

Senate Bill 2314

Presented by: Julie Fedorchak
Public Service Commission

Before: Senate Energy and Natural Resources Committee
The Honorable Dale Patten, Chairman

Date: January 27, 2023

TESTIMONY

Mister Chairman and committee members, I am Julie Fedorchak, a member of the Public Service Commission, and I'm here to testify in opposition to this bill on behalf of the Public Service Commission (Commission).

The right to own property and use it as you see fit is a fundamental principle of the United States. Efforts by the government to infringe on this need to be limited and scrutinized carefully. At the same time, the Commission recognizes the need for and value of carefully enacted tools such as eminent domain that support development of a broader public good. This process at times impacts private property in ways that property owners oppose. This bill establishes parameters under which a developer of a carbon dioxide pipeline can pursue eminent domain. The Commission believes this question is best addressed by the legislative body and has no position relating to this issue.

The Commission does oppose the procedure and requirement for Commission approval to use eminent domain as proposed by this bill. The state's eminent domain process is a process of last resort, and in the Commission's experience companies have used eminent domain sparingly. Aside from the

current storm over the Carbon Solutions project, we have received very few complaints about utilities or others exercising eminent domain in excessive ways.

This bill would dramatically alter the process by adding a second, redundant review to the eminent domain process. Energy infrastructure developers would endure multiple layers of permitting and review prior to construction.

To give an example, an intrastate natural gas pipeline or crude transmission line across the state would be required to file a siting application with the Commission. The Commission would hold multiple siting hearings across the state relating to the proposed route and corridor. Once a corridor and route are approved, if any landowners oppose crossing their property, the Commission would then be required to hold another series of public meetings in every county to determine whether the pipeline should be permitted to exercise eminent domain authority. Once that process is complete, the company would need to go through the court's procedure to exercise eminent domain and set compensation.

The requirement of Commission approval for the use of eminent domain could add a substantial amount of additional time to the construction and development of the state's energy infrastructure. One could only imagine how this would have impacted the development of the Bakken during the most recent boom.

The Commission does not see the value or the ultimate public benefit gained by this additional layer of bureaucracy. On the contrary, the public harm could be significant as it would no doubt slow down, complicate and otherwise jeopardize the production of fossil fuels and additional electricity infrastructure

needed to maintain the reliability of our energy systems and our state's strong energy industry.

Finally, the requirement to consider "any issues raised during the public meetings" is vague in guidance on whether to grant or deny the use of eminent domain. In the event that the legislature finds it appropriate for the Commission to hear and deliberate over "any issues" presented, we request that criteria be provided to guide whether approval or denial is warranted.

Mister Chairman, this concludes our testimony. I will be happy to answer any questions.