

STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

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

Case No. 08-2026-CV-02066

Appellants,

vs.

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

Appellees.

NOTICE OF APPEAL AND SPECIFICATIONS OF ERROR
N.D.C.C. § 28-32-42

1. Appellants Wano Township, Willowbank Township, Russell Township, Corwin Township, and Valley Township, by and through undersigned counsel, give notice under N.D.C.C. § 28-32-42 that they appeal to the Burleigh County District Court from the final agency order issued by the North Dakota Public Service Commission on June 24, 2026, in Case No. PU-25-236, titled Findings of Fact, Conclusions of Law and Order.

2. Appellants also appeal from and seek review of the March 13, 2026 Order Denying Petition to Intervene and Denying Motion to Accept Filings as Late-Filed Exhibits, and all related intermediate rulings merged into or

reviewable upon appeal from the Commission's final order, including the April 16, 2026 Order on Motion for Clarification and Limited Further Relief, filed April 17, 2026.

The agency proceeding appealed from is:

Otter Tail Power Company/Montana-Dakota Utilities Co.
345kV JETx Transmission Line Siting Application
Public Service Commission Case No. PU-25-236
OAH File No. 20250300

3. The parties taking this appeal are Wano Township, Willowbank Township, Russell Township, Corwin Township, and Valley Township. The agency and parties of record not designated as appellants are named as appellees: the North Dakota Public Service Commission, Otter Tail Power Company, and Montana-Dakota Utilities Co.

4. Copies of the orders appealed from are filed with this Notice of Appeal as follows:

Exhibit 1 – June 24, 2026 Findings of Fact, Conclusions of Law and Order;

Exhibit 2 - March 13, 2026 Order Denying Petition to Intervene and Denying Motion to Accept Filings as Late-Filed Exhibits;

Exhibit 3 – April 16, 2026 Order on Motion for Clarification and Limited Further Relief, filed April 17, 2026;

5. An undertaking for costs on appeal is filed concurrently, unless waived or otherwise not required by law.

SPECIFICATIONS OF ERROR

1. Appellants specify the following grounds upon which this appeal is taken. Appellants reserve the right to refine, consolidate, or supplement these specifications after the agency record is certified and filed.

2. The Commission and Administrative Law Judge erred as a matter of law, abused their discretion, and acted arbitrarily and capriciously by denying the Townships' petition to intervene for the limited purposes of record preservation, inclusion on the service list, and preservation of governmental interests directly affected by the proposed 345 kV transmission line.

3. The Commission and Administrative Law Judge erred by concluding, expressly or implicitly, that the Townships failed to demonstrate good cause for limited post-hearing intervention, despite the Townships' direct governmental interests in route selection, local roads, drainage, construction impacts, restoration, zoning, retained land use authority, and the Applicants' request for findings superseding or preempting township land use and zoning ordinances.

4. The Commission and Administrative Law Judge erred by treating the Townships' January 6, 2026 email concerning pro hac vice admission and anticipated public participation as a waiver, election, or basis to deny later limited intervention. The January 6 email did not waive,

foreclose, or irrevocably disclaim the Townships' right to seek intervention after Applicants' preemption request, record-status uncertainty, and final-order issues became clear.

5. The Commission and Administrative Law Judge erred by denying limited intervention even though the Townships sought narrow, non-disruptive relief that would not have required discovery, reopening of the merits, travel, or additional witness testimony except, if necessary, a short remote authentication procedure.

6. The Commission and Administrative Law Judge erred by denying the Townships' motion to accept the Township Filings as late-filed exhibits, or alternatively as record-preserving memoranda, briefs, objections, or written submissions addressing issues the Commission was required to decide in its final order.

7. The Commission and Administrative Law Judge erred by denying the Townships' alternative petition to reopen for the limited purpose of receiving the Township Filings as additional evidence or record materials under a narrow, remote, nonprejudicial procedure.

8. The Commission and Administrative Law Judge erred by refusing to preserve Corwin Township's corresponding filings in the agency record despite recognizing that Corwin Township's filings were identical in

substance to filings submitted by other Townships and despite Corwin Township's direct governmental interests.

