

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Otter Tail Power Company/Montana-Dakota
Utilities Co. 345kV Transmission Line Siting
Application

Case No. PU-25-236

Wano Township, Willowbank Township,
Russell Township, Corwin Township,
and Valley Township

**PETITION TO INTERVENE; MOTION TO ACCEPT TOWNSHIP
FILINGS AS LATE-FILED EXHIBITS; AND, IN THE ALTERNATIVE,
PETITION TO REOPEN FOR LIMITED ADDITIONAL EVIDENCE
(N.D.A.C. §§ 69-02-02-05, 69-02-04-07(k), 69-02-06-01)**

Petitioners Wano Township, Willowbank Township, Russell Township,
Corwin Township, and Valley Township (collectively, the “Townships”), by
and through undersigned counsel, respectfully petition to intervene for the
limited purpose of record preservation and to ensure the Townships’ formal
filings are included in the formal evidentiary record considered by the
Commission in its final findings with reasons and for purposes of judicial
review.

The Townships further move for an order accepting and designating the
Townships’ previously submitted captioned filings as late-filed exhibits to be

included in the formal evidentiary record. In the alternative, if the presiding administrative law judge concludes the filings cannot be made part of the formal record without reopening, the Townships petition the Commission to reopen this proceeding for the limited purpose of receiving those filings as additional evidence under a narrowly tailored, remote procedure.

At the January 14, 2026 public hearing in Edgeley, a Russell Township official appeared on behalf of Russell Township, identified that Russell Township had submitted the Township Filings (Limited Objections, Preemption Statements, and Questions for the Record) in this docket, and sought to read and summarize those positions for purposes of the Commission's consideration in PU-25-236. Applicants objected on the ground the Township "isn't a party," while the presiding administrative law judge stated the documents "will become part of the record" and would be reviewed by the Commission. Because Commission staff has also advised in writing that submissions made outside formal or technical hearing processes may be placed in a public-input file and not treated as part of the formal evidentiary record unless submitted under oath and subject to cross-examination, the Townships bring this limited petition and motion to eliminate uncertainty

and ensure compliance with N.D.C.C. § 28-32-24(2) in the Commission’s final findings with reasons and for judicial review.

This submission is intended to be narrow, efficient, and record-preserving. The Townships are not re-submitting their underlying zoning ordinances, setback provisions, or moratoria that were previously filed in this docket; those materials are already part of the docket and have been addressed by Applicants’ December 17, 2025 preemption memorandum.

The Townships seek party status and formal-record treatment for the Township Filings identified below (Limited Objections, Preemption Statements, and Questions for the Record). The Townships request this so the Commission’s final findings with reasons address those filings and they are preserved for judicial review. The Townships do not seek to re-open merits hearings, conduct discovery, or impose undue burden on the Commission or other parties. The Townships’ purpose is to preserve issues that the Commission must address in a lawful final order, including (1) the “need” showing and the Commission’s findings with reasons under N.D.C.C. ch. 49-22, (2) the role and effect of any prior CPCN from PU-24-91 as asserted proof of need in this siting docket, and (3) Applicants’ requested findings

regarding supersession or preemption of local land use and zoning ordinances and regulations.

To the extent the existing record reflects an earlier indication that the Townships did not intend to seek intervenor status, the Townships now respectfully request limited-purpose intervention as set forth herein.

I. PETITION TO INTERVENE (N.D.A.C. § 69-02-02-05)

A. Grounds for intervention.

1. The Townships are political subdivisions directly affected by the proposed 345 kV Jamestown-to-Ellendale transmission line, including route selection, permit conditions, construction impacts, drainage and restoration issues, local road and infrastructure impacts, and the Townships' retained land use and zoning interests.

2. The Townships are directly affected by the manner in which “need” is addressed in this docket. The Townships object to any attempt to treat PU-24-91 (CPCN under N.D.C.C. ch. 49-03) as conclusive proof of “need” in this siting docket or as a substitute for the record and findings with reasons required under N.D.C.C. ch. 49-22.

3. Applicants have requested Commission findings regarding supersession and preemption of local land use and zoning ordinances and

regulations. The Townships' local governmental interests are therefore directly and expressly implicated by issues raised in this proceeding.

B. Position and interest of Petitioners in the proceeding.

4. The Townships' limited-purpose position is that the Commission's final order must be supported by a complete formal evidentiary record and by findings with reasons as required under the Siting Act, including record-based findings addressing statutory criteria and considerations under N.D.C.C. ch. 49-22.

5. The Townships request that any treatment of supersession or preemption of local land use and zoning ordinances and regulations be addressed specifically and in a findings-based manner tied to the record, the approved route (if any), and permit conditions, rather than by generalized declarations not anchored to route-specific findings and conditions.

6. The Townships' interests are direct, substantial, and distinct from Applicants and Commission Staff. Applicants seek a permit. Staff serves an advisory and investigatory role. Neither represents the Townships' local governmental interests.

