

CO₂ Common Carriage

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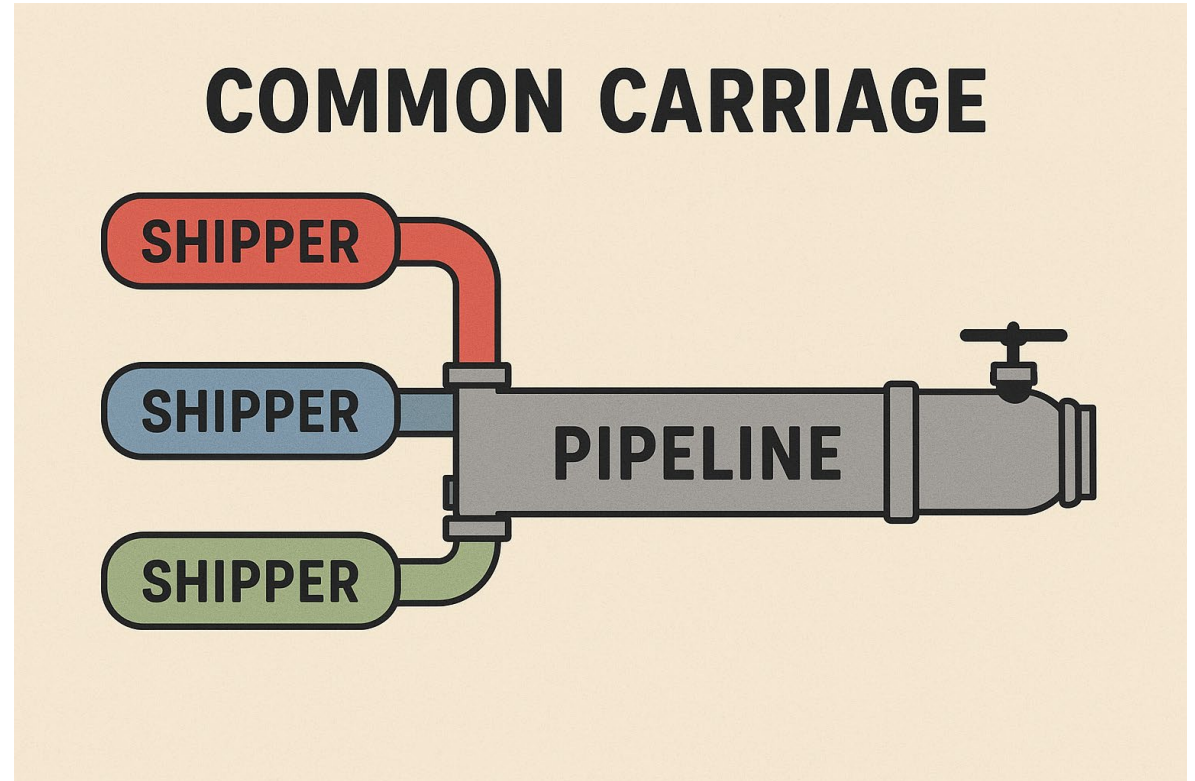
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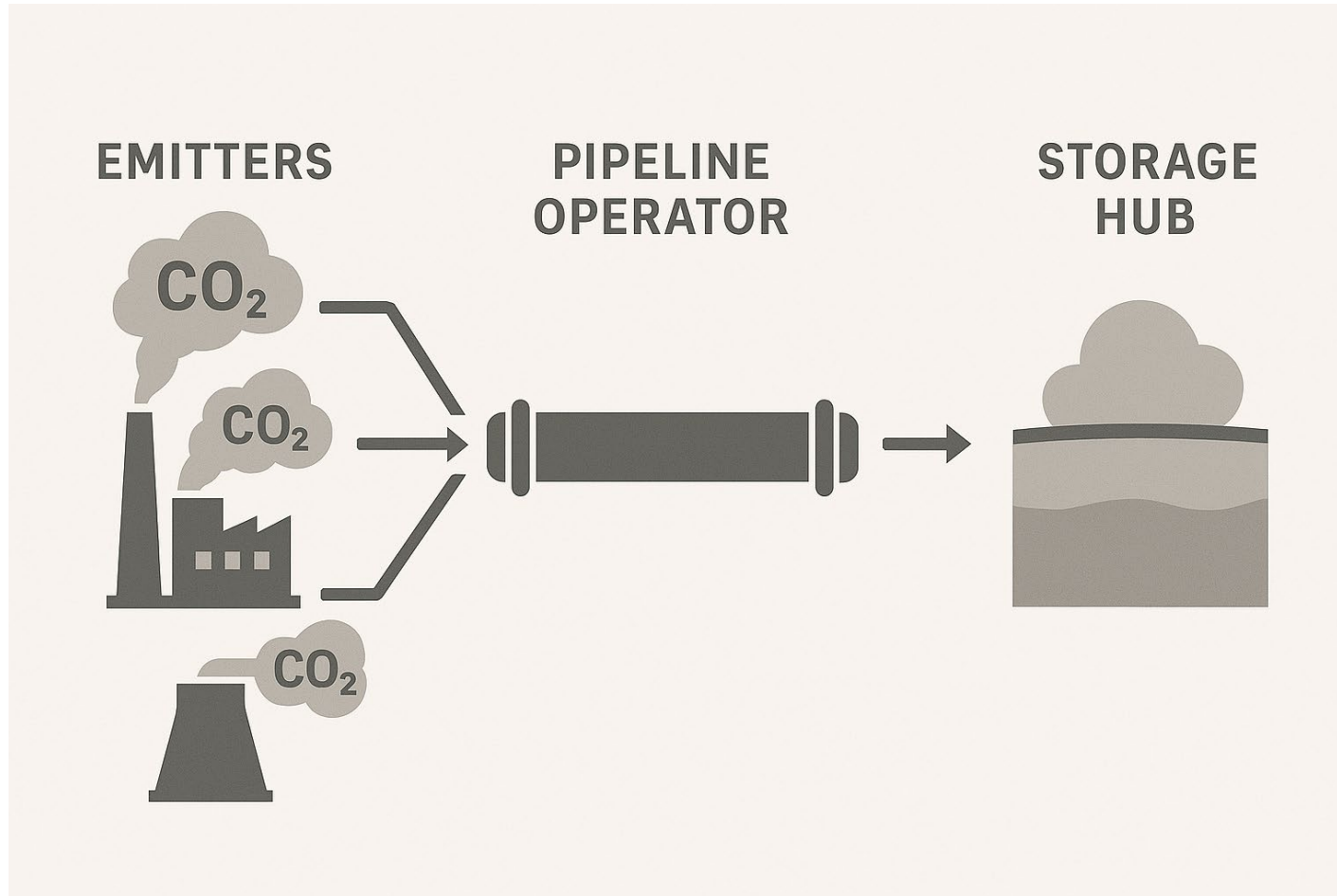
THE WORLD NEEDS MORE COWBOYS.

