

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 Townships
Motion for Clarification and Limited Further Relief,
Or in the Alternative for Certification to the Commission**

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. Hearings were held. *See* Dkt. Nos. 25, 27.

[¶2] 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. The Commission and Applicants filed response briefs. Dkt. Nos. 89, 91. An Order denying the petition to intervene and denying the motion to accept filings as late-filed exhibits was issued on March 13, 2026. Dkt. No. 95. The Townships filed a “Motion for Clarification and Limited Further Relief, or in the Alternative For Certification to the Commission” on March 27, 2026. Dkt. No. 95.

LAW AND ARGUMENT

[¶3] The hearing record contains what the Order (Dkt. No. 95) indicated it contains. The hearing record is the record of exhibits that were received at the hearing. Clarification is not necessary because the Order makes it clear what is contained in the record. Further, the Administrative Agencies Practices Act governs what comprises the record of the Commission. N.D.C.C. § 28-32-36.

[¶4] Briefing the issue of “need” in the current proceeding is not appropriate as a matter of law: the Commission does not have the authority to address “need” in an electric transmission line siting case brought under N.D.C.C. Ch. 49-22. *In re Application of Neb. Pub. Power Dist.*, 330 N.W.2d 143, 148-49 (N.D. 1983).

[¶5] Briefing the preemption issue is also not appropriate. The Applicants have asked for local zoning ordinances to be preempted as a matter of law. The Townships are not intervenors. Dkt. No. 95. Even so, they have made it known they are opposed to the Applicants’ position that the local zoning ordinances are preempted. Representatives of the Townships attended the public hearings, but none of the Townships requested the ability to file post-hearing briefs.

[¶6] The ALJ has authority to resolve procedural matters so long as the disposition does not involve a final determination of the case. N.D.A.C. § 69-02-04-07(1)(h). Asking for clarification on an Order issued by the ALJ does not involve the final determination of the case. The ALJ should exercise the discretion afforded by N.D.A.C. § 69-02-04-07, decide the pending motion, and decline to certify any of the questions to the Commission.

CONCLUSION

[¶7] The ALJ should deny the Townships’ motion.

Dated this 27th day of March, 2026.

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