

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2026 ND 146

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,

Appellants

v.

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

Appellees

No. 20260059

Appeal from the District Court of Burleigh County, South Central Judicial
District, the Honorable Bobbi B. Weiler, Judge.

AFFIRMED.

Opinion of the Court by Jensen, Justice.

Douglas J. Nill (argued), Minneapolis, MN, and Steven J. Leibel (appeared), Bismarck, ND, for appellants.

Zachary E. Pelham, Special Assistant Attorney General, Bismarck, ND, for appellee North Dakota Public Service Commission.

Paul J. Forster (argued), Erik J. Edison (on brief), and Casey A. Furey (on brief), Bismarck, ND, for appellees Otter Tail Power Company and Montana-Dakota Utilities, Co.

Wano Township v. North Dakota Public Service Comm’n
No. 20260059

Jensen, Justice.

[¶1] Various townships, entities, and individuals (together “Petitioners”) appealed to the district court after the Public Service Commission (“PSC”) denied their petition to intervene following the PSC’s issuance of a certificate of public convenience and necessity (“CPCN”) to Otter Tail Power Company and Montana-Dakota Utilities Co. (“Utility Companies”) for construction of an electric transmission line. The court held it lacked jurisdiction to decide the validity of the order granting the CPCN and affirmed the PSC’s order denying intervention. The Petitioners lack standing to appeal the CPCN order, and the PSC did not abuse its discretion when it denied post-hoc intervention. We affirm the judgment.

I

[¶2] In February 2024, the Utility Companies filed an application with the PSC seeking a CPCN for a 345-kilovolt transmission line running about 85 miles from Jamestown to Ellendale. In April 2024, the PSC published notice of the proceeding in various newspapers, including the official newspaper of each affected county. The PSC held a hearing and conducted work sessions in the summer and early fall of 2024. In November 2024, the PSC issued an order granting the CPCN with one of the three commissioners dissenting. Notice of the order was served on the Utility Companies, and no appeal followed.

[¶3] In May 2025, the Petitioners attempted to intervene, requesting the proceeding be reopened and the decision reconsidered. The Petitioners claimed the CPCN order lacked sufficient findings and reasoning to qualify as a final decision. They also claimed the CPCN was invalid because the PSC acted under the wrong statutory framework. They urged the PSC to reverse its decision, arguing that the project primarily serves the private interests of wind-power and data-center companies.

[¶4] The PSC denied the petition. The PSC determined intervention was not appropriate because its decision was final and deadlines to reconsider and

appeal had expired. The PSC explained additional proceedings are required before construction of the project, stating: “the line may not be constructed without obtaining a certificate of corridor compatibility and route permit from the Commission.” The PSC noted the Petitioners “will have an opportunity to raise these concerns” in those proceedings.

[¶5] The Petitioners appealed to the district court. The court determined it lacked subject matter jurisdiction to decide issues related to the validity of the CPCN order. The court reasoned the order was final, properly served on the parties, and deadlines for reconsidering or appealing the decision had passed. The court affirmed the PSC’s decision denying intervention. The court explained the Petitioners had not established a justification for waiting to intervene until after the proceeding had concluded. The court entered judgment dismissing as untimely the portion of the appeal challenging the CPCN order and affirming the PSC’s intervention decision. The Petitioners appeal.

II

[¶6] The Petitioners argue the PSC acted without authority when it issued the CPCN order under the Territorial Integrity Act, N.D.C.C. ch. 49-03. They claim that law does not apply because this project is a high-voltage transmission line. They assert the Energy Conversion and Transmission Facility Siting Act, N.D.C.C. ch. 49-22, instead governs. They assert the PSC is required to evaluate the public convenience and necessity of the project under chapter 49-22, and the PSC did not satisfy notice and hearing requirements under that chapter. The PSC and Utility Companies argue the Petitioners lack standing to appeal or seek reconsideration of the CPCN order because the Petitioners did not participate in the proceeding.

