

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Wano Township, Willowbank Township,
Russell Township, Corwin Township,
Valley Township, Mike and Patty Bartel,
Richard and Susan R. Long, Steven and
Julia Nelson, Phyllis P. Otterness and
Patricia A. Vick, Brandon and Tausha
Schweigert, Shockman Farm Partnership,
LLLP, Debra Sue Wald, Lucas and Jill Wald,
Tim Leppert, Orr Farms, Steve M. and
Sandra J. Rupp, David A. and Denette
M. Schweigert, Allen D. and Inna N. Swiontek,
David and Holly Wald, Weston Wald, and
Willowbank Hutterian Brethren Association,

Supreme Court No.:
20260059

Burleigh County No.:
08-2025-CV-02068

Hon. Bobbi Weiler

Appellants,

v.

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

Appellees.

**SUPPLEMENTAL DECLARATION OF DOUGLAS J. NILL IN
SUPPORT OF APPELLANTS' MOTION FOR STAY
PENDING APPEAL**

I, Douglas J. Nill, declare as follows:

1. I am counsel of record for Appellants in this appeal and have

been admitted pro hac vice in this matter. I make this declaration in support of Appellants' Motion for Stay Pending Appeal under N.D.R.App.P. 8.

2. The facts set forth in this declaration are based on my personal knowledge, my review of filings and orders in Public Service Commission Docket Nos. PU-24-91 and PU-25-236 and in Burleigh County District Court Case No. 08-2025-CV-02068, and communications I have received in the course of representing the Appellants. If called as a witness, I could and would testify competently to these matters.

3. Attached as Exhibit 16 is a true and correct copy of the March 13, 2026 Order by Administrative Law Judge Hope L. Hogan in PU-25-236 Denying Petition To Intervene And Denying Motion To Accept Filings As Late-Filed Exhibits.

I declare under penalty of perjury under the laws of the State of North Dakota that the foregoing is true and correct.

Dated: March 16, 2026

/s/ Douglas J. Nill
Douglas J. Nill (ND # P00392)

Exhibit 16

Supreme Court No.:
20260059

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
OAH File No. 20250300

**ORDER DENYING PETITION TO INTERVENE AND DENYING MOTION TO
ACCEPT FILINGS AS LATE-FILED EXHIBITS**

[1] On August 8, 2025, Otter Tail Power Company and Montana-Dakota Utilities Co. (hereinafter collectively referred to as “Applicants”) filed a joint consolidated application for a certificate of corridor compatibility and route permit for approximately 92 miles of double circuit capable 345 kV electric transmission line and facilities through Dickey, LaMoure, and Stutsman Counties. On November 19, 2025, the Commission issued notices for both the technical hearing and public hearings concerning the joint application.

[2] On January 6, 2026, Attorney Douglas Nill filed a Motion for Admission *Pro Hac Vice* to represent a group of clients including Willowbank, Wano, Russell, Corwin and Valley Townships. Commission staff advised Mr. Nill that in addition to seeking *pro hac vice* status, he would need to request intervenor status. Mr. Nill response was:

As set forth in Paragraph 7 of the motion, my participation is expected to be limited to advising the Interested Persons 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. I do not presently anticipate appearing in person at hearings or examining witnesses. The Interested Persons may also personally participate in the Commission's public process, including submitting written comments and providing statements at public hearings. To my understanding, that type of public participation does not require a petition to intervene. Nothing in this email is intended as a request for intervenor or party status.

Commission Response to Petition, Exh. A (Dkt #89).

[3] The Commission held the technical hearing on January 8 and 9, 2026. The Commission then held three public hearings as follows: in Ellendale, North Dakota on January 12, 2026; in Edgeley, North Dakota on January 14, 2026; and in Jamestown on January 16, 2026.

[4] On January 12, 2026, Jason Hildenbrand testified as a representative of Valley Township. *See* Commission Dkt # 50. Valley Township provided the Commission copies of two documents captioned:

- Valley Township Questions for the Record; and
- Valley Township Limited Objection to Reliance on PU-24-91 CPCN as Proof of Need and Reservation of Rights.

These documents were included in the record as exhibit 21 – public testimony handouts (Ellendale). Commission Dkt # 58.

[5] At the January 14, 2026, hearing, Wayne Wald and Cody Rupp testified on behalf of Wano Township; Tim Leppert testified on behalf of Russell Township; and Jane Coleman testified on behalf of Willowbank Township. *See* Commission Dkt # 54. Wano Township submitted the following documents:

- 2010 Comprehensive Plan;
- Zoning Regulations;
- Wano Township Limited Objection to Reliance on PU-24-91 CPCN as Proof of Need and Reservation of Rights;
- Wano Township Questions for the Record; and
- Wano Township Statement Regarding Applicants' Request to Declare Local Land Use and Zoning Ordinances and Regulations Superseded and Preempted

Russell Township submitted the following documents:

- Russell Township Limited Objection to Reliance on PU-24-91 CPCN as Proof of Need and Reservation of Rights;
- Russell Township Statement Regarding Applicants' Request to Declare Local Land Use and Zoning Ordinances and Regulations Superseded and Preempted; and
- Russell Township Question for the Record

