

1 Chairman Curt Kreun & members of the committee, my name is Scott Skokos and I am
2 testifying on behalf of Dakota Resource Council and our members. Thank you for allowing me
3 to submit written testimony in opposition to HB 1096. Below are some of our concerns.

4 Dakota Resource Council (DRC) has spent the last 40 years working to empower local
5 people to speak for themselves on issues that affect their families and communities. Public
6 hearings are one of the ways that our members, and other citizens of ND, can express their views
7 on proposed projects. We understand that public hearings might seem like they are a time-
8 consuming formality, but we believe they are a vital component of our democratic institutions.
9 The removal of those hearings for temporary approval, as we believe is proposed in HB 1096, is
10 taking away the voices of people who may be impacted directly, or indirectly, by the project. HB
11 1096, as it is currently written, is taking away the rights of North Dakotans to have their
12 concerns on a project heard, and be considered, through the hearing process. The project
13 proposer or utility cannot always identify and mitigate all potential problems that impact
14 individuals without feedback. Many of DRC's members are landowners and even small projects
15 can have big impacts on them as individuals. If temporary approval is given, without a public
16 hearing, the likelihood that the project will stop if impacts are identified later is very low once
17 construction is underway. It also increases the likelihood for public backlash on a project, if no
18 public hearings were held which can be costly politically and sometimes financially. HB 1096
19 takes away the ability for local citizens to give their perspective and we believe that is negligent.
20 We oppose HB 1096 as the process with public hearings is currently working as is. Public
21 hearings are a necessary part of citizen engagement in our democracy.

22 We also believe that the changes in wording of 49-22-07.2. in HB 1096 removes a key
23 definition of what constitutes an emergency. We understand that sometimes, in case of an
24 emergency, a public hearing process would impede leadership's ability to move swiftly on
25 immediately needed action. However, beginning on page 3 line 30 the proposed bill would
26 remove "which requires immediate construction and that adherence to the procedures and time
27 schedules would jeopardize the utility's system." It leaves in "demonstratable emergency exists".
28 We ask, who decides what constitutes an "demonstratable emergency" if not explicitly defined?
29 An emergency is a very subjective concept and this language is ambiguous. Ambiguous language
30 should not be included in the century code. The original language defined that a waiver could be
31 issued if the normal process would jeopardize the utility system. We understand that emergency
32 exemptions are necessary, however, the definition is now being removed to become entirely
33 subjective. This leaves a lot open to interpretation and could be used to construct projects that are
34 surrounded by political controversy without a public hearing. While we oppose HB 1096, we
35 request that if the bill is passed, that the original language that defines the emergency remain or
36 new language to define what constitutes an emergency be created.

37 In addition, on page 4 line 10-12 HB 1096 states "If the commission determines there is
38 an emergency that would prevent an in-person hearing in the county in which any portion of a
39 site, corridor, or route is proposed, a remote public hearing may be held." We agree with the

inclusion of language to clarify when to hold remote hearings, however, we disagree with the use of the word “may” in this context. If there is an emergency in which an in-person hearing cannot be held than a remote hearing must or shall be held. The use of the word “may” is not strong enough to ensure that a hearing is held even during an emergency such as the COVID-19 pandemic. These projects still have impacts on landowners even during emergencies that might prevent an in-person hearing. We believe that if an in-person hearing cannot be held due to an emergency than a remote public hearing must be held.

Beginning on page 5 line 29-30, “showing of good cause and receipt of a utility certification that the activities will have no adverse impacts upon the welfare of the citizens of this state or the environment.” DRC asks how is “good cause” going to be determined and what does a utility certification include? We believe this language is again, ambiguous. In addition, shouldn’t what constitutes a “demonstrable emergency” to the utility’s system be determined by Independent Systems Operators (ISOs) such as Midcontinent Independent System Operator (MISO) or Southwest Power Pool (SPP), rather than the commission. The lack of clarity is very concerning. It takes months of research and consulting experts in multiple fields to determine the impacts of projects on the health of citizens and the environment. Is this done by a utility certification and in an objective manner? There are very good reasons that public hearings are already included in the law and DRC proposes that the law remain as is.

On page 6 lines 1-3, HB 1096 states “The commission may issue a temporary approval or variance without the necessity of notice, publication, or public hearing with any additional terms, conditions, or modifications deemed necessary to minimize impacts.” We believe that this directly removes the commission’s responsibility to hold public hearings to gather public input. It is also concerning that even “notice” and “publication” are also being removed. This is going backwards on government transparency rather forward. Transparency reduces the risk for corruption. DRC advocates on behalf of our members, many who are landowners in ND, for the law to stay as is. There is no reason for a change, as the original process of public hearings is working for the public even if it seems burdensome or a formality to entities that are supposed involve citizens in its decision to construct a facility.

I urge the committee to oppose HB 1096 or amend it to clarify the definition of emergency and keep public hearings included.