[¶7] “Standing is a threshold issue to determine whether a party is entitled to have a court decide the merits of a dispute and is a question of law, which we review de novo.” *State v. Leingang*, 2009 ND 38, ¶ 17, 763 N.W.2d 769. Standing in the administrative context is broad. *Minn-Kota Ag Prods., Inc. v. N.D. Pub. Serv. Comm’n*, 2020 ND 12, ¶ 11, 938 N.W.2d 118 (stating “a narrow or limited construction should not be placed on who may be a party for purposes of

appeal”). Under N.D.C.C. § 28-32-42, “[a]ny party to any proceeding heard by an administrative agency . . . may appeal from the order within thirty days after notice of the order has been given” See also N.D.C.C. § 49-05-12 (stating appeals from PSC proceedings are taken in the manner prescribed by chapter 28-32). The term “party” is defined as “each person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.” N.D.C.C. § 28-32-01(9).

[¶8] We employ a three-part test to determine whether standing exists to appeal a final administrative decision. See *In re Bank of Rhame*, 231 N.W.2d 801, 808 (N.D. 1975). The test continues to apply although it was adopted before the Legislature defined the term “party” under N.D.C.C. ch. 28-32. That definition “helped identify a party for purposes of the agency proceeding, [but] it added nothing to the distinct concept of standing for judicial review of an agency decision.” *Shark v. U.S. W. Commc’ns, Inc.*, 545 N.W.2d 194, 197 (N.D. 1996); see also *Minn-Kota*, 2020 ND 12, ¶ 13. Under the three-part test, standing to challenge an administrative decision exists when a person is: (1) “directly interested” in the administrative proceedings; (2) “factually aggrieved by the decision”; and (3) participates in the proceeding. *Bank of Rhame*, at 808.

[¶9] The standard for satisfying the participation prong requires a showing of “minimal” involvement. *Minn-Kota*, 2020 ND 12, ¶ 21. This burden can be satisfied by raising an issue or advocating for an outcome during the administrative proceeding. For example, in *Minn-Kota*, a power company applied for a CPCN to construct a transmission line serving a grain-handling facility. *Id.* ¶¶ 2-3. A representative of the facility submitted testimony and a document asking the PSC to grant the application. *Id.* ¶ 22. The facility appealed after the PSC denied the application. *Id.* ¶ 8. We reversed the district court’s order dismissing the appeal for lack of standing, explaining the facility participated when it “advocated for a certain result” by submitting documents and testimony in favor of the application. *Id.* ¶ 23.

[¶10] An example of a challenger not presenting a position sufficient for standing to appeal an administrative decision is *Shark v. United States West Communications*, 545 N.W.2d 194. The PSC approved a sale of telephone

exchanges by a company, including the transfer of each associated CPCN. *Id.* at 195. A customer wrote a letter to one of the commissioners that “praised that commissioner’s position and complained about the apparent position of the other two commissioners in scheduling the case.” *Id.* at 196. The PSC approved the sale after a hearing. *Id.* The district court dismissed the customer’s appeal, holding he lacked standing because he did not participate. *Id.* This Court affirmed, reasoning the letter was insufficient to establish standing. *Id.* at 198-99. The Court explained the customer failed “to raise a particular issue in the agency proceeding” and because “he presented no position to the PSC about the transfers, [he] did not participate and lacks standing to obtain judicial review of the PSC’s order approving the transfers.” *Id.* at 199.

[¶11] The Petitioners in this case claim they participated sufficiently for standing to appeal the CPCN order. They argue that after the PSC issued the CPCN they held meetings, denied permits, and petitioned the PSC to reopen the case and reconsider the decision. However, the Petitioners’ actions all occurred *after* the PSC issued the CPCN order. Like the challenger who lacked standing in *Shark*, the Petitioners did not advocate for a result or raise an issue during the proceedings leading up to the PSC’s order. Absent any involvement, the Petitioners lack standing to challenge the CPCN order. Given our holding, we need not address whether the Petitioners’ attempted appeal of the CPCN order is timely. *See City of Casselton v. N.D. Pub. Serv. Comm’n*, 307 N.W.2d 849, 852 (N.D. 1981) (declining to address the timeliness of an administrative appeal after concluding the district court lacked jurisdiction).

III

[¶12] The Petitioners argue they were unable to participate in the CPCN proceedings because they did not receive “direct notice” as required by N.D.C.C. ch. 49-22. They assert, given the insufficient notice, that the PSC should have granted intervention and reopened the CPCN proceeding. Unlike the Petitioners’ attempt to challenge the CPCN, their appeal of the order denying intervention is properly before us. *See Energy Transfer LP v. N.D. Priv. Investigative & Sec. Bd.*, 2022 ND 85, ¶ 12, 973 N.W.2d 394 (explaining an administrative order denying

intervention prevents the movant from becoming a party to the proceeding and is immediately appealable).

