

Testimony of Senator Jeff Magrum
in favor of
SENATE BILL NO. 2314
Senate Energy and Natural Resources Committee
January 27, 2023

Chairman Patten and members of the committee,

I sponsored SB 2314 because I heard from many landowners that they were being told that developers could use eminent domain simply by filing a one-page piece of paper with the Public Service Commission. I understand that under existing law a court would still look at a developer's eminent domain authority, but because developers have been claiming that filing a document with the PSC gives them eminent domain authority. That is not true and this bill makes that clear, and also makes it clear that courts should consider a developer's common carrier status as part of any eminent domain proceeding.

I worked with legal counsel to develop an amendment to this bill, which would remove the requirement that the Public Service Commission hold hearings and make the decision on common carrier status, and move that decision to the courts where it is now. I would offer this amendment to the bill and request the committee vote to amend and then vote do pass on SB 2314 as amended.

I hope you will support this bill and vote do pass on SB 2314 as amended by my proposed amendment.

Thank you,
Senator Jeff Magrum

CHAPTER 49-19 COMMON PIPELINE CARRIERS

49-19-01. Definition of common pipeline carriers.

Every person:

1. Owning, operating, or managing any pipeline or any part of any pipeline within this state for the transportation of crude petroleum, gas, coal, or carbon dioxide to or for the public for hire, or engaged in the business of transporting crude petroleum, gas, coal, or carbon dioxide by pipelines;
2. Owning, operating, managing, or participating in the ownership, operation, or management of, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipeline, or any part of any pipeline, for the transportation of crude petroleum, gas, or coal bought from others from any oil, gas, or coal field or place of production, to any distributing, refining, or marketing center or reshipping point;
3. Engaged in the business of producing, purchasing, transporting for hire or transporting for sale within this state of natural gas, which is transported through pipelines, or any part of a pipeline, the right of way for which is granted or secured under the provisions of this chapter or, subject to chapter 32-15, through the exercise of the right of eminent domain; or
4. Made a common carrier by or under the terms of a contract with or in pursuance of the laws of the United States, is a common carrier and is subject to the provisions of this chapter as a common pipeline carrier.

49-19-02. Pipeline carriers - Special powers of commission.

The commission shall take reports from and may investigate the books and records kept by any pipeline carrier in connection with its business, and may require such company to make monthly reports duly verified under oath showing the total quantity of crude petroleum owned by such carrier and of that held by it in storage for others, and its unfilled storage capacity. No publicity shall be given by the commission to the reports as to stock of crude petroleum of any particular pipeline, but it may make public the aggregate amounts held by all the pipelines making such reports and their aggregate storage capacity.

49-19-03. Enforcement of orders by commission.

The commission shall hear and determine complaints, require attendance of witnesses, and institute suits and sue out such writs and process as may be necessary for the enforcement of its orders.

49-19-04. Reservation in gas franchises.

No city or other public corporation hereafter shall grant to any person a franchise to furnish natural gas to the public in this state without making a reservation therein that a percentage of native natural gas shall be used by such person if and when the same is produced in commercial quantities.

49-19-05. Percentage of native natural gas to be used.

Whenever native natural gas is produced in this state in commercial quantities, any person having a franchise to furnish gas to the public, which franchise is dated after March 9, 1933, shall use fifty percent, or its equivalent, of native natural gas as developed if the source thereof is located not more than six miles [9.66 kilometers] from any established gas pipeline.

49-19-06. Gas in commercial quantities - What constitutes.

Any gas well of two hundred fifty thousand cubic feet [7079.21 cubic meters] volume and two hundred pounds [90.72 kilograms] of rock pressure shall constitute a well producing native natural gas in commercial quantities under the provisions of this chapter.

From: Magrum, Jeffery jmagrum@ndlegis.gov

To: Patten, Dale dpatten@ndlegis.gov, Boehm, Keith kboehm@ndlegis.gov, Beard, Todd tbeard@ndlegis.gov, Kessel, Greg gkessel@ndlegis.gov, Kannianen, Jordan L. jkannianen@ndlegis.gov, Magrum, Jeffery jmagrum@ndlegis.gov

Date: Thu, Jan 26, 2023, 6:24 PM

It appears to mean any entity defined under federal law or contract as a common carrier is a common carrier under ND law and subject to the statutory provisions applicable to pipeline carriers

Here is the original language:

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Every person, firm, corporation, limited partnership, joint stock association or association of any kind whatsoever;

(a) Owning, operating, or managing any pipe line or any part of any pipe line within the State of North Dakota for the transportation of crude petroleum or gas to or for the public for hire, or engaged in the business of transporting crude petroleum or gas by pipe lines; or

