

OIL PIPELINE REGULATION - AUTHORITY OF STATE TO REQUIRE TRANSMISSION OF NORTH DAKOTA OIL

This memorandum is in response to a request for information regarding whether the state of North Dakota could impose requirements on the operator of a proposed oil pipeline to accept oil from this state.

An oil pipeline that operates on an interstate basis is classified as a common carrier under federal and North Dakota law which must provide transportation service on a nondiscriminatory basis. Under federal law, maximum transportation fees or rates that a pipeline carrier engaged in interstate commerce may charge are regulated by the Federal Energy Regulatory Commission.

North Dakota Century Code Chapter 49-19 addresses pipelines and grants the Public Service Commission limited authority to regulate pipelines. Section 49-19-11 provides that a common carrier must agree that it, without discrimination, will accept, carry, or purchase the oil of any person. Section 49-19-13 authorizes the Public Service Commission to establish and enforce rates or charges

and regulations for transporting oil by pipeline. If a pipeline carrier agrees to comply with the provisions of Chapter 49-19, the carrier is authorized under Section 49-19-12 to exercise the right of eminent domain under state law. Section 49-19-19 prohibits a pipeline carrier from discriminating between or against shippers in regard to facilities furnished, services rendered, or rights charged.

When constructing a new pipeline, the pipeline owner is subject to state and local laws to the extent those laws are not preempted by federal law with respect to the design, operation, and maintenance of an interstate pipeline. The federal laws generally apply to safety requirements. State laws that may apply include environmental permitting requirements and nondiscriminatory provisions such as those under Chapter 49-19. Local regulations may involve the granting of an easement for a right of way over or upon public lands.