7. The Townships would contribute to the proceeding a discrete, governmental record on (a) the Townships' local land-use and zoning

interests implicated by Applicants’ supersession and preemption request, and (b) the Townships’ limited objections and questions directed to the “need” showing and the Commission’s statutory findings with reasons—issues the Commission must address in a lawful final order and that must be preserved for judicial review.

C. Limited scope of participation.

8. The Townships request intervention on a limited-purpose basis: (a) inclusion of the Township Filings in the formal evidentiary record; (b) inclusion on the service list; and (c) the opportunity to submit any additional written filing only if the hearing officer requests it and limited to record status and issues the Commission must address in its findings with reasons (including Applicants’ preemption request and any asserted reliance on PU-24-91 as proof of need). The Townships do not request discovery, do not request reopening merits hearings, and do not seek to call witnesses other than the limited remote sponsorship procedure described below if required for formal-record inclusion. Nothing in this limited-purpose intervention is intended to waive, concede, or limit any constitutional challenge to HB 1258 and N.D.C.C. § 49-22-16 as amended, or any other rights or arguments preserved for judicial review.

D. Support or opposition to relief sought.

9. The Townships oppose the requested certificate and permit. The Townships seek limited-purpose intervention for record preservation as described above.

E. Timing and good cause.

10. N.D.A.C. § 69-02-02-05(2) provides that a petition to intervene generally must be filed at least ten days prior to the hearing, but late intervention may be allowed for good cause shown. Good cause exists here because:

a. Applicants filed a memorandum on December 17, 2025 requesting Commission findings that local land use and zoning regulations are superseded and preempted under N.D.C.C. § 49-22-16 as amended. The Townships served and submitted their responsive Township Statements in January 2026 to preserve their governmental interests and objections, including preservation of rights regarding the interpretation and application of § 49-22-16 as amended. The Townships seek limited intervention now to resolve the record-status of those filings before the Commission issues its final order.

b. Commission staff responded in writing that written comments submitted outside formal or technical hearing processes would be placed in the public input file and would not be part of the formal evidentiary record unless submitted under oath and subject to cross examination. *See Exhibit 4.*

c. The Townships' governmental interests and the issues addressed in their filings are directly implicated by Applicants' preemption request and by the asserted use of PU-24-91 as proof of need in this siting docket. The Townships seek a narrow procedure to ensure these filings are included in the formal record and addressed in the Commission's findings with reasons.

d. The Townships did not retain counsel to attend and participate in person at the January hearings due to substantial cost burdens on the Townships and their constituents. The Townships seek to participate in a limited, written, record-preserving manner without travel, and any limited record sponsorship (if required) can be accomplished remotely in a short, efficient procedure.

e. The Edgeley public hearing record reflects that a Russell Township official appeared on behalf of Russell Township, identified

that Russell Township had already submitted three captioned Township Filings in PU-25-236 (a limited objection on “need,” a response to Applicants’ preemption request, and questions for the record), and sought to read and summarize those positions “for the record.” Applicants objected on “party status,” and the presiding administrative law judge stated the documents “will become part of the record” and would be reviewed—creating a concrete need for a narrow order confirming formal evidentiary-record status before final disposition. *See Exhibit 5.*

11. The Townships respectfully request that the hearing officer grant intervention for the limited purposes described above and include the Townships and undersigned counsel on the service list for PU-25-236.

II. MOTION TO ACCEPT TOWNSHIP FILINGS AS LATE-FILED EXHIBITS (N.D.A.C. § 69-02-04-07(k))

12. Upon granting this Petition to Intervene, the Townships move for an order accepting and designating the Townships’ formal filings identified below as late-filed exhibits to be included in the formal evidentiary record in this docket. For purposes of this motion, “Township Filings” means the Townships’ captioned submissions consisting of: (a) Limited Objections to

reliance on PU-24-91 as proof of need; (b) Township Statements responding to Applicants' preemption request; and (c) Questions for the Record.

13. N.D.A.C. § 69-02-04-07(k) authorizes the hearing officer to authorize any party to furnish and serve designated late-filed exhibits within a specified time after the close of the hearing. The Townships request that the hearing officer exercise that authority here to avoid prejudice to substantial rights through exclusion of the Township Filings from the formal evidentiary record.

14. The Townships request that the hearing officer enter an order that:

a. Accepts and designates the following as Township Exhibits for the formal record:

Township Filings; Email Service and PSC Acknowledgements

Exhibit 1A – Wano Township Limited Objection to Reliance on PU-24-91
CPCN as Proof of Need and Reservation of Rights

Exhibit 1B – Willowbank Township Limited Objection (same)

Exhibit 1C – Russell Township Limited Objection (same)

Exhibit 1D – Corwin Township Limited Objection (same)

Exhibit 1E – Valley Township Limited Objection (same)

Exhibit 2A – Wano Township Statement re Applicants' Preemption Request

Exhibit 2B – Willowbank Township Statement (same)

Exhibit 2C – Russell Township Statement (same)

Exhibit 2D – Corwin Township Statement (same)

Exhibit 2E – No separate Valley Township 'Statement' was submitted;

Valley's positions are reflected in Exhibits 1E and 3E.

