

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 FULL-COURT REVIEW OF SINGLE-
JUSTICE ORDERS DENYING MOTION FOR IN-PERSON ORAL
ARGUMENT AND MOTION FOR LEAVE TO FILE REPLY
(N.D.R.App.P. 27(c), 27(d), 34)**

[¶1] Appellants respectfully move for full-court review of the May 28,
2026 single-justice orders denying Appellants' Motion for In-Person Oral

Argument, Doc. 60, and Appellants' Motion for Leave to File Reply, Doc. 64.

[¶2] The docket reflects that both motions were denied by an individual justice after 5:00 p.m. on May 28, 2026. The notice and docket entry do not identify the individual justice and do not state the reasons for the rulings.

[¶3] Rule 27(d) provides that a single justice may entertain and grant or deny motions, subject to specified limitations, and further provides that “[t]he action of a single justice may be reviewed by the court.” N.D.R.App.P. 27(d). Rule 27(c) also permits a party adversely affected by action on a procedural motion to request reconsideration, vacation, or modification of that action. Appellants seek full-court review, vacation, or modification under those provisions.

[¶4] Appellants request full-court review because the rulings deny in-person oral argument in a significant public appeal despite Appellants' objection to reliable-electronic-means argument and despite the Court's public guidance stating that the Court's policy is that arguments are in person unless the parties agree to use reliable electronic means.

[¶5] Appellants do not agree to reliable-electronic-means argument in this case. The Appellants include five townships, numerous landowners, and

other affected parties challenging orders of the Public Service Commission concerning a proposed 345 kV transmission line. The appeal presents public-law issues concerning the relationship between N.D.C.C. ch. 49-03 and N.D.C.C. ch. 49-22, the authority of the Commission, and the treatment of local governmental and landowner interests in a major transmission-line proceeding.

[¶6] The Public Service Commission did not oppose in-person oral argument if it can occur in June. *See* PSC Response, Doc. 62. Its objection was limited to resetting the argument to September if no June in-person date is available. The Utilities did not file a response opposing in-person argument.

[¶7] The Commission's efficiency concern does not justify denying in-person argument. The appeal is fully briefed. The requested relief concerns only the manner and date of oral argument. A modest adjustment to preserve in-person argument is appropriate where Appellants do not agree to reliable electronic means and where affected township and landowner parties have a strong interest in attending and observing the argument in person.

[¶8] Nor should the manner of argument be controlled by avoidable or duplicative scheduling conflicts. Appellants understand from the scheduling

process that remaining June in-person dates may have been rendered unavailable by conflict submissions from Appellees' counsel. Appellants respectfully request that the full Court review the scheduling issue 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] This request is not made for delay. Appellants seek in-person argument because of the importance of the appeal, the public interest in the case, 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 also request review of the denial of leave to file a short reply. The proposed reply was directed to the limited issue raised by the Commission's response: whether scheduling concerns should cause the Court's ordinary in-person argument policy to yield where Appellants have not agreed to reliable electronic means. The proposed reply did not seek to expand the issues.

[¶11] Appellants respectfully request that the full Court vacate or modify the single-justice orders, grant leave to file Appellants' reply, and

grant Appellants' Motion for In-Person Oral Argument.

[¶12] Appellants further request that the Court set this appeal for in-person oral argument in Bismarck on the earliest available in-person date, including any June date on which at least one counsel of record for each Appellee can appear, or, if no June in-person date is available, the next available in-person calendar date.

CONCLUSION

[¶13] For these reasons, Appellants respectfully request full-court review under N.D.R.App.P. 27(c) and 27(d), vacation or modification of the single-justice orders entered May 28, 2026, leave to file Appellants' reply, and an order setting this appeal for in-person oral argument in Bismarck on the earliest available in-person date.

Respectfully submitted,

Dated: May 29, 2026

By: /s/ Douglas J. Nill
Douglas J. Nill (ND # P00392)
DOUGLAS J. NILL, PLLC
1850 Fifth Street Towers
150 South Fifth Street
Minneapolis, MN 55402
(612) 573-3669
dnill@farmlaw.com

Steven J. Leibel (ND # 07361)
KNOLL LEIBEL LLP

P. O. Box 858
1915 N. Kavaney Drive, Ste. 3
Bismarck, ND 58501
(701) 255-2010
steve@bismarck-attorneys.com

Attorneys for Appellants