Willowbank Township submitted the following documents:

- Willowbank 2002 Comprehensive Plan;
- Willowbank Zoning Regulations;
- Willowbank Township Limited Objection to Reliance on PU-24-91 CPCN as Proof of Need and Reservation of Rights;
- Willowbank Township Statement Regarding Applicants' Request to Declare Local Land Use and Zoning Ordinances and Regulations Superseded and Preempted;
- Willowbank Township Question for the Record;
- February 25, 2025 denial of conditional use permit letter to Ottertail Power Company;
- Declaration of Jane Coleman, Willowbank Township Officer (Burleigh County District Court Case No. 08-2025-CV-02068); and
- Willowbank Township, Resolution for Moratoriums.

All documents submitted by Valley, Wano, and Willowbank Townships were included in the record as exhibit 22 – public testimony handouts (Edgeley). Commission Dkt # 59.

[6] At the January 16, 2026, hearing, Lucas Wald testified on behalf of Wano Township; Tim Lippert testified again on behalf of Russel Township; and Jake Emo testified on behalf of Corwin Township. Wano Township submitted the following documents:

- Wano Township Limited Objection to Reliance on PU-24-91 CPCN as Proof of Need and Reservation of Rights;
- Wano Township Questions for the Record; and

- Wano Township Statement Regarding Applicants' Request to Declare Local Land Use and Zoning Ordinances and Regulations Superseded and Preempted

Russell Township submitted a copy of the Russell Township Zoning Ordinance. All documents submitted were included in the record as exhibit 23 – public testimony handouts (Jamestown). See Commission Dkt # 85.

[7] On February 25, 2026, 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. The Townships made this filing “for the limited purpose of record preservation and to ensure the Townships’ formal filings are included in the formal evidentiary record considered by the Commission in its final findings with reasons and for purposes of judicial review.” *Petition*, p. 1.

[8] The documents the Townships request to be admitted into the “formal evidentiary record” are:

Exhibit 1A – Wano Township Limited Objection to Reliance on PU-24-91 CPCN as Proof of Need and Reservation of Rights

Exhibit 1B – Willowbank Township Limited Objection (same)

Exhibit 1C – Russell Township Limited Objection (same)

Exhibit 1D – Corwin Township Limited Objection (same)

Exhibit 1E – Valley Township Limited Objection (same)

Exhibit 2A – Wano Township Statement re Applicants’ Preemption Request

Exhibit 2B – Willowbank Township Statement (same)

Exhibit 2C – Russell Township Statement (same)

Exhibit 2D – Corwin Township Statement (same)

Exhibit 2E – No separate Valley Township ‘Statement’ was submitted; Valley’s positions are reflected in Exhibits 1E and 3E

Exhibit 3A – Wano Township Questions for the Record

Exhibit 3B – Willowbank Township Questions (same)

Exhibit 3C – Russell Township Questions (same)

Exhibit 3D – Corwin Township Questions (same)

Exhibit 3E – Valley Township Questions (same)

Exhibit 4A – Wano Township email transmittal to PSC and PSC acknowledgment email chain (Jan. 7, 2026)

Exhibit 4B – Willowbank Township email transmittal to PSC attaching Exhibits 1B–3B (PSC acknowledgment email not located)

Exhibit 4C – Russell Township email transmittal to PSC and PSC acknowledgment email chain (Jan. 7, 2026)

Exhibit 4D – Corwin Township email transmittal to PSC and PSC acknowledgment email chain (Jan. 7, 2026)

Exhibit 4E – Valley Township email transmittal to PSC and PSC acknowledgment email chain (Jan. 7, 2026)

Exhibit 5 – Excerpt of Edgeley public hearing transcript (Jan. 14, 2026) (regarding Russell Township submission and record-status discussion) (Tr. 24:32–34:03)

[9] The Commission and Applicants both filed objections to the Intervenor’s Petition/Motion on January 20, 2026.

[10] On February 25, 2026, the Townships filed a Motion for Leave to File Reply in Support of Petition to Intervene and Related Relief.

CONCLUSIONS OF LAW

[11] According to Commission rules, a hearing officer is authorized to “regulate the course of hearing,” “receive evidence,” and “dispose of any procedural matters so long as the disposition does not involve a final determination of the proceedings.” N.D.A.C. § 69-02-04-07. The motion does not address the final determination, and thus the undersigned hearing officer may issue a decision.

PETITION TO INTERVENE:

[12] The Commission has adopted a rule specific to intervention which provides:

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.

3. Number of copies. The petitioner will serve a copy of the petition on each party to the proceeding and will file with the commission the original and seven copies.

4. Effect. Admission as an intervenor shall not be construed as recognition by the commission that such intervenor might be aggrieved by an order of the commission in such proceeding.

N.D.A.C. § 69-02-02-05.

