

March 27, 2026

Via Electronic Mail & Hand Delivery

Mr. Brian Johnson
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480
ndpsc@nd.gov

In re: Otter Tail Power Company & Montana-Dakota Utilities Co.
345kV JETx Transmission Line
Siting Application - Stutsman, LaMoure, and Dickey Counties
Case No. PU-25-236
OAH File No. 20250300
Our File No. 072879-000001

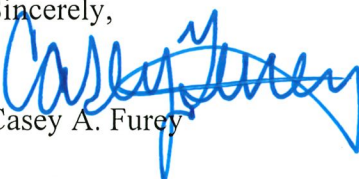
Dear Mr. Johnson:

Enclosed for filing in the above-referenced matter, please find eight copies of the following documents:

- 1) Otter Tail Power Company and Montana-Dakota Utilities Co.'s Response in Opposition to Townships' Motion for Clarification or Certification; and
- 2) Certificate of Service.

Please feel free to contact me if you have any questions. Thank you.

Sincerely,


Casey A. Furey

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Response in Opposition to Townships' Motion
for Clarification or Certification

CAF/lh
Enc.

Otter Tail Power Company/Montana-Dakota Utilities Co.
Casey Furey, Crowley Fleck, PLLP

cc:	ALJ Hope Hogan	(via email)	Otter Tail Power Co. Regulatory	(via email)
	Louise Wetzel	(via email)	Allison Waldon	(via email)
	Zachary Pelham	(via email)	Travis R. Jacobson	(via email)
	Victor Schock	(via email)	Erik Edison	(via email)
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STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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

Case No. PU-25-236

OTTER TAIL POWER COMPANY AND MONTANA-DAKOTA UTILITIES CO.'S
RESPONSE IN OPPOSITION TO TOWNSHIPS' MOTION FOR CLARIFICATION OR
CERTIFICATION

I. INTRODUCTION

Otter Tail Power Company (“Otter Tail”) and Montana-Dakota Utilities Co. (“Montana-Dakota”) (collectively, “Applicants”) submit this Response in Opposition to the Townships’¹ Motion for Clarification or Certification (the “Motion”). The Motion largely attempts to reargue issues that have already been decided and is the latest in a series of specious attempts to delay and derail the Commission’s orderly processing of Applicants’ siting application.

Under the guise of requesting “clarification of the record status” of the Townships’ Submittals², the Townships seek leave to circumvent the denial of their petition to intervene and to submit post-hearing legal briefing. To the extent the Motion seeks to ensure that the Submittals are preserved in the record for judicial review, it is moot. The Submittals are already included in the Commission’s docket, which will be part of the agency record in any administrative appeal. The remainder of the Townships’ requests lack merit. The Townships’ untimely petition to intervene, file the Submittals as late-filed exhibits, and to reopen the record has been denied, and they are not parties to this proceeding. Therefore, the Townships are not entitled to submit briefs or exhibits at all, let alone at this late stage in the proceeding. Moreover, the legal issues that the Townships now seek to brief have existed since the siting application in this case was filed. Finally, the alternative request to submit a certified question to the Commission should be denied.

II. BACKGROUND

On August 8, 2025, Otter Tail and Montana-Dakota filed a Joint Consolidated Application for Certificate of Corridor Compatibility and Route Permit (the “Application”). Dkt. No. 1. The Application notes that the permitting requirements of political subdivisions are automatically

¹ The “Townships” referred to herein are Wano Township, Willowbank Township, Russell Township, Corwin Township, and Valley Township.

² The “Submittals” referred to herein are those Limited Objections, Statements, and Questions for the Record filed by the Townships in Exhibits 1(A)–3(E) filed as Dkt. No. 86(3); *see* Dkt. Nos. 58–59; 85 (Exs. 21–23). Thus, the Submittals all appear in the record.

superseded and preempted under N.D.C.C. § 49-22-16(2)(b) and requests that the Commission also find that certain local land use and zoning regulations and requirements are unreasonably restrictive in view of existing technology, factors of cost or economics, needs of consumers regardless of location, and/or conflict with state law. *Id.* § 7.5. On December 17, 2025, Applicants filed their Memorandum in Support of Request to Declare Local Land Use and Zoning Ordinances and Regulations Superseded and Preempted.

