

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Otter Tail Power Company/Montana Dakota Utilities Co.
345 JETx Transmission Line**

Case No. PU-25-236

**Response of Public Service Commission to Petition
to Intervene, Motion to Accept Township Filings, and
Alternative Petition to Reopen for Limited Additional
Evidence**

BACKGROUND

[¶1] On August 8, 2025, Otter Tail Power Company and Montana-Dakota Utilities CO. (together “Applicants”) filed joint applications with the North Dakota Public Service Commission (“Commission”) for a certificate of corridor compatibility and for a route permit concerning approximately 92 miles of double circuit capable 345 kV electric transmission facility and associated facilities in Dickey, LaMoure, and Stutsman Counties, North Dakota. *See* Commission Docket (“Dkt.”) No. 1.¹ The Commission issued public notices of hearings on the application on November 19, 2025. *See* Dkt. Nos. 25, 27. A technical hearing on the application was held in Bismarck on January 8-9, 2026; public hearings on the application were held in Ellendale on January 12, 2026, Edgeley on January 14, 2026, and Jamestown on January 16, 2026.

[¶2] After the hearings were duly noticed by the Commission, a Motion for Admission Pro Hac Vice was received by the Commission on January 6, 2026. Dkt. No. 38. The motion speaks for itself, but sought an order from the Commission admitting Douglas J. Nill, a non-North Dakota licensed attorney, to practice before the Commission in this matter as attorney for “Interested Persons” listed in an accompanying exhibit. Dkt. No. 38. The Motion explained “Mr.

¹ The Commission’s docket is at:
<https://apps.psc.nd.gov/cases/pscasedetail?getId=25&getId2=236#>

Nill's participation is expected to be limited to advising the Clients and assisting designated North Dakota associate counsel with written submissions and other record-preservation steps in this docket in connection with the related pending appeal. Mr. Nill does not presently anticipate appearing in person at hearings or examining witnesses." *Id.* at ¶ 7. In an email to Commission staff, Mr. Nill stated that intervention status was not sought. *See* Ex. A, E-mail String dated January 6, 2026. The ALJ granted the motion on January 7, 2026, noting there is no intention for intervention. Dkt. No. 41.

[¶3] The technical and public hearings were held as noticed. The Applicants called witnesses to testify in support of their application. Public comment was taken at the Ellendale, Edgeley, and Jamestown hearings. Exhibits were received into the record at the hearings. Dkt. Nos. 58-59, 65-85. These exhibits that are part of the record included exhibits from the Applicants (Dkt. Nos. 1-20) and exhibits from persons who provided documents as part of their public testimony. (Dkt. Nos. 21-23). The documents that were received at the hearings are part of the record in this matter.

[¶4] On February 4, 2026, Wano Township, Willowbank Township, Russell Township, Corwin Township, and Valley Township (together "Townships") filed a "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)." Dkt. No. 86. These Townships were all listed as "Clients" on Mr. Nill's motion from January 6, 2026. Dkt. No. 38.

LAW AND ARGUMENT

A. Intervention

[¶5] The Townships chose not to intervene until after the hearings were held. The intervention motion is untimely. No good cause exists to grant intervention.

[¶6] The Townships have to provide “good cause” as to why they should be allowed to intervene. Our administrative code provides in relevant part:

Any person with a substantial interest in a proceeding may petition to intervene in that proceeding by complying with this section. An intervention may be granted if the petitioner has a statutory right to be a party to the proceeding; or the petitioner has a legal interest which may be substantially affected by the proceeding, and the intervention would not unduly broaden the issues or delay the proceeding. The commission may impose conditions and limitations on an intervention to promote the interests of justice.

1. Contents of petition to intervene. A petition to intervene must be in writing and must set forth the grounds for intervention, the position and interest of the petitioner in the proceeding, what the petitioner would contribute to the hearing, and whether the petitioner's position is in support of or in opposition to the relief sought.
2. When filed. A petition to intervene in any proceeding must be filed at least ten days prior to the hearing, but not after except for good cause shown.