Why common carriage?

1. What are common carrier requirements?
2. Why do they matter?
3. How do they work?



Monopoly Concerns for CO₂ Transport



Common Carriage – Federal Law

- Mineral Leasing Act (MLA)
 - “The owners or operators of pipelines subject to this section shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands.”
 - Applies to most CO2 pipelines, historically
- *Compare:*
 - Federal Land Policy & Management Act (FLPMA)
 - Interstate Commerce Act (ICA)

Common Carriage – State Law

Eminent Domain Requires Common Carriage

- Texas
- Montana
- North Dakota

Eminent Domain With No Common Carriage

- Wyoming

Case study: Texas

- Must be common carrier to exercise eminent domain
 - *Texas Rice Land Partners, Ltd. v. Denbury Green Pipeline-Texas, LLC*
- Standard: “Reasonable probability” of a future customer other than the pipeline owner
- Requires: Posting of a tariff with Texas Railroad Commission
- Complaints & enforcement: Texas Railroad Commission

Implementing Common Carriage for CO₂ Pipelines

Fair Tariffs and Forced Access: MLA ROWs

“Whenever the Secretary has reason to believe that any owner or operator subject to this section is not operating any oil or gas pipeline in complete accord with its obligations as a common carrier hereunder, he may request the Attorney General to prosecute an appropriate proceeding before the Secretary of Energy or Federal Energy Regulatory Commission or any appropriate State agency or the United States district court for the district in which the pipeline or any part thereof is located, to enforce such obligation or to impose any penalty provided therefor, or the Secretary may, by proceeding as provided in this section, suspend or terminate the said grant of right-of-way for noncompliance with the provisions of this section.”

