Senate Bill 2406

Presented by: **Chris Martens, General Counsel**
Public Service Commission

Before: **Special Ad Hoc Policy Committee**
Honorable Sen. Jerry Klein, Chairman

Date: **September 1, 2026**

TESTIMONY

Mr. Chairman and members of the Committee, thank you for the opportunity to provide the Public Service Commission's perspective on Senate Bill 2406 and how North Dakota's existing open records and open meetings laws operate in our day-to-day work.

As a matter of practice, the Commission does not enter into nondisclosure agreements that restrict our ability to disclose information. We view such agreements as inconsistent with existing law. N.D.C.C. § 44-04-18.10(3) provides that an officer or employee of a public entity may disclose or comment on an open record and that an agreement prohibiting that disclosure or comment is void and against public policy. Whether information before the Commission is open, exempt, or confidential is determined by law—not by agreement.

At the same time, not every piece of information submitted to the Commission is public. N.D.C.C. § 44-04-18.4 protects qualifying trade secret, proprietary, commercial, financial, and research information. This protection is important to our regulatory role because the Commission may need detailed and commercially sensitive information to

evaluate utilities and major infrastructure projects. When information meets a statutory standard for protection, we protect it. When it does not, it remains subject to the open records law.

The same framework applies to Commission meetings. Existing law allows confidential or closed information to be considered in executive sessions when there is an independent legal basis for protecting that information. The executive session itself does not create confidentiality. In addition, a person who believes a public entity has improperly withheld a record or closed a meeting may seek Attorney General review under Chapter 44-04, providing an independent check on those determinations.

As the Committee considers this bill, it may also be worthwhile examining whether the existing definitions and standards in Chapter 44-04 continue to draw the appropriate line for modern infrastructure development. New types and scales of projects may involve sensitive information concerning energy demand, infrastructure requirements, siting, and commercial operations. Refining those standards, if necessary, may provide another means of addressing the concerns underlying this bill.

If Senate Bill 2406 moves forward, we encourage ensuring that it is carefully harmonized with Chapter 44-04. The bill prohibits certain agreements concerning confidentiality while also preserving existing statutory protections. Those provisions should work together clearly so that agencies remain able to appropriately protect information that North Dakota law makes confidential.

The Commission is committed to transparent regulatory decision-making and to faithfully applying the standards established by the Legislature. Whether operating under existing framework or changes enacted by the Legislature, the Commission will

continue to apply the law in a manner that preserves transparency while allowing us to effectively perform our regulatory responsibilities.

Thank you. I would be happy to answer any questions.