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Senate Bill 2406

To Chairs Senator Jerry Klein and Representative Matthew Ruby, and all the members of the Special Ad Hoc Policy Committee.

On behalf of Missouri River Energy Services (MRES), and through our local lobbyist, Todd D. Kranda (No. 58) of Kelsch Ruff Kranda Nagle and Ludwig law firm in Mandan, I am submitting this written testimony to express concerns with SB 2406. In particular, the bill, as introduced, prohibits all political subdivisions from entering into a nondisclosure agreement (NDA) with a data center or with any party related to an industrial project, including utilities or infrastructure such as construction of generation and transmission projects – a core business of MRES. As a municipal power agency working with municipal electric utilities in four states (North Dakota, Iowa, Minnesota and South Dakota) we are concerned with the unintended consequences of this bill—namely, that it prohibits municipal power agencies, municipal electric utilities and related political subdivisions of North Dakota from entering into <u>any</u> nondisclosure agreements or other contracts restricting the disclosure of information.

MRES is a municipal power agency, providing wholesale supplemental electric power to 61 municipal electric utilities in 4 states: North Dakota, Iowa, Minnesota, and South Dakota; 6 of which municipal utilities are located in North Dakota—Cavalier, Hillsboro, Lakota, Northwood, Riverdale, and Valley City. MRES also provides various services to its North Dakota associate member Maddock.

Organized under Iowa Code Ch. 28E, MRES is a political subdivision of Iowa, and <u>it is also considered a political subdivision of each of the states it has members in, which includes North Dakota</u>. MRES has developed generation assets and transmission assets in all four of these states, plus Wyoming. MRES has financed these assets through tax exempt municipal bonds issued under Minnesota law, through MRES's financing arm, Western Minnesota Municipal Power Agency (Western), which is also <u>considered a political subdivision</u>.

In short, SB 2406 would prohibit MRES and Western, as political subdivisions, from entering into NDAs. This would have a profound effect on our ability to reliably and affordably provide electric power to the municipal electric customers of North Dakota. Even without the addition of data centers, electric use is going up in the nation and the region. Furthermore, as older generation units begin to come off-line due to age, we will need new generation to replace them. MRES/Western would be at a significant disadvantage in developing energy projects if this bill were to pass. Energy developers commonly require NDAs, particularly in the early development phase of a project. MRES/Western, as political subdivisions, would not be able to enter into NDAs with these energy developers.

It is important to note that the bill does not impact the ability of investor-owned utilities (IOUs) or cooperatives to enter NDAs. While IOUs and cooperatives can enter agreements with energy developers, municipal utilities could not. Without the ability to enter NDAs to develop and own their energy resources, North Dakota municipal electric utility customers would be subject to higher rates as they scramble to buy power on volatile markets.

This also would mean that MRES and North Dakota municipal utilities could not invest in new transmission lines coming into the region. Not surprisingly, joint transmission ownership agreements, transmission construction contractors, and equipment suppliers require NDAs—particularly on pricing information and equipment acquisition. SB 2406 would prohibit MRES and North Dakota municipal utilities from entering into NDAs associated with transmission buildout, thus prohibiting municipals from owning or co-owning these assets. This again will impact municipal electric ratepayers as they cannot hedge transmission costs through ownership. They would instead be fully at the mercy of other entities and the market.

Therefore, MRES/Western urges the Joint Policy Committee to exclude municipal utilities and municipal power agencies from the provisions of this bill by an amendment which simply states that the prohibition on NDAs does not apply to municipal power agencies or municipal electric utilities operating in the state. It would allow municipal utilities to continue to enter into generation, distribution, and transmission contracts to provide reliable and affordable electricity to North Dakota and its ratepayers.

Sincerely,

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PS – A potential solution would be to focus on data centers only which appeared to be the initial intent. Alternatively, amend out MRES and other joint action agencies with the following type of amendment for SB 2406 which would add one section to the bill:

“44-04.1-05 Applicability. This chapter does not apply to:
(1) municipal power agencies established under and exercising the powers authorized by chapter 40-33.2,
(2) a city when it is exercising the powers provided in chapter 40-33.2, or
(3) municipal power agencies formed under the laws of a state other than North Dakota.”