9. The April 16, 2026 clarification order erred by denying leave for the Townships to file a short post-hearing memorandum limited to Applicants' preemption request and the treatment of PU-24-91 as asserted proof of "need" in PU-25-236.

10. The April 16, 2026 clarification order erred by denying certification of record-status and related procedural questions to the full Commission, or by otherwise failing to ensure that the Commission decided those issues before issuing its final order.

11. The Commission erred by issuing the June 24, 2026 final order after denying the Townships party status and limited briefing, while nevertheless deciding issues that directly affect the Townships' local governmental interests, including supersession or preemption of township land use and zoning ordinances.

12. The Commission erred by failing to make adequate findings with reasons addressing the Townships' objections, questions, and legal submissions concerning the need showing, the asserted relationship between PU-24-91 and PU-25-236, and Applicants' request for preemption or supersession of local land use and zoning ordinances.

13. The Commission erred by treating PU-24-91, a separate

certificate-of-public-convenience-and-necessity proceeding under N.D.C.C. ch. 49-03, as conclusive or substitutive proof of “need” in this siting docket, or by otherwise failing to make record-based findings with reasons on need under N.D.C.C. ch. 49-22 and the Commission’s siting rules.

14. The Commission erred as a matter of law in concluding that it had no authority or duty to determine need under the Siting Act. The Commission’s conclusion is contrary to the statutory requirement that a certificate application include a statement explaining the need for the facility, the statutory policy requiring routes to be chosen while ensuring that energy needs are met and fulfilled in an orderly and timely fashion, and the requirement that designations be made in findings with reasons based on the evidence, statutory considerations, and siting criteria.

15. The Commission erred by relying on *Matter of Nebraska Public Power District*, 330 N.W.2d 143 (N.D. 1983), for a proposition broader than that case supports, and by using that case to avoid making record-based findings with reasons on need in this docket.

16. The Commission’s findings on need are inadequate, conclusory, and not supported by a preponderance of the evidence. The final order does not sufficiently address evidence and comments asserting that the line is driven by wind, solar, data center, export, or future generation development rather than a demonstrated need for the proposed facility as routed.

17. The Commission erred by granting a certificate of corridor compatibility and route permits without findings with reasons sufficient to support the statutory determinations required under N.D.C.C. §§ 49-22-02, 49-22-08, 49-22-08.1, and 49-22-09.

18. The Commission erred by concluding that issuance of a route permit “automatically” supersedes and preempts local land use or zoning regulations, except for road use agreements, without making the specific findings required by N.D.C.C. § 49-22-16 concerning particular local requirements, unreasonably restrictive regulations, direct conflict with state or federal law, road use agreements, and retained local governmental interests.

19. The Commission erred by failing to address the Townships’ position that any treatment of supersession or preemption must be specific, record-based, route-specific, tied to permit conditions, and supported by findings with reasons rather than by generalized declarations.

20. The Commission erred by construing or applying N.D.C.C. § 49-22-16 to authorize blanket, generalized, or automatic supersession or preemption of township land use and zoning ordinances without first making the specific findings required by that statute as to particular local requirements, without identifying which township provisions were affected, and without addressing the Townships’ written submissions requesting a narrow, provision-specific, findings-based application of the statute.

21. To the extent N.D.C.C. § 49-22-16 was construed or applied in this proceeding to authorize preemption of township ordinances or other township governmental interests without meaningful opportunity for township participation, without adequate notice and findings tied to particular local requirements, or without a fair hearing on those issues, the statute was applied in a manner that violates the Townships' constitutional rights, including due process, and is unconstitutional as applied in this proceeding.

22. The Commission erred by failing to provide the Townships a fair hearing before issuing findings and conclusions affecting their local ordinances, zoning authority, moratoria, setback requirements, road interests, and other governmental interests.

23. The Commission's final order violates Appellants' constitutional rights, including due process rights, by denying the Townships limited party participation and then issuing a final order impairing or purporting to preempt their governmental interests.