30 U.S.C. 185(r)(5)

Fair Tariffs and Forced Access: Surface Transportation Board

“To ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including the national defense, it is the policy of the United States Government to ... encourage the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair or destructive competitive practices.”

The [Surface Transportation] Board has jurisdiction over [interstate] transportation by pipeline, or by pipeline and railroad or water, when transporting a commodity other than water, gas, or oil.

49 U.S.C. 15301

Fair Tariffs and Forced Access: Surface Transportation Board

Pipeline Carriers subject to regulation by the STB must establish reasonable rates, must not discriminate against other shippers including through showing preference for its own shipments, and must provide transportation or service upon reasonable written request.



Fair Tariffs and Forced Access: Surface Transportation Board

STB only intervenes upon complaint.

- Process must be initiated through filing of a complaint either by a person or government agency.
- STB will investigate and either dismiss or issue an order.
- An order of the STB may be enforced by the board through a civil action.
- A person injured by non-compliance may bring a civil action for damages.

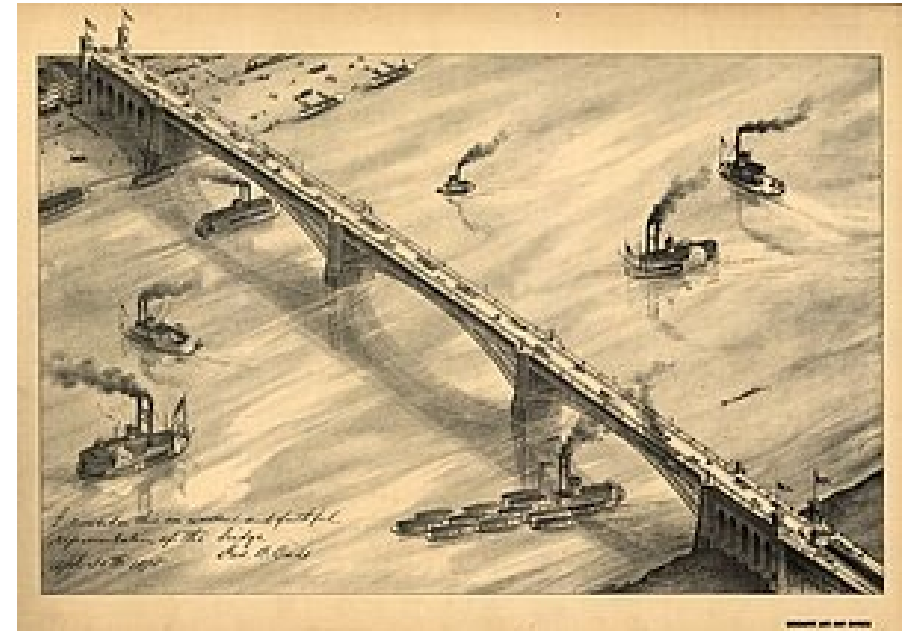
Fair Tariffs and Forced Access: Sherman Act Claims

Essential Facilities Doctrine

Four elements necessary to prove liability under the EFD:

1. control of the essential facility by a monopolist;
2. a competitor's inability practically or reasonably to duplicate the essential facility;
3. the denial of the use of the facility to a competitor; and,
4. the feasibility of providing the facility.

MCI Communications Corp. v. American Tel. & Tel. Co., 708 F.2d 1081, 1132-33 (7th Cir. 1983).



Fair Tariffs and Forced Access: Sherman Act Claims

United States v. Terminal Railroad Ass'n, 224 U.S. 383 (1912)

There indeed is compulsion, but it is inherent in the situation... The other companies use the terminal properties because it is not possible to acquire adequate facilities for themselves. The cost to any one company is prohibitive.