On January 6, 2026, the Townships' attorney Douglas J. Nill moved the Commission for admission *pro hac vice*. Dkt. No. 38. At that time, Attorney Nill was advised by Commission staff to request intervention, but the Townships specifically rejected that advice, choosing instead to submit public comments rather than seeking party status.

Formal Hearings were held in this matter on January 8, 9, 12, 14, and 16, 2026, in Bismarck, Ellendale, Edgeley, and Jamestown, North Dakota (the "Hearings"). At the Hearings, several officials from the Petitioner-Townships provided public testimony and submitted written materials. Dkt. Nos. 51–64; 85. Specifically, Township officials provided comments and submitted the Submittals into the record as public comments.

On February 4, 2026, the Townships filed a Petition to Intervene and Motion to Accept the Township Submittals as Late Filed Exhibits (the "Petition"). Dkt. No. 86. On March 16, 2026, Administrative Law Judge Hogan (the "ALJ") filed an Order denying the Petition. Dkt. No. 95. On March 17, 2026, the Townships filed the Motion.

III. LAW AND ARGUMENT

A. The Submittals are in the record.

The Townships "seek[] clarification of the record status and treatment of the [Submittals] already received at public hearings." Dkt. No. 96(2), p. 1. The Townships' apparent confusion as to the treatment of the Submittals and other docket entries could be clarified by even a cursory review of the North Dakota's Administrative Practices Act (the "APA"). *See* N.D.C.C. ch. 28-32. Agencies like the Commission "shall maintain an official record of each adjudicative proceeding or other administrative proceeding." N.D.C.C. § 28-32-44. An administrative agency, like the Commission "shall make a record of all testimony, written statements, documents, exhibits, and other evidence presented at any adjudicative proceeding or other administrative proceeding heard by it." N.D.C.C. § 28-32-36; *see also* N.D.C.C. § 28-32-44. In the event of an appeal, the Commission shall certify the official record, which may include "[a]ny motions, pleadings, briefs, petitions, requests, and intermediate ruling" and "written statements" and "exhibits," as well as the "[t]he transcript of the hearing." N.D.C.C. § 28-32-44(4). The Commission's docket is publicly available, such that anyone can easily review the docket and confirm what is in the record.³

³ *See Otter Tail Power Co. / Montana-Dakota Utilities Co. 345kV Transmission Line-Jamestown to Ellendale Siting Application*, N.D. PSC Case No. PU-25-236; <https://apps.psc.nd.gov/cases/pscasedetail?getld=25&getld2=236#>

To the extent that the Motion merely seeks to ensure that the Submittals and their other document submissions in this proceeding are included in the administrative record, it is moot. The Submittals have already been included in the record as public comments. *See* Dkt. Nos. 58 (Hearing Exhibit No. 21), 59 (Hearing Exhibit No. 22), and 85 (Hearing Exhibit No. 23); *see also* Dkt. No. 86(3). The order, briefing, and exhibits related to the Townships' untimely attempt to intervene are also in the record. Dkt. Nos. 86, 89, 91, and 95.

Despite being included in the record, the Submittals should not be considered by the Commission because they are irrelevant. The Submittals do not contain any evidence, only demands and legal arguments prepared by the Townships' counsel. *See* Submittals, fn. 1. Under the APA "'relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the administrative action more probable or less probable than it would be without the evidence." N.D.C.C. § 28-32-01(11); *see also* N.D.R. Evid. 401. Under N.D.C.C. § 28-32-24, "admissibility of evidence in any adjudicative proceeding before an administrative agency shall be determined in accordance with the North Dakota Rules of Evidence." N.D.C.C. § 28-32-24.

Rather than presenting factual evidence for the Commission to consider, the Submittals consist of only Petitioners' (1) questions to the Applicants and Commission staff; (2) demands that the Commission make certain findings and conclusions in this matter; and (3) legal arguments related to the Applicants' preemption request. Legal arguments, demands to the Commission, and questions do not have a tendency to make the existence of any fact more probable or less probable. Moreover, the subject matter of the Submittals is of no consequence to the determination of the administrative action at hand and does not relate to the siting factors. As such, the Submittals do not constitute "relevant evidence" under the APA or the North Dakota Rules of Evidence.