24. The Commission erred by failing to comply with N.D.C.C. § 28-32-39 because the final order does not concisely and explicitly state findings of fact and separate conclusions of law sufficient to explain the Commission's decision on contested issues material to the Townships.

25. The Commission erred under N.D.C.C. § 28-32-46 because the

final order is not in accordance with law, violates Appellants' constitutional rights, fails to comply with N.D.C.C. ch. 28-32, does not afford Appellants a fair hearing, is not supported by a preponderance of the evidence, and contains conclusions of law and an order not supported by adequate findings of fact.

26. The Commission erred because its findings do not sufficiently address evidence and written submissions presented to the agency by the Townships and other public participants concerning need, preemption, setback distances, local zoning ordinances, agricultural impacts, local roads, alternate routes, underground versus overhead construction, future wind and solar development, data centers, and other route-specific impacts.

27. The Commission erred by failing to include or require inclusion of all relevant Township materials in the certified agency record, including the February 4, 2026 petition and motion, the February 25, 2026 reply, the responses thereto, the March 13, 2026 order, the March 17, 2026 clarification motion, the April 16, 2026 clarification order, the Township Filings, the Corwin Township filings, and public hearing exhibits and handouts reflecting Township submissions.

28. The Commission erred by issuing certificates and route permits based on an incomplete record and after excluding, disregarding, or failing to give proper legal consideration to the Townships' record-preserving submissions.

29. The Commission erred by finding that adverse effects on local roads, agricultural operations, drainage, restoration, land use, public welfare, and local governmental interests were adequately minimized without findings supported by the record and without sufficiently addressing contrary evidence and objections.

30. The Commission erred by approving the certificate of corridor compatibility and route permits without adequate findings with reasons concerning alternatives to the preferred corridor or route, including alternatives raised during the hearing process.

31. The Commission erred by issuing Conclusion of Law No. 4 and related order provisions concerning local preemption because those conclusions are not supported by adequate findings of fact and do not sufficiently explain the Commission's rationale.

32. The Commission erred by issuing Conclusions of Law Nos. 5, 6, and 7 because those conclusions largely restate statutory standards without adequate subsidiary findings or reasoned explanation tied to disputed evidence.

33. The Commission erred by granting Certificate of Corridor Compatibility Nos. 244 and 245 and Route Permit Nos. 255 and 256 because the Commission's findings, conclusions, and order are affected by legal error, procedural error, constitutional error, and insufficient findings.

RELIEF REQUESTED

1. Appellants respectfully request that the District Court:
 - a. Reverse or vacate the June 24, 2026 Findings of Fact, Conclusions of Law and Order; Vacate Certificate of Corridor Compatibility Nos. 244 and 245 and Route Permit Nos. 255 and 256;
 - b. Reverse or vacate the March 13, 2026 Order Denying Petition to Intervene and Denying Motion to Accept Filings as Late-Filed Exhibits;
 - c. Reverse or vacate the April 16, 2026 Order on Motion for Clarification and Limited Further Relief to the extent it denied inclusion or preservation of Corwin Township's filings, denied leave to file a limited post-hearing memorandum, denied certification to the Commission, or otherwise limited the Townships' record-preserving rights;
 - d. Remand to the Commission with instructions to grant the Townships limited intervention, include the Township Filings and related submissions in the certified agency record, accept Corwin Township's corresponding filings, and permit a limited post-hearing memorandum or other appropriate procedure addressing need, PU-24-91, and preemption;
 - e. Alternatively, remand for the Commission to reopen the record for the limited purpose of receiving the Township Filings and any necessary authentication, foundation, or related briefing;
 - f. Require the Commission to issue new findings of fact, separate

conclusions of law, and an order with findings with reasons addressing all material contested issues, including need under N.D.C.C. ch. 49-22, the legal effect of PU-24-91, local land use and zoning preemption under N.D.C.C. § 49-22-16, route-specific impacts, local roads, agricultural impacts, alternatives, and statutory siting criteria; and

g. Grant such other and further relief as the Court deems just and proper.

Dated: July 24th, 2026

Respectfully submitted,

By: /s/ Steven J. Leibel
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