[13] The Townships seek intervention to include their filings as part of the formal evidentiary record, to be included on the service list, and for “the opportunity to submit any additional written filing only if the hearing officer requests it and limited to record status and issues the Commission must address in its findings with reasons” *Petition*, p. 6. There must be good cause to allow the Townships to intervene post-hearing. The Townships allege good cause exists because on December 17, 2025, the Applicants requested the Commission find local land use and zoning regulations are superseded and preempted under N.D.C.C. § 49-22-16; the Townships interests are directly implicated by the Applicants preemption request; Commission staff advised the Townships that any comments submitted prior to the hearing would be placed in the public input file and not made part of the evidentiary record; and the Townships chose not to retain counsel for the hearings due to cost. Both the Applicants and Commission argue these reasons do not constitute good cause.

[14] The Townships have failed to demonstrate good cause to intervene post-hearing. Prior to the hearing, Attorney Nill was advised to request intervention, but intervention was not sought at that time. Each of the Townships provided public input and the information the Townships wish to be adopted as formal exhibits is part of the record for this proceeding.¹ The Townships chose to participate in this case by providing public input rather than seeking party status even after direct advisement from Commission staff. All the reasons specified as good cause existed prior to the hearing and do not demonstrate good cause for allowing a change to party status post-hearing.

REQUEST TO ACCEPT LATE-FILED EXHIBITS:

[15] As alternative relief, the Townships request their filings be accepted as late-filed exhibits. Under the Commission’s rules, a hearing officer is permitted to “authorize any party to furnish and serve designated late filed exhibits within a specified time after the close of the hearing.” N.D.A.C. § 69-02-04-07(k).

[16] As described in the Commission’s response, at times, the hearing officer will allow late-filed exhibits when decided at the hearing and agreed upon by the parties. This request was made weeks after the hearing, without agreement from the parties and all the information sought to be admitted was available before the hearing. Additionally, this relief is only available for parties to the proceeding. The Townships are not a party and therefore this relief is not available.

PETITION TO REOPEN THE RECORD:

[17] Additionally, the Townships request the record be reopened “for the limited purpose of taking additional evidence, namely receipt of the Township Exhibits.” *Petition*, p. 12.

¹ Exhibits 1A through 3E, except Corwin Township exhibits (1D, 2D, and 3D), are contained in exhibits 21 – 23. The Corwin Township exhibits are identical to the documents submitted by the other Townships. Exhibits 4A through 4E are not technically part of the evidentiary record for the case, but document prior submission to the Commission of the documents comprised within exhibits 1A through 3E.

[18] The Commission's rule on reopening the record specifies:

At any time after the conclusion of a hearing, but before the final order is issued or a rule is adopted, any party may file a petition to reopen the proceeding for the purpose of taking additional evidence.

1. **Contents.** The petition must set forth clearly the facts claimed to constitute the grounds requiring reopening of the proceeding, including any material changes of fact or law alleged to have occurred since the conclusion of the hearing.

2. **Service.** A copy of the petition to reopen must be served by the petitioning party upon all parties and a certificate to that effect must be attached to the petition when filed with the commission. The original and seven copies must be filed with the commission.

3. **Responses.** Within ten days following the service of a petition to reopen, any other party may file a response. The response must be served on the parties and the original response and certificate of service and seven copies must be filed with the commission. Failure to file a response is a waiver of any objection to the granting of the petition.

4. **Order to reopen.** If the commission has reason to believe the conditions of fact or law have so changed as to require, or that public interest requires, the reopening of a proceeding, the commission may issue an order to reopen.

N.D.A.C. § 68-02-06-01. The Townships argue the exhibits "address issues central to the Commission's final order and findings . . ." and failure to consider these documents "would substantially prejudice the Townships' governmental interests and impair meaningful judicial review." *Petition*, p. 13.

[19] The Townships allege no material change in fact or law in relation to the timing of their request. The Townships chose not to seek party status prior to the hearing despite having ample time to make such a request and after advisement by the Commission. The Applicants request regarding preemption was filed with the Commission on December 17, 2025, and made part of the Commission's docket which allowed the Townships ample time to request intervention prior to the hearings. The Applicants would be prejudiced by re-opening the record even under the procedures proposed by the Townships. Furthermore, the documents the Townships would like

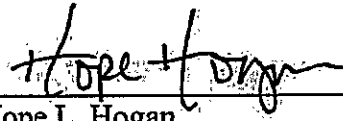
made part of the “formal evidentiary record” were received by the Commission and the Commission heard testimony from representatives of each petitioning Township.

IT IS HEREBY ORDERED:

[20] The Township’s Petition to Intervene, Motion to Accept Township Filings as Late-Filed Exhibits, and Petition to Reopen for Limited Additional Evidence is **DENIED**.

Dated at Bismarck, North Dakota this 13 day of March 2026.

State of North Dakota
Public Service Commission

A handwritten signature in black ink, appearing to read "Hope L. Hogan", written over a horizontal line.

Hope L. Hogan
Administrative Law Judge
Office of Administrative Hearings

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
OAH File No. 20250300

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the **ORDER DENYING PETITION TO INTERVENE AND DENYING MOTION TO ACCEPT FILINGS AS LATE-FILED EXHIBITS** was sent by electronic mail at the on the 13 day of March 2026, to:

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