Or suppose it became necessary in the exigency of commerce that all incoming trains should reach a common focus, but every railroad company provide its own track; **then not only would the expense of obtaining the necessary rights of way be so enormous as to amount to the exclusion of all but a few of the strongest roads, but, if it could be accomplished, the city would be cut to pieces with the many lines of railroad intersecting it in every direction, and thus the greatest agency of commerce would become the greatest burden."**

Common Carrier & Oil Pipelines

Hepburn Act amended ICA to apply common carrier requirements to interstate oil pipelines. Jurisdiction for rate regulation transferred to FERC from the ICC in 1994.

RATES: FERC regulates rates and terms of service for interstate oil pipelines; Carrier must publish their tariffs; adjusted according to index system

CAPACITY ALLOCATIONS: Space must be allocated in a non-discriminatory manner; cannot accommodate one shipper while denying entire request of another.

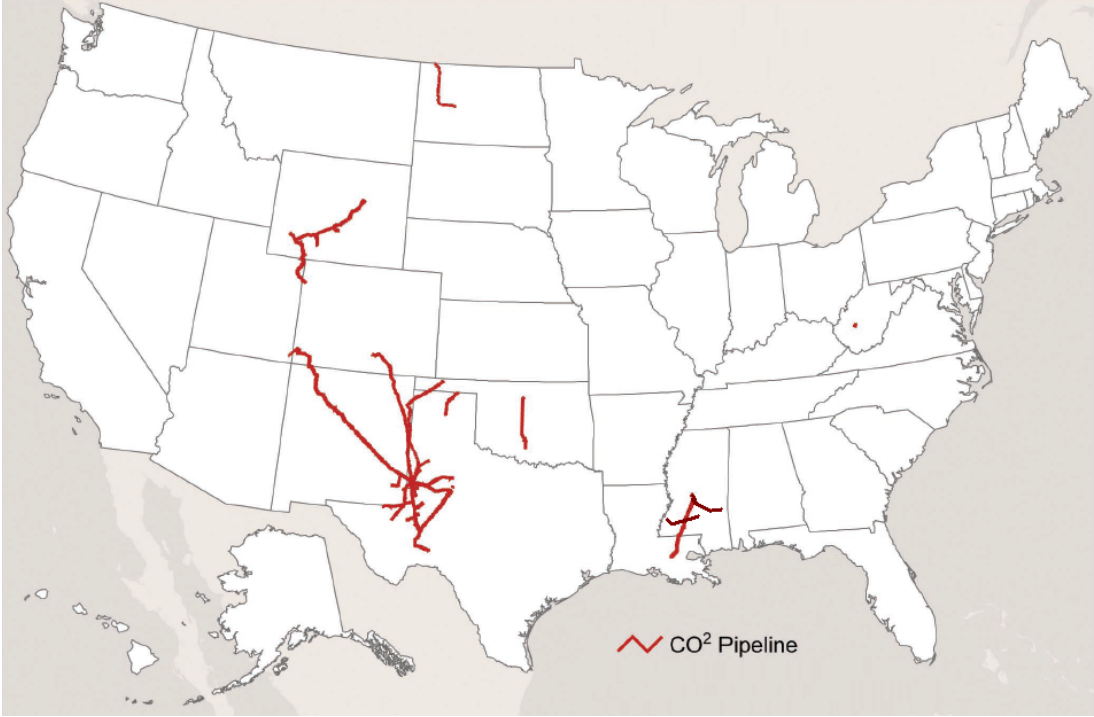


Open Access and Gas Pipelines

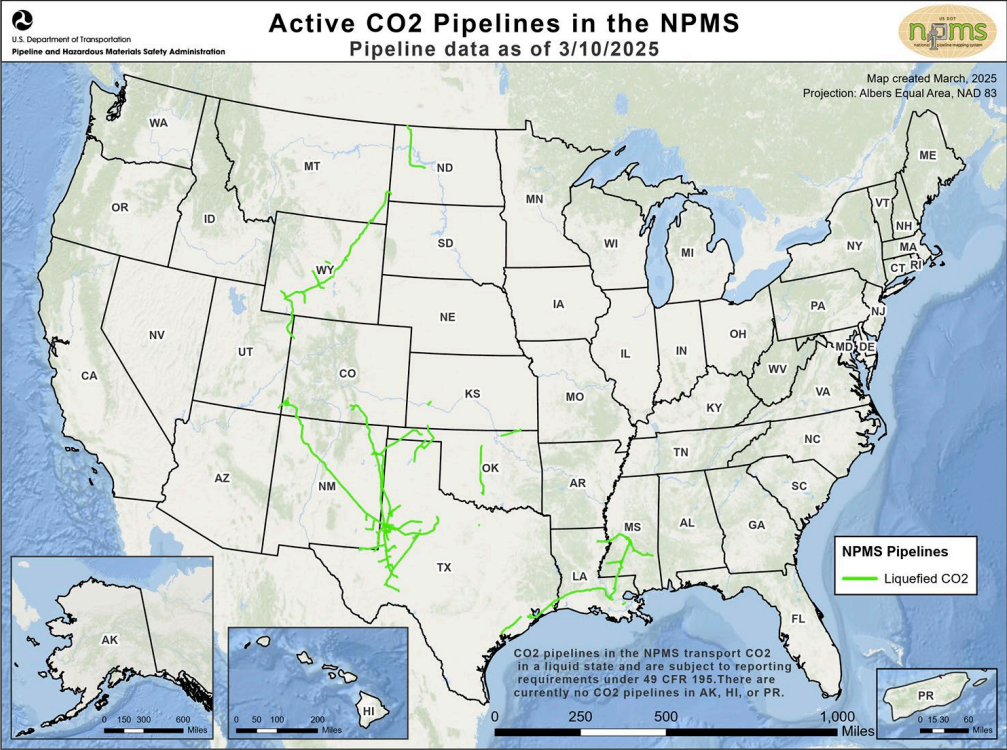
- Open Access requirements established by FERC Order 636 “ to ensure that all shippers have meaningful access to the pipeline transportation grid so that willing buyers and sellers can meet in a competitive, national market to transact the most efficient deals possible” while ensuring consumers “access to an adequate supply of gas at a reasonable price.”
- RATES: Must file rates, terms of service, and operational conditions with FERC
- CAPACITY ALLOCATIONS: Occur during “open seasons” when pipelines expand or when firm capacity contracts expire; excess capacity can be sold in secondary markets.

Are CO₂ pipelines ripe for
regulation?

CO₂ Pipelines in the United States: Current Infrastructure & its Evolution

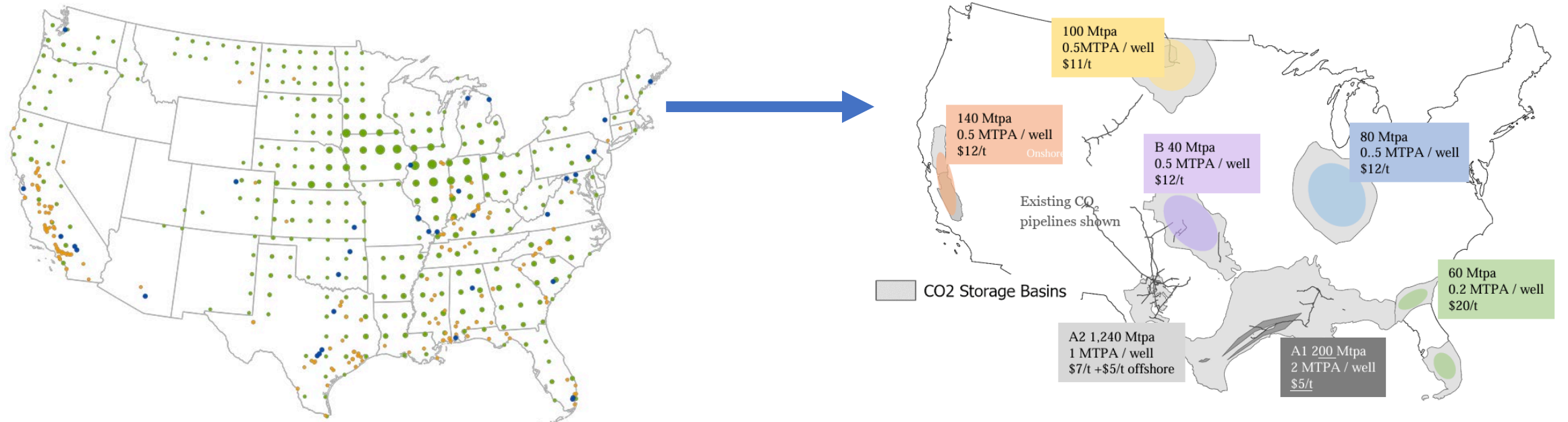


Congressional Research Service (2007)



