

Testimony from Mr. Andy McDonald, Montana-Dakota Utilities Co.

before the

U.S. Senate Energy and Natural Resources Committee

October 29, 2025

I. Introduction

Chairman Lee, Ranking Member Heinrich, and members of the Committee, thank you for the opportunity to testify today on the need to improve predictability and certainty in the Section 106 review process under the National Historic Preservation Act (NHPA).

My name is Andy McDonald, and I serve as the Environmental Compliance Manager responsible for supporting Montana-Dakota Utilities Co.'s (Montana-Dakota) electric operations. Montana-Dakota is a small investor-owned utility company that generates, transmits, and distributes electricity to more than 145,000 customers across 185 communities and adjacent rural areas in North Dakota, South Dakota, Montana, and Wyoming. I have worked for Montana-Dakota for ten years, and as part of my responsibilities, I oversee the natural and cultural resource permitting efforts for the Company's electric projects.

Montana-Dakota is also a member of the Edison Electric Institute (EEI), which represents all investor-owned electric companies in the United States, serving more than 250 million customers in 50 states and the District of Columbia. EEI member companies, like Montana-Dakota, work every day to provide reliable energy to their customers at the lowest cost possible.

Across our nation, electric companies are building critically needed new generation, as well as the transmission and distribution infrastructure to deliver energy to customers.

Congress has an opportunity to act on a bipartisan basis to codify common-sense reforms to the federal permitting process to allow electric companies to more efficiently plan for and timely implement new grid investment and deliver reliable energy.

II. Section 106 Reviews Are Unpredictable.

Section 106 of the NHPA requires federal agencies to define and document the Area of Potential Effects (APE) of a proposed project—in other words, the area that must be assessed for impacts to historic resources. The implementing regulations define key terms broadly, and over time these terms have been interpreted inconsistently and sometimes expansively, creating confusion and unnecessary delays.

Montana-Dakota has experienced this issue on recent projects. In the example I'd like to discuss today, Montana-Dakota is rebuilding a three-mile electric distribution line where approximately half of the line crosses federal lands managed by two different federal agencies. The project involves undergrounding lines for wildfire risk mitigation and upgrading aging infrastructure. One agency required the APE to include only the portion of land managed by that agency. However, the other agency required the APE to include the entire three miles, including portions on private land where no federal approval is required. It's important to note that there is an area of cultural significance on federal land in this area that we are working with the agency to find a path around that does not negatively affect those important resources.

We're cognizant of the fact that these resources could extend onto neighboring private lands. Unfortunately, there is a perception among some that if the federal agencies don't have oversight over projects, that industry disregards any and all aspects of environmental concern. My experience over the last ten years paints a brighter picture about our efforts to provide a reliable energy source to our customers, while respecting the environmental and cultural resources that exist across our landscape.

There are plenty of examples across the country of voluntary efforts made by industry to preserve our landscape and resources. In a situation such as the one I have described, utilities still have the ability to use consultants and work with the appropriate state/tribal agencies and private landowners to navigate a path around these areas without negatively impacting historic resources. This approach provides more certainty for industry and our federal counterparts. They know which areas they are responsible for, and we know which areas we are responsible for. This allows projects to be planned and executed in a more timely and economical manner. It will also allow federal employees more time to focus on other management needs within their respective areas.

To be clear, our issue is not with the intent of Section 106 or the federal employees' efforts to interpret and implement it, but rather, the absence of clear, predictable boundaries around what constitutes the relevant APE and what effects must be considered. As my example illuminates, this lack of clarity leads to inconsistent interpretations among agencies, regions, individual staff, consultants, and even utility companies.

In certain cases, environmental conditions and wildlife restrictions leave extremely limited annual windows for construction to be completed, sometimes as little as two months during the year. In order to efficiently plan for rebuilding our existing infrastructure to more modern designs, as well as building new infrastructure to serve the rapidly expanding load growth, clarity is needed in the NHPA.

III. Clarifying The NHPA.

Congress has an opportunity to enhance predictability and certainty to the Section 106 review process for all parties involved. Specifically for linear projects, clarifying that agencies shall review the geographic area or areas within which an undertaking may *directly* cause alterations in the character or use of historic properties, if any such properties exist. And that agencies may only consider effects that share a reasonably close causal relationship to, and are proximately caused by, the undertaking. Effects that are speculative, attenuated from the undertaking, separate in time or place from the undertaking, or in relation to separate existing or potential future undertakings shall not be reviewed. Lastly, clarifying that where the geographic area or areas of an undertaking includes multiple agency jurisdictions, agencies *must* work together to apply consistent standards with regard to reviewing potential alterations in the character or use of historic properties. This preserves the spirit of the NHPA while restoring predictability and adding certainty to the Section 106 process.

IV. Conclusion

Consistent and predictable Section 106 reviews are essential to ensuring that electric companies can continue to meet demand growth and provide reliable energy at the lowest cost possible.

Making these reasonable clarifications within NHPA would not weaken historic preservation, but rather, provide more certainty and predictability to the Section 106 review process.

On behalf of Montana-Dakota Utilities Co. and EEI, I appreciate the Committee's attention to this critical issue and support Congress making changes to the NHPA to achieve a more efficient, consistent, predictable, and effective Section 106 process.

Thank you for the opportunity to testify and I look forward to answering any questions you may have.