

Senate Bill 2209

Testimony of Brady Pelton

Senate Energy and Natural Resources Committee

January 27, 2023

Chairman Patten and members of the Committee, my name is Brady Pelton, vice president of the North Dakota Petroleum Council (“NDPC”). The North Dakota Petroleum Council represents more than 600 companies 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 2209.

This bill attempts to modify the existing law as to when a pipeline carrier may exercise the right to eminent domain, specifically as applied to a carbon dioxide common carrier pipeline. This bill would require voluntary written consent from 85 percent of the landowners in a project area, or more than 85 percent 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 2209 would substantially alter existing law on the use of eminent domain by a specific type of common carrier pipeline and would severely limit and restrict any carbon dioxide pipelines that have been designated as a common carrier from using eminent domain to complete a project.

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 North Dakota Public Service Commission (PSC) and obtain approval for its specific route and corridor. If Senate Bill 2209 is approved, then a project could fail to be completed based on not securing voluntary

consents from 85 percent or more than 85 percent of the landowners within the project area. Such a project would then have to start over, find a new route, and obtain new siting approval from the PSC through its siting process again for that new route and corridor. This time consuming process could be repeated until the project secures the 85 percent or greater consent to proceed. Also, it is unclear and somewhat vague as to what is meant by “85 percent” in the language of the bill. It remains unclear whether this threshold refers to the number of individuals who have title ownership to certain land within the project area or, in the alternative, if it is based on the volume, such as the acreage and size of land that is owned within the project area by landowners.

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 deemed to be for the common use and in the public interest by its designation 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 2209 on the use of eminent domain by having a requirement for 85 percent or greater voluntary consent could negatively impact development and ultimately result in a pipeline project not being completed despite its siting through the PSC process and designation as a common carrier for the public. A common carrier carbon dioxide pipeline should not be unreasonably prohibited and restricted from the use of eminent domain as is being proposed by SB 2209.

Senate Bill 2209 is also substantially similar to Senate Bill 2314 that will be heard by this Committee later today. However, Senate Bill 2314 includes a requirement that the PSC approve the use of eminent domain after a public hearing is held in every county seat of each county involved

with the pipeline project. It also includes the same provisions for 85 percent voluntary consent, or more than 85 percent if the board of county commissioners determine it is necessary.

NDPC strongly opposes Senate Bill 2209 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.