[¶13] We conduct a “limited” review of appeals under the Administrative Agencies Practice Act, N.D.C.C. ch. 28-32. *Reile v. State by & through Workforce Safety & Ins.*, 2025 ND 6, ¶¶ 8-9, 16 N.W.3d 212. We review the PSC’s decision in the same manner as the district court. *Cap. Elec. Coop., Inc. v. City of Bismarck*, 2007 ND 128, ¶ 31, 736 N.W.2d 788. We decide legal issues de novo. *Id.* We do not make independent factual findings and decide only whether a reasoning mind could have determined the findings are proven by the weight of the evidence. *Id.* We affirm unless one of the statutorily enumerated grounds for reversal exists under N.D.C.C. § 28-32-46.

[¶14] Intervention in an adjudicative administrative proceeding is governed by N.D.C.C. § 28-32-28. An agency may allow intervention “to promote the interests of justice” when doing so “will not impair the orderly and prompt conduct of the proceeding” and the petitioner shows that its “legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding” *Id.* Agencies may adopt their own intervention rules. *Id.* The PSC’s rule permits intervention if the petitioner has an interest that may be “substantially affected by the proceeding” so long as intervention “would not unduly broaden the issues or delay the proceeding.” N.D. Admin. Code § 69-02-02-05.

[¶15] Intervention during a proceeding is liberally granted. *Energy Transfer*, 2022 ND 85, ¶ 16. Intervention after an agency has issued a final decision “is unusual and not often granted.” *Id.* (cleaned up). Intervention after a final decision may be permitted when it will not prejudice the rights of the parties or substantially interfere with the process of the agency. *Id.* In proceedings before the PSC, a late intervention motion is not permitted absent a showing of “good cause.” N.D. Admin. Code § 69-02-02-05(2). “Good cause” means a showing “as to why a petitioning intervenor should be allowed to intervene late under the circumstances.” *Minn-Kota*, 2020 ND 12, ¶ 42. The abuse of discretion standard applies to intervention decisions in administrative proceedings. *Energy Transfer*, ¶ 15. “A court abuses its discretion if it acts in an arbitrary, unreasonable, or

unconscionable manner, its decision is not the product of a rational mental process leading to a reasoned determination, or it misinterprets or misapplies the law.” *Id.* (quoting *Pub. Serv. Comm’n v. Grand Forks Bean Co.*, 2017 ND 201, ¶ 16, 900 N.W.2d 255). The same standard applies in an adjudicative proceeding under the Administrative Agencies Practice Act.

[¶16] The Petitioners assert their late attempt at intervention is justified because the PSC did not issue sufficient notice of the CPCN proceeding. They specifically argue the PSC should have provided “direct notice,” which they assert is required by N.D.C.C. ch. 49-22. They argue we must decide whether the CPCN order is valid because that question is intertwined with the intervention issue. Contrary to the Petitioners’ assertion, this appeal does not require us to determine which specific statutory provisions apply to this particular type of transmission line. Given the posture of this administrative appeal, our review is limited to whether the PSC abused its discretion when it decided intervention was not warranted.

[¶17] We disagree with the Petitioners’ contention that the PSC’s notice of the CPCN proceeding was deficient in a manner showing good cause for post-hoc intervention. The PSC published notice of the Utility Companies’ application for a CPCN in fourteen different newspapers, including the official newspaper of each affected county. The notices identified the project, defined the issues the PSC would consider, and invited comments. The main purpose of the proceeding was to determine whether the project would serve the public interest. The PSC’s method of notice by publication was consistent with this purpose and sufficient to inform the public, including the Petitioners, of the proceeding’s existence. *See Eckre v. Pub. Serv. Comm’n*, 247 N.W.2d 656, 664 (N.D. 1976) (explaining the reasonableness of notice provided by the PSC is assessed considering the scope and nature of the hearing). To the extent the Petitioners assert defects in the CPCN process will affect their individual interests or due-process rights in the future, they may advance their claims when those issues arise. The PSC did not abuse its discretion when it denied the petition to intervene.

IV

[¶18] The Petitioners lack standing to appeal the CPCN order. The PSC did not abuse its discretion when it denied post-hoc intervention. The judgment is affirmed.

[¶19] Lisa Fair McEvers, C.J.

Jerod E. Tufte

Jon J. Jensen

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