

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 District Court
Civil No. 08-2025-CV-02068

Appellants,

v.

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

Appellees.

**APPELLANTS' MOTION FOR LEAVE TO FILE REPLY AND
PROPOSED REPLY IN SUPPORT OF MOTION FOR IN-PERSON
ORAL ARGUMENT**

[¶1] Appellants respectfully move under N.D.R.App.P. 27 for leave to
file this short reply in support of their Motion for In-Person Oral Argument.

[¶2] The Public Service Commission filed its response on May 27, 2026. The Commission does not oppose in-person oral argument if it can occur in June, but asks the Court to keep the existing reliable-electronic-means argument date if no June in-person date is available.

[¶3] A short reply will assist the Court because the Commission's response narrows the issue to whether scheduling conflicts should cause the Court's ordinary in-person argument policy to yield where Appellants have not agreed to reliable electronic means.

[¶4] Appellants do not seek delay and do not seek to expand the issues. The reply is limited to the scheduling issue raised by the Commission's response. Appellants therefore respectfully request leave to file the following reply.

[¶5] The Commission does not oppose in-person oral argument if it can occur in June. Appellants welcome that concession. The remaining issue is whether the Court's stated policy favoring in-person argument should yield to scheduling conflicts that may have made the remaining June in-person calendar unavailable.

[¶6] Appellants respectfully submit that it should not. The Court's public guidance states that oral argument is held in person or by reliable

electronic means and that the Court's policy is that arguments are in person unless the parties agree to use reliable electronic means. Appellants do not agree to reliable electronic means argument in this case.

[¶7] Appellants do not seek delay for its own sake. But neither should the manner of oral argument in an important public appeal be determined by avoidable or duplicative scheduling conflicts, particularly where Appellees are represented by multiple counsel of record. Rule 34 addresses the date, time, and place of argument, the time allowed, postponement, and the effect of nonappearance. N.D.R.App.P. 34(a)(2), (b), (e). The question is not whether every asserted conflict of every lawyer must be preserved. The question is whether this appeal should be heard in person under the Court's ordinary policy when Appellants have not agreed to reliable electronic means.

[¶8] Based on the scheduling process, Appellants understand that remaining June in-person dates may have been rendered unavailable by conflict submissions from Appellees' counsel. Appellants respectfully request that the Court review those conflict submissions and determine whether any asserted conflict should prevent in-person argument in June, including whether at least one counsel of record for each Appellee can appear on an available in-person date.

[¶9] If the Court can set this matter for in-person argument in June, Appellants respectfully request that it do so. If no June in-person date is available after the Court reviews the submitted conflicts, Appellants respectfully renew their request that the matter be reset to the next available in-person calendar date. The modest delay associated with an in-person argument is outweighed by the importance of the case, the public interest in the appeal, the number and nature of the affected Appellants, and the Court's stated policy favoring in-person argument absent agreement to reliable electronic means.

[¶10] Appellants therefore respectfully request that the Court grant leave to file this reply, grant the Motion for In-Person Oral Argument, and set this appeal for in-person oral argument in Bismarck on the earliest available in-person date.

Respectfully submitted,

Dated: May 28, 2026

By: /s/ Douglas J. Nill
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