N.D. Admin. Code 69-02-02-05 (emphasis added).

[¶7] The Townships have failed to provide “good cause.” This factor is necessarily discretionary. Discretionary decision-making authority is not second-guessed by the North Dakota Supreme Court. Given there is no “good cause” even argued in the pending motion, the ALJ should not find “good cause” where none is asserted. This is especially so when counsel for the Townships confirmed no intervention was sought. *See Ex. A.*

[¶8] A decision to deny the motion to intervene is appropriate. The Applicants presented their evidence at the hearing and the Commission asked questions. Public comment was taken at Ellendale, Edgeley, and Jamestown—anyone who wanted to offer comment was given the opportunity. Only *after* this statutory process had occurred, weeks later, did the Townships choose

to try to intervene. This “wait and see attitude,” even if unintentional, creates a distinct advantage to a litigant in a case—to *know* what one’s opponent *has* argued is simply unfair to those parties who followed the rules. And once the evidence has been presented, there is no putting it back in the proverbial bottle.

B. Late-Filed Exhibits

[¶9] The Townships seek an order allowing them to file late filed exhibits under N.D.A.C. § 69-02-04-07(k). The Commission opposes this request. The Townships are not parties. The administrative code defines “Parties.” N.D.A.C. § 69-02-01-07. They chose not to intervene. *See* Ex. A. Because the Townships are not parties, they cannot present evidence because they chose not to intervene at an appropriate time.

[¶10] The Commission will often request parties to file exhibits that may not be available at the time of the hearing as late filed exhibits. Often, parties will make the request *at* the hearing to be able to supplement their case by filing late filed exhibits. The general practice of allowing for late filed exhibits is necessarily done at the time of the hearing, not after. This is done to allow those parties present at the hearing to determine what, if any, late filed exhibits are appropriate. Typically, such exhibits will be relevant to a question asked that a witness was unable to answer at the time but can answer at a later time. The type of late filed exhibits that are sought to be admitted here were all available at the time of the hearings.

[¶11] The Administrative Code provides the process for receiving late filed exhibits. N.D.A.C. § 69-02-04-07(k). This section of the code details authority the hearing officer has at a hearing. The hearing officer “may . . . [a]uthorize any *party* to furnish and serve designated late filed exhibits within a specified time after the close of the hearing.” *Id.* (emphasis added). This is authority that exists at the time of the hearing, not weeks after a hearing. And this is authority a

hearing officer has only as to allowing a “party” to provide. Here, the Townships are not parties and they made no one made any request at any of the hearings held to file what the Townships seek to file as late filed exhibits. The petition should be denied.²

C. Alternative Request to Reopen for Limited Additional Evidence

[¶12] The Townships make an alternative request to reopen the hearing to provide additional evidence under N.D.A.C. § 69-02-06-01. The Commission opposes this request. Again, the Townships are not parties. They chose not to intervene. The administrative code requires that for the relief sought that there be a change in facts or law. There have been no changes of fact or law, let alone material ones since the hearings were held. The documents sought to be included were available prior to the hearing. Further, it appears that at least some of the evidence the Townships seek to insert into the record after the close of the evidentiary phase are part of the record for those Townships that chose to send representatives to the hearings and who provided documents that were provided to the Commission as part of the hearings. Dkt. Nos. 58-59, 85. There is no need to add those documents (Dkt. Nos. 58-59, 85) to the record as they are part of the record.

CONCLUSION

[¶13] The ALJ should deny the Townships’ motion to intervene, file late filed exhibits, and to re-open the hearing.

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² Again, as explained above, what was received at the hearing during public comment *is* a part of the record. Dkt. Nos. 58-59, 85. Upon review of the record, it appears the following Townships submitted some form of what is now sought to be added to the record at the hearing: Valley (Dkt. No. 58); Wano (Dkt. Nos. 59, 85); Russell (Dkt. 59); Willowbank (Dkt. 59).

Dated this 20th day of February, 2026.



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