U.S. Dept. of Transportation (2025)

CO₂ Pipelines in the United States: Objectives for CCS



Looking Toward 2050

CO2 point source type

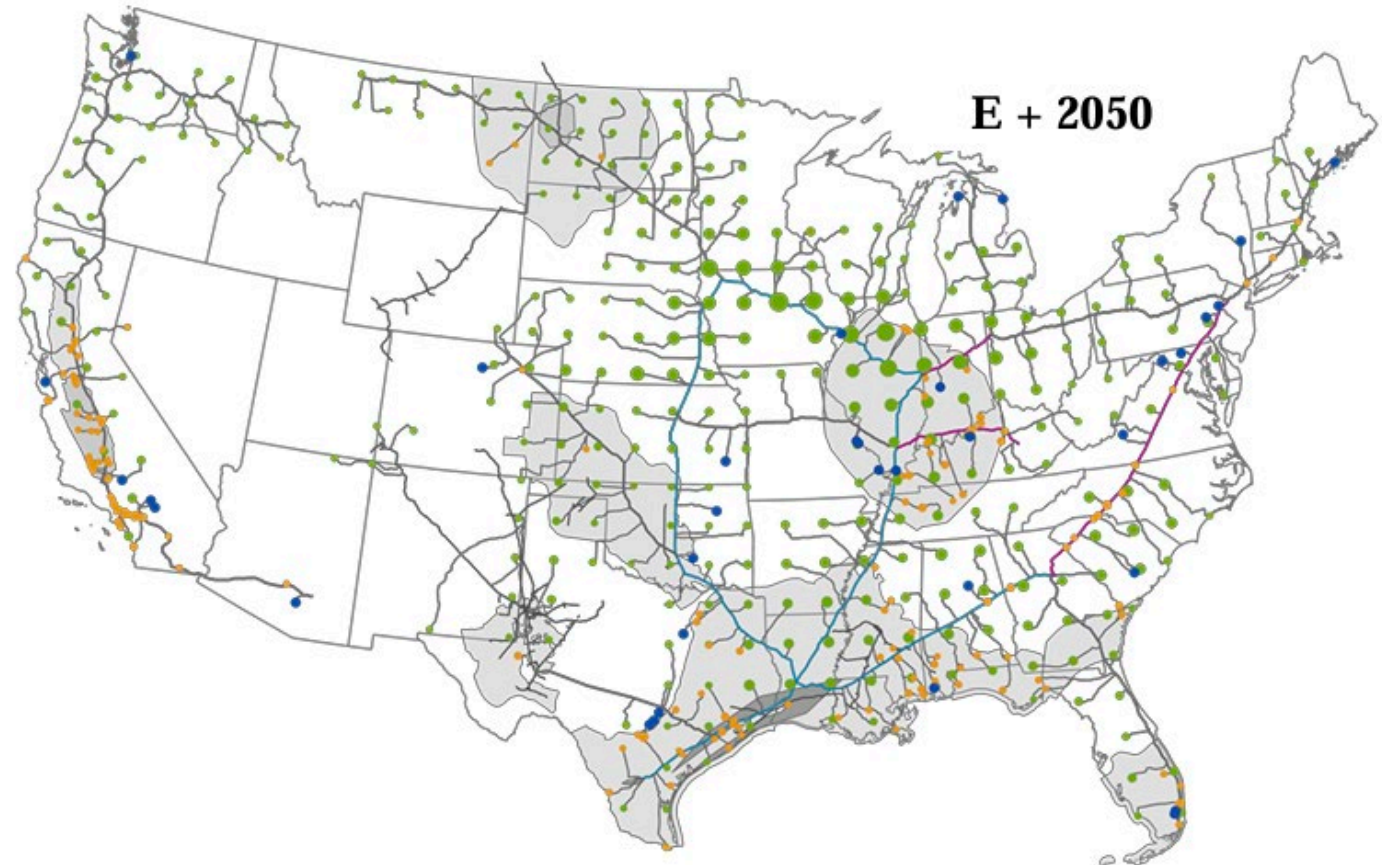
- CO2 point sources
- BECCS - power and fuels
- Cement w/ ccs
- Natural gas power ccs oxyfuel