B. Only parties to a proceeding may submit briefs of memoranda of law.

The Townships' untimely Petition was already denied. Dkt. No. 95 at ¶ 14. The ALJ's order denying the Petition noted, "[t]he Townships chose to participate in this case by providing public input rather than seeking party status even after direct advisement [to file a petition to intervene] from Commission Staff." *Id.* Additionally, the ALJ found, "[a]ll the reasons specified as good cause [to allow for untimely intervention] existed prior to the hearing and do not demonstrate good cause for allowing a change to party status post-hearing." *Id.* Now the Townships seek to submit a post-hearing legal memorandum to address these very same issues. The Applicants' preemption request was included in the Application filed on August 8, 2025. Moreover, the Townships have been advancing their misguided arguments related to public need and the Project's CPCN since May 21, 2025 when they filed their untimely petition to intervene in PU-24-091 (the "CPCN Proceeding"). The Townships have long been aware of these issues.

Moreover, these same issues were raised by the Townships at the Hearings. At the Hearings, numerous Township officials (and others) testified and/or submitted written public

comment addressing the same issues they now seek to brief. In fact, several Township officials spoke at length on multiple occasions. *See* Dkt. Nos. 52, 57, 64.

Instead of timely seeking intervention to obtain party status, they chose to participate by providing public comments. After hearing, the Townships' untimely petition to intervene was denied. Despite their lack of party status, they now seek leave to submit legal briefing at this late stage in this proceeding. The Hearings were held and this matter is now before the Commission for decision. If the Townships wanted to file briefs or legal memoranda in this proceeding, they should have timely intervened and obtained party status before the Hearings.

Because they are not parties, the Townships are not entitled to brief legal arguments in this proceeding under N.D. Admin. Code § 69-02-01-07 or N.D.C.C. § 28-32-01(9). The Commission's administrative rules contemplate only a "party to a proceeding may file . . . briefs or memoranda of law." N.D. Admin. Code § 69-02-04-10(1). Allowing any non-party to submit briefs at any time, let alone after hearing, would defeat the purpose of the Commission's permissive intervention rules. Furthermore, allowing non-parties to lodge legal arguments without the gate-keeping function of the intervention process would undermine the interest of the Commission, the public, and the parties in maintaining an orderly proceeding. The Townships' request to file a post-hearing legal memorandum should be denied.

C. Certifying a question to the Commission is not warranted.

The Townships make the alternative request that the hearing officer certify a question to the Commission. The hearing officer may "[c]ertify any question to the commission for its consideration and disposition." N.D. Admin. Code § 69-02-04-07(1)(i). Under the Commission's rules, only the hearing officer is delegated the authority to certify a question to the Commission. *Id.* Nothing in the administrative rules permits a party, or in this case a non-party, to initiate a certified question. Here, no good cause exists to certify a question to the Commission. The Submittals discussed in the Motion are in the record. The remaining issues raised by the Townships either have already been addressed or are irrelevant to the proceeding. Additionally, the request to brief legal issues is extremely untimely, as the request comes two months after the Hearings were held. The Townships' alternative request should be denied.

IV. CONCLUSION

For the above reasons, the Applicants respectfully request that the Commission deny the Motion in all respects.

Dated this 27th day of March, 2026.

By: 
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BEFORE THE STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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

Case No. PU-25-236

CERTIFICATE OF SERVICE

[¶1] I hereby certify that on the 27th day of March, 2026, a true and correct copy of the following document:

1. Otter Tail Power Company and Montana-Dakota Utilities Co.'s Response in Opposition to Townships' Motion for Clarification or Certification

was filed with the North Dakota Public Service Commission via electronic mail and hand delivery, and was served via electronic mail and hand delivery, upon the following:

Brian Johnson
ND Public Service Commission
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480
ndpsc@nd.gov

[¶2] I further certify that on the 27th day of March, 2026, a true and correct copy of the same was served via electronic mail upon the following:

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ALJ Hope Hogan
Office of Administrative Hearings
hlhogan@nd.gov

Dated this 27th day of March, 2026.

By:



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