

ENGROSSED SENATE BILL 2264
Testimony of Todd D. Kranda
House Energy and Natural Resources Committee

- March 2, 2023 -

Chairman Porter and members of the House Energy and Natural Resources Committee, for the record, my name is Todd D. Kranda, I am an attorney with the law firm of Kelsch Ruff Kranda Nagle & Ludwig in Mandan, ND. I am appearing before you as a lobbyist on behalf of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 600 companies in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota.

The North Dakota Petroleum Council is in opposition to Engrossed SB 2264. This Bill attempts to modify the existing laws relating to the energy conversion and transmission facility siting acts for electric, gas and liquid transmission facilities. The changes relate to the notification process for (1) an application for a route permit for an electric transmission facility under North Dakota Century Code (NDCC) § 49-22-08.1; (2) an application for a certificate of corridor compatibility for a gas or liquid transmission facility under NDCC § 49-22.1-06, and (3) an application for a route permit for a gas or liquid transmission facility under NDCC § 49-22.1-07. Specifically, this Bill would require all applicants seeking route permits for an electric, gas or liquid transmission facility to mail notice to all landowners of record within the requested corridor within thirty days after the North Dakota Public Service Commission (“Commission”) determines that an application is complete. According to ND Administrative Code § 69-06-05-01(f) the width of a corridor is not less than 1 mile nor greater than 6 miles. The notice requirement in SB 2264 is not only unnecessary given the current notice requirements under the siting acts, but

it will also create undue burdens on applicants, such as added costs and expenses, and delay the orderly development of energy infrastructure within the State.

When speaking in terms of electric and gas or liquid transmission facilities, we must recognize that any applicant/utility seeking to construct a transmission facility must obtain easements from the landowners along the proposed route. This process is the most intimate form of notice of the proposed project and typically begins long prior to submission of an application to the Commission.

For example, a utility will need to analyze and determine the most suitable route prior to submission of its application to the Commission. This is accomplished by gaining physical access to the land for surveys to locate cultural and historical resources and any other potential unsuitable conditions for the proposed transmission facility. This is usually the first interaction with landowners and if surveys determine the property to be suitable for the proposed transmission facility, easement negotiations will follow. It should also be noted that both siting acts (Ch. 49-22 and Ch. 49-22.1) require applicants to state in their application the manner in which the applicant will inform affected landowners of easement acquisition and how the applicant will compensate said landowners. *See* NDCC §§ 49-22-08.1 and 49-22.1-07. In order to capture landowners not directly affected by construction of the project, most utilities will also facilitate community open house type meetings with landowners to review and explain a proposed project and its broader impact on the community.

As you can see, both siting acts, as well as the very nature of constructing electric or gas or liquid transmission facilities, require direct, one-on-one communications with all landowners along the proposed route prior to submission of an application to the Commission. This Bill, if enacted, will only require yet another, unnecessary notice to landowners who are already intimately aware of the

project and with whom the applicant has likely engaged on several occasions.

To be sure, additional notices are required under both siting acts and the rules of the Commission in order to ensure all affected landowners and agencies are receiving notice of the application. First, once the Commission formally determines that the application is complete, the Commission must serve notice of filing on persons or agencies deemed appropriate and shall publish a notice of filing in the newspaper of each county in which any portion of the facility is proposed to be located. *See* NDCC §§ 49-22-08(2), 49-08.1(2), 49-22.1-06(2) and 49-22.1-07(2). Thereafter, the Commission must also furnish a copy of the application to any person or agency upon request within thirty days of the service or publication. *See* NDCC §§ 49-22-08(3), 49-08.1(3), 49-22.1-06(3) and 49-22.1-07(3). The Commission must provide notice of each public hearing by service on those persons the Commission deems appropriate and *TWICE* by publication, once at least twenty days before the hearing and a second time within twenty days before the hearing. *See* §§ 49-22-13 and 49-22.1-10. All such notices are at the expense of the applicant. Additionally, the rules of the Commission set forth in the North Dakota Administrative Code (NDAC) require notice of any hearing to be held on a certificate or permit to be provided at least twenty days prior to the hearing as follows:

- (a) by publication in the official newspaper of each county in which any part of the proposed site, corridor or route is located; and
- (b) by mail or electronic mail to the following persons in each county in which any part of the site, corridor or route is proposed to be located:
 - i. the chairman of the board of county commissioners;
 - ii. the county auditor;
 - iii. the chief executive officer of each city in the county on an

- application for a certificate for an energy conversion facility;
- iv. the chief executive officer of each city within a corridor on an application for a certificate or permit for a transmission facility;
- (c) by mail or electronic mail to any state or federal agency listed in NDCC Section 69-06-01-05;
- (d) by mail or electronic mail to all parties; and
- (e) by mail or electronic mail to the state senators and representatives of each legislative district in which any part of the site, corridor, or route is proposed to be located.

See NDAC §§ 69-06-01-02(3), 69-06-04-01(4) and 69-06-05-01(5). Finally, an applicant for a transmission facility is required to serve one copy of a complete application on the county auditor in each county in which any part of the designated corridor is located. *See* NDAC § 69-06-05-01(4).

These multiple, and sometimes duplicative, notice procedures are meant to capture a wide range of interested persons and agencies for the purpose of soliciting public feedback on the application and the proposed facility. All such notices must be properly and timely made in order for a public hearing to proceed. The additional notice required by SB 2264 will unnecessarily increase costs incurred in connection with the preparation and filing of applications with the Commission and will further delay public hearings on such applications, especially in the context of larger projects which span multiple counties or states.

The additional notice requirements proposed under Engrossed SB 2264 are a duplication and completely unnecessary for the siting process for either an electric energy facility or a gas or liquid energy facility under the existing siting acts. For these reasons, the North Dakota Petroleum Council strongly opposes Engrossed SB 2264 and urges a **Do Not Pass Recommendation**. Thank you for the opportunity to

provide this information. I would be happy to answer any questions.