *See* Supplemental Declaration of Douglas J. Nill, Ex. 16. The order confirms that, despite the Townships' efforts to preserve their objections and secure limited post-hearing participation, the Townships have been denied party status in the siting docket.

[¶15] That development materially strengthens the irreparable-harm showing. Appellees' answer to the stay motion was that Appellants could participate in the siting docket and protect themselves there. The March 13 order confirms that is not an adequate answer. Even where Township materials were received as public hearing handouts, the Townships were denied intervention and related procedural relief.

[¶16] At the same time, the siting docket is nearing final disposition. If a final siting order issues and project activities proceed toward construction while this appeal remains pending, the practical value of a later merits decision may be sharply reduced. That risk is heightened now that the Appellant Townships have been denied party status in the siting docket. That underscores the need for Rule 8 relief now.

V. The requested relief remains narrow and preserves, rather than disrupts, the status quo.

[¶17] Appellees also contend a stay would improperly derail the project, but that again overstates the relief sought.

[¶18] Appellants do not ask this Court to prevent the Commission from continuing to process Chapter 49-22 issues. They ask only that the challenged Chapter 49-03 CPCN not be treated as settled proof of need or operative predicate authority while its legality and reviewability are before this Court.

[¶19] That narrow relief preserves the Court's ability to grant meaningful review later without unnecessarily halting all further agency activity now.

CONCLUSION

[¶20] For the foregoing reasons, and for the reasons stated in the motion, Appellants respectfully request that the Court grant the requested stay or, at minimum, clarify that the Commission and the Utilities may not treat the challenged Chapter 49-03 CPCN as a settled determination of need or as binding predicate authority in PSC Case No. PU-25-236 while this appeal is pending.

Dated: March 16, 2026

Respectfully submitted,

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