(b) Owning, operating, or managing any pipe line or any part of any pipe line for the transportation of crude petroleum or gas, to or for the public for hire, and which said pipe line is constructed or maintained upon, along, over, or under any public road or high way; or

(c) Owning, operating, or managing any pipe line or any part of any pipe line or pipe lines for the transportation to or for the public hire, of crude petroleum, or gas, and which said pipe line or pipe lines is or may be constructed, operated, or maintained across, upon, along, over, or under the right of way of any railroad, corporation, or other common carrier, required by law to transport crude petroleum or gas as a common carrier; or

(d) Owning, operating or managing or participating in ownership, operation or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipe line or pipe lines, or any part of any pipe line, for the transportation from any oil or gas field or place of production, to any distributing, refining, or marketing center, or reshipping point thereof, of crude petroleum or gas, bought of others; or

(e) Engaged in the business of producing, purchase, transportation for hire or transportation for sale within this State of natural gas, which is transported through pipe lines or any part of a pipe line, the right of way for which is granted or secured

under the provisions of this Act or through exercise of the right of eminent domain; or
(f) Made a common carrier by or under the terms of contract with or in pursuance of
the law of the United States, is here by declared to be a common carrier and subject
to the provisions hereof.

John Bjornson

Director

North Dakota Legislative Council

600 East Boulevard Avenue

Bismarck, ND 58505

701-328-2916

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA**

In the Matter SCS Carbon Transport LLC)
Acceptance of Provisions of North Dakota)
Century Code § 49-19-12)

Case No. _____

**ACCEPTANCE OF PROVISIONS OF
NORTH DAKOTA CENTURY CODE § 49-19-12**

Upon approval by the North Dakota Public Service Commission (“Commission”) for construction of a proposed carbon dioxide (“CO₂”) pipeline project, SCS Carbon Transport LLC (“SCS”) will own and operate a pipeline located within the State of North Dakota and will be engaged in the business of transporting CO₂ for others by such pipeline in accordance with the definition of a common carrier. *See* N.D.C.C. § 49-19-01.

North Dakota Century Code § 49-19-12 provides in relevant part that “[e]very common pipeline carrier which shall have filed with the commission its acceptance of the provisions of this chapter has, subject to chapter 32-15, the right and power of eminent domain in the exercise of which it may enter upon and condemn the land, right of way, easements, and property of any person necessary for the construction, maintenance, or authorization of its pipeline.”

SCS, pursuant to North Dakota Century Code § 49-19-12, as a common carrier, accepts the provisions of Chapter 49-19 of the North Dakota Century Code. This acceptance by SCS is hereby filed with the Commission.

Dated this 24th day of June, 2022.

SCS Carbon Transport LLC

James Pirolli, Chief Commercial Officer

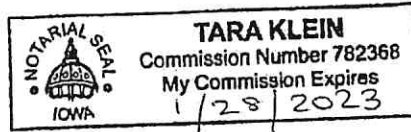
STATE OF IOWA

)

)ss.

COUNTY OF STORY

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The foregoing instrument was acknowledged before me this 24th day of June, 2022, by James Pirolli, Chief Commercial Officer of SCS Carbon Transport LLC, a limited liability company, on behalf of the company.

Notary Public

My Commission Expires: 1/28/2023

June 24, 2022

HAND DELIVERED

Mr. Steve Kahl
Executive Secretary/Director of Administration
North Dakota Public Service Commission
600 E Blvd Ave Dept 408
Bismarck, ND 58505-0480

**RE: SCS Carbon Transport LLC
Acceptance under NDCC §49-19-12**

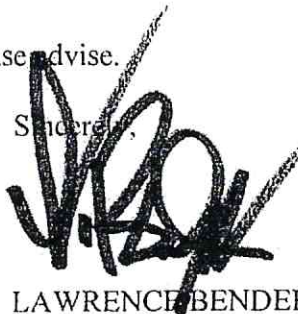
Dear Mr. Kahl:

Pursuant to the provisions of Section 49-19-12 of North Dakota Century Code, please find enclosed herewith an original and five (5) copies of the SCS Carbon Transport LLC Acceptance of Provisions of North Dakota Century Code §49-19-12.

Also enclosed herewith is a CD containing this letter and the above-referenced document in PDF format.

Should you have any questions, please advise.

Sincerely,



LAWRENCE BENDER

LB/kl
Enclosures

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1 PU-22-260 Filed 06/24/2022 Pages: 3
Acceptance of Provisions of N.D.C.C. Section 49-19-12
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