

# **Senate Bill 2285**

**Presented by:** Randy Christmann, Chair  
Public Service Commission

**Before:** House Judiciary Committee  
The Honorable Lawrence Klemin, Chair

**Date:** March 12, 2025

## **TESTIMONY**

My name is Randy Christmann, Chair of the Public Service Commission (PSC). I am here today to provide testimony in opposition to this bill.

The Public Service Commission is a constitutional agency comprised of three statewide elected officials. Unlike other agencies, constitutional agencies hold executive authority as defined by the Legislature but are not subject to executive appointment. Generally, the Commission is vested with authority over a number of jurisdictions relating to economics, environmental, infrastructure protection, energy infrastructure siting, gas pipeline safety, and coal mine reclamation. Many of these jurisdictions are public interest statutes requiring decisions based on legal terms of art such as “prudent,” “used and useful,” “just and reasonable,” “for the public convenience and necessity,” or “in the public interest.”

Regulatory frameworks like economic regulation of franchise monopolies and environmental siting are often not well-defined because

they require the flexibility and broad authority to investigate and address a wide range of issues that may arise to protect the public and individual citizens. The Commission operates with a commitment to public involvement, allowing individuals to participate in proceedings through public input and even to have a seat at the table without legal representation. This openness stands in contrast to the more rigid processes found in the courts and certain other administrative proceedings.

Additionally, the PSC manages several state-federal partnerships, including programs for pipeline safety and coal mine reclamation. These programs are subject to regular federal audits, which evaluate compliance with federal standards. Problems may arise if federal auditors find that the state is not adequately enforcing these standards, even if the inadequacy were the result of a judge's ruling. The auditors may then issue findings of inadequacy, potentially resulting in federal agencies assuming enforcement responsibilities.

It is also worth noting that in states that have moved toward limiting judicial deference, there has been recognition that certain subject matters within longstanding agency expertise should be exempted. For example, Arizona's statute removing deference from the agencies expressly

provides that deference is retained for the regulation of public utilities and carriers<sup>1</sup> by their public utilities commission.

It is unclear what issues this bill will resolve, but there is a high likelihood that it will result in additional litigation. While the impacts are difficult to forecast, the PSC operates on a lean staff. The additional time and work engaged in addressing appeals and litigation may cripple the agency. If the Legislature deems this bill necessary, I respectfully urge you to exclude agencies led by elected officials, such as the Public Service Commission. These agencies have the appropriate expertise to make informed decisions and are directly accountable to the people of North Dakota.

Chair Klemin, thank you for the opportunity to testify. I am happy to answer any questions you may have.

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<sup>1</sup> See Ariz. Rev. Stat. section 12-910(H) (The removal of deference “does not apply to any agency action pursuant to Title 40”, Public Utilities and Carriers).