Exhibit 3A – Wano Township Questions for the Record

Exhibit 3B – Willowbank Township Questions (same)

Exhibit 3C – Russell Township Questions (same)

Exhibit 3D – Corwin Township Questions (same)

Exhibit 3E – Valley Township Questions (same)

Exhibit 4A – Wano Township email transmittal to PSC and PSC
acknowledgment email chain (Jan. 7, 2026)

Exhibit 4B – Willowbank Township email transmittal to PSC
attaching Exhibits 1B–3B (PSC acknowledgment email not
located).

Exhibit 4C – Russell Township email transmittal to PSC and PSC
acknowledgment email chain (Jan. 7, 2026)

Exhibit 4D – Corwin Township email transmittal to PSC and PSC
acknowledgment email chain (Jan. 7, 2026)

Exhibit 4E – Valley Township email transmittal to PSC and PSC
acknowledgment email chain (Jan. 7, 2026)

Exhibit 5 – Excerpt of Edgeley public hearing transcript (Jan. 14, 2026)
(regarding Russell Township submission and record-status
discussion) (Tr. 24:32–34:03)

b. Sets a short schedule, if the hearing officer deems
appropriate, for Applicants and Staff to state whether they object to
inclusion of the Township Exhibits in the formal record and, if so, on
what grounds.

15. This motion does not request a new merits hearing or travel. It
requests only the formal designation and inclusion of the Township Exhibits
as late-filed exhibits in the evidentiary record so the Commission's final

findings with reasons can address them and meaningful judicial review can occur if necessary. Admission of the Township Exhibits will not prejudice any party because the Townships propose (and request, if required) a narrow remote sponsorship procedure and an opportunity for limited cross-examination solely on authenticity and foundation.

III. IN THE ALTERNATIVE, PETITION TO REOPEN FOR LIMITED ADDITIONAL EVIDENCE (N.D.A.C. § 69-02-06-01)

16. If the hearing officer concludes the Township Exhibits may not be accepted into the formal record without reopening, the Townships petition the Commission to reopen this proceeding for the limited purpose of taking additional evidence, namely receipt of the Township Exhibits.

17. N.D.A.C. § 69-02-06-01 provides that at any time after conclusion of a hearing, but before a final order is issued, any party may file a petition to reopen for the purpose of taking additional evidence. The Townships seek reopening solely to cure the record-status problem for the Township Exhibits.

18. Limited reopening requested. The Townships request that any reopening be limited as follows:

a. Additional evidence limited to receipt of the Township Exhibits identified above.

b. If the hearing officer requires a sworn sponsorship

procedure to place the Township Exhibits into the evidentiary record, the Townships request a short, remote technical session (Zoom or telephonic) at which a designated Township official for each Township will appear under oath solely to authenticate and adopt the Township Exhibits. No additional testimony beyond that authentication and adoption is requested.

c. Any cross-examination, if requested by any party, shall be limited to authenticity, foundation, and the limited scope of the Township Filings, and may occur remotely.

d. A short written response period for Applicants and Staff, if deemed appropriate, limited to admissibility and any response on the record-status request.

19. Grounds. The Township Exhibits address issues central to the Commission's final order and findings with reasons, including the need showing and record requirements in N.D.C.C. ch. 49-22, the relationship between PU-24-91 and PU-25-236 as it pertains to "need," and Applicants' preemption request. Excluding these filings from the formal record would substantially prejudice the Townships' governmental interests and impair meaningful judicial review.

IV. REQUESTED RELIEF

The Townships respectfully request that the hearing officer and Commission enter an order:

1. Granting the Townships' petition to intervene under N.D.A.C. § 69-02-02-05 for the limited purposes described above and adding the Townships and undersigned counsel to the service list;
2. Accepting and designating the Township Exhibits as late-filed exhibits under N.D.A.C. § 69-02-04-07(k) for admission into the formal evidentiary record; and
3. Declaring and ordering that Exhibits 1A–4E are admitted into the evidentiary record of PU-25-236 and will be treated as record evidence considered by the Commission in its final findings with reasons.
4. In the alternative, if necessary, ordering that the Commission reopen the proceeding under N.D.A.C. § 69-02-06-01 for the limited purpose of receiving the Township Exhibits as additional evidence under the limited, remote procedure described above.
5. Ultimately, after considering the complete evidentiary record (including the Township Filings), deny the requested certificate of corridor compatibility and route permit for the proposed 345 kV transmission line.

Dated: February 4, 2026

Respectfully submitted,

By: /s/ Douglas J. Nill

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