

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

08-2026-CV-02066
Case No. PU-25-236

OAH File No. 20250300

ORDER ON MOTION FOR CLARIFICATION AND LIMITED FURTHER RELIEF

[1] Wano Township, Willowbank Township, Russell Township, Corwin Township, and Valley Township (hereinafter collectively referred to as “Townships”), filed a Petition to Intervene; Motion to Accept Township Filings as Late-Filed Exhibits; and Petition to Reopen for Limited Additional Evidence dated February 4, 2026.¹ The Public Service Commission (Commission) and Otter Tail Power Company and Montana-Dakota Utilities Co. (Applicants) both filed objections to the Intervenor’s Petition/Motion on February 20, 2026.² On March 16, 2026, the undersigned Administrative Law Judge (ALJ) issued an Order Denying Petition to Intervene and Denying Motion to Accept Filings as Late-Filed Exhibits (hereinafter referred to as “Order”). *See* Dkt. #95.

[2] On March 17, 2026, the Townships filed a Motion for Clarification and Limited Further Relief, or in the Alternative for Certification to the Commission. Township Motion (Dkt. #96). The Townships request clarification on:

¹ The Order dated March 13, 2026, incorrectly stated the Townships’ Petition was filed on February 25, 2026. The correct date of filing was February 4, 2026. *See* Dkt. #86.

² The Order dated March 13, 2026, incorrectly stated the objections were filed on January 20, 2026. The correct date of filing was February 20, 2026. *See* Dkt. #89, #91.

- “Whether the Township materials already received as public hearing handouts and reflected in hearing Exhibits 21 through 23 are part of the record before the Commission and must be included in the certified record on judicial review.” *Id.* at p. 2.
- Whether “Corwin Township’s corresponding filings, identified in the March 13 Order as identical in substance, are likewise preserved in the agency record and must be included in the certified record on judicial review.” *Id.* at pp. 3-4.
- Whether “the March 13, 2026, order, the Townships’ February 4, 2026 petition and motion, the Townships’ February 25, 2026 reply, and the responses thereto are part of the agency record in this proceeding and must be included in the certified record on judicial review.” *Id.* at p. 4.

The Townships also requested leave to file one post-hearing memorandum to address the Applicants’ request for preemption of local land use and zoning ordinances and treatment of “PU-24-91 in this docket as it relates to ‘need’ and the findings with reasons requested in PU-25-236.” *Id.* at p. 4. Lastly, the Townships request, in the alternative to the above-described clarification requests, certification of these questions to the Commission.

[3] The Commission and the Applicants filed responses to the motion on March 27, 2026, and requested the motion be denied. Dkt. #97, #98.

Exhibits:

[4] The Order specified what documents were presented by the Townships during the public testimony portions of each hearing. Those documents are part of the record as public testimony handouts (*see* Exs. 21- 23) and will be considered by the Commission in a similar fashion to how it considers all information and testimony received during public testimony. The Commission will

determine what weight, if any, to give this evidence. Corwin Township's corresponding filings are not part of the record as these documents were not presented at the hearing. As determined by the Order, no good cause was given by the Townships for failing to provide these documents in due course and, thus, the Townships request to include the documents after the hearing was denied. There is no additional reason provided by the Townships to reconsider that determination.

Post-Hearing Memorandum:

[5] The Townships request permission to file a post-hearing memorandum. The Townships are not parties to this proceeding as they chose to participate as a public participant rather than an intervening party. If the Townships presented a memorandum at the hearing as part of public testimony, that information would have been included within the public testimony exhibits. Again, no reason is given by the Townships for not proceeding in that manner and, thus, the request should be denied.

Record on Appeal:

[6] Under the Administrative Agency Practice Act, within 30 days after an appeal is filed, the administrative agency is required to prepare and file with the district court the "entire record of proceedings before the agency, or an abstract of the record as may be agreed upon and stipulated by the parties." N.D.C.C. § 28-32-44. The record of the hearing consists of:

- a. The complaint, answer, and other initial pleadings or documents.
- b. Notices of all proceedings.
- c. Any prehearing notices, transcripts, documents, or orders.
- d. Any motions, pleadings, briefs, petitions, requests, and intermediate rulings.
- e. A statement of matters officially noticed.
- f. Offers of proof and objections and rulings thereon.
- g. Proposed findings, requested orders, and exceptions.
- h. The transcript of the hearing prepared for the person presiding at the hearing, including all testimony taken, and any written statements, exhibits, reports, memoranda, documents, or other information or evidence considered before final disposition of proceedings.

- i. Any recommended or proposed order, recommended or proposed findings of fact and conclusions of law, final order, final findings of fact and conclusions of law, or findings of fact and conclusions of law or orders on reconsideration.
- j. Any information considered pursuant to section 28-32-25.
- k. Matters placed on the record after an ex parte communication.

N.D.C.C. § 28-32-44(4). While the above list is not mandatory, the list includes motions, pleadings, briefs, petitions, requests, and intermediate rulings. The contents of the agency record are not decided by the undersigned ALJ but by the agency charged with compiling the record. Thus, there are no grounds for the undersigned ALJ to order the Townships filings to be included in the record.

Certification:

[7] The Commission's rules set forth the authority delegated to a hearing officer and included within that authority is the right to:

- h. Dispose of procedural matters so long as the disposition does not involve a final determination of the proceedings.
- i. Certify any question to the commission for consideration and disposition.

N.D.A.C. § 69-02-04-07(i). The Townships have presented procedural questions which are within the purview of the undersigned ALJ's authority as the designated hearing officer for this case. As such, there is no need to certify this motion to the Commission.

IT IS HEREBY ORDERED:

[8] The requested clarification is provided as described above.

[9] The Townships request to include Corwin Township's filings as part of the exhibits is

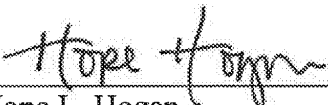
DENIED.

[10] The Townships request for leave to file a post-hearing memorandum is **DENIED.**

[11] The Townships request to certify its motion to the Commission is **DENIED**.

Dated at Bismarck, North Dakota this 16 day of April 2026.

State of North Dakota
Public Service Commission



Hope L. Hogan
Administrative Law Judge
Office of Administrative Hearings

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CERTIFICATE OF SERVICE

The undersigned certifies that the original of the **ORDER ON MOTION FOR CLARIFICATION AND LIMITED FURTHER RELIEF** was sent by electronic mail on the 16 day of April 2026 to:

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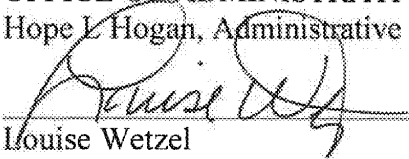
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