

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **EMINENT DOMAIN - NORTH DAKOTA**

### **Montana-Dakota Utilities Co. v. Behm**

**Supreme Court of North Dakota - May 16, 2019 - N.W.2d - 2019 WL 2135825 - 2019 ND 139**

Condemnor, a utility company, brought an eminent domain action against landowner to acquire an easement across landowner's property for a 3,000-foot natural gas pipeline to service a railroad switch which was required to be heated to keep it operable during winter months.

The District Court dismissed action. Parties cross-appealed.

The Supreme Court held that:

- Utility company's proposed pipeline was for a public use under North Dakota law, and
- Proposed taking was necessary.

Utility company's proposed taking to acquire an easement over landowner's property to construct pipeline to supply natural gas to railroad company for the purpose of heating a railroad switch during the winter months was for a public use under North Dakota law, even though portion of pipeline was intended to serve only a single customer, the railroad company.

Utility company's proposed taking to acquire an easement across landowner's property for a natural gas pipeline to heat railroad company's railroad switch was necessary for a public use under North Dakota law, rather than for mere convenience, absent evidence of bad faith, gross abuse of discretion, or fraud in determination of chosen pipeline route, where utility company did not own adjacent land on which it could construct pipeline, one alternative route would have added 18,000 feet of pipeline to project at additional cost of \$ 1,200,000, and second alternative route would have resulted in utility company's easement being subordinate to public's section line right-of-way easement with utility company being forced to accommodate at its expense any conflicts that might arise.