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## **Senate Bill 2314**

### **Testimony of Ron Ness**

#### **Senate Energy and Natural Resources Committee**

**January 27, 2023**

Chairman Patten and members of the Committee, my name is Ron Ness, president of the North Dakota Petroleum Council (NDPC). The North Dakota Petroleum Council represents more than 600 companies involved 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. I appear before you today in opposition to Senate Bill 2314.

This bill attempts to modify the existing law as to when a pipeline carrier may exercise the right to eminent domain and adds an additional requirement specific to a carbon dioxide common carrier pipeline. This bill would require that the North Dakota Public Service Commission (PSC) approve the use of eminent domain after a public hearing is held in every county seat of each county for any common carrier pipeline, and in addition, requires voluntary written consent from 85% of the landowners in a project area, or more than 85% of the landowners in a project area if the board of county commissioners specify a larger percentage is necessary before a carbon dioxide common carrier pipeline may use eminent domain.

Senate Bill 2314 would substantially alter existing law on the use of eminent domain by a pipeline carrier with an additional review and approval process through the PSC for the use of eminent domain, but also an additional requirement before the use of eminent domain to complete a project for a specific type of common carrier pipeline, namely a carbon dioxide pipeline that has been designated as a common carrier.

The use of eminent domain is rare and is typically considered as a last option available for a project. A project first needs to complete the extensive siting process through the PSC to obtain approval for the specific route and corridor. If Senate Bill 2314 is approved, then the common carrier pipeline project would include an additional process with the review and approval by the PSC for the use of eminent domain.

Additionally, there is another requirement created only for carbon dioxide common carrier pipelines that could cause the project to fail and not be completed because it must secure voluntary consents from 85% or more than 85% of the landowners within the project area before using eminent domain. A project that doesn't secure 85% or more consent within the project area would have to start over, find a new route and corridor, obtain new siting approval from the PSC through the siting process for that new route and corridor, and again seek review and approval for use of eminent domain which could be repeated over and over until the project secures the 85% or more consent to proceed.

It is also unclear and somewhat vague as to what is meant by 85%: whether it refers to the number of individuals who have title ownership to the land within the project area or is it based on the volume, such as the acreage and size of land that is owned within the project area by landowners in order to reach the 85% or more.

The use of eminent domain by a pipeline, including carbon dioxide pipelines, should not be restricted in such a manner particularly when the pipeline project has been designated as a common carrier. A pipeline designated as a common carrier must, without discrimination, accept, carry, or purchase, the product (oil, coal, gas, or carbon dioxide) of the state or of any person not the owner of any pipeline, operating a lease or purchasing oil, coal, gas, or carbon dioxide at prices and under regulations to be prescribed by the PSC (§ 49-19-11 NDCC).

The restrictions under SB 2314 on the use of eminent domain by having an additional process through the PSC for review and approval of the use of eminent domain, and then a requirement for 85% or more voluntary consent with a carbon dioxide common carrier pipeline could negatively impact and ultimately result in a pipeline project not being completed even though the pipeline was sited through the PSC process and designated as a common carrier for the public.

NDPC strongly opposes Senate Bill 2314 and urges a **Do Not Pass Recommendation**. Thank you for the opportunity to provide this information, and I would be happy to answer any questions.