CO2 captured (MMTPA)

- 0.0006449
- 7.9144
- 15.8282
- 23.7419

Trunk lines (capacity in MMTPA)

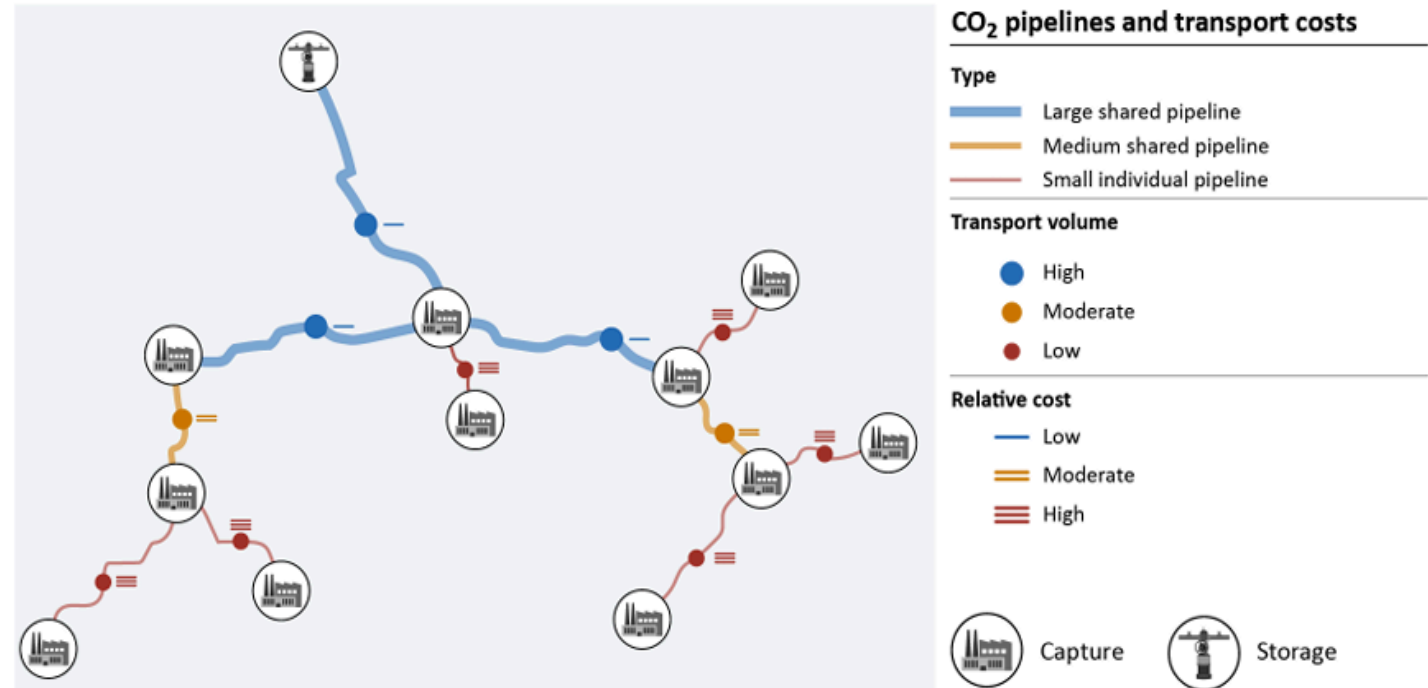
- < 100
- 100 - 200
- > 200



Chris Greig & Andrew Pascale, Princeton's Net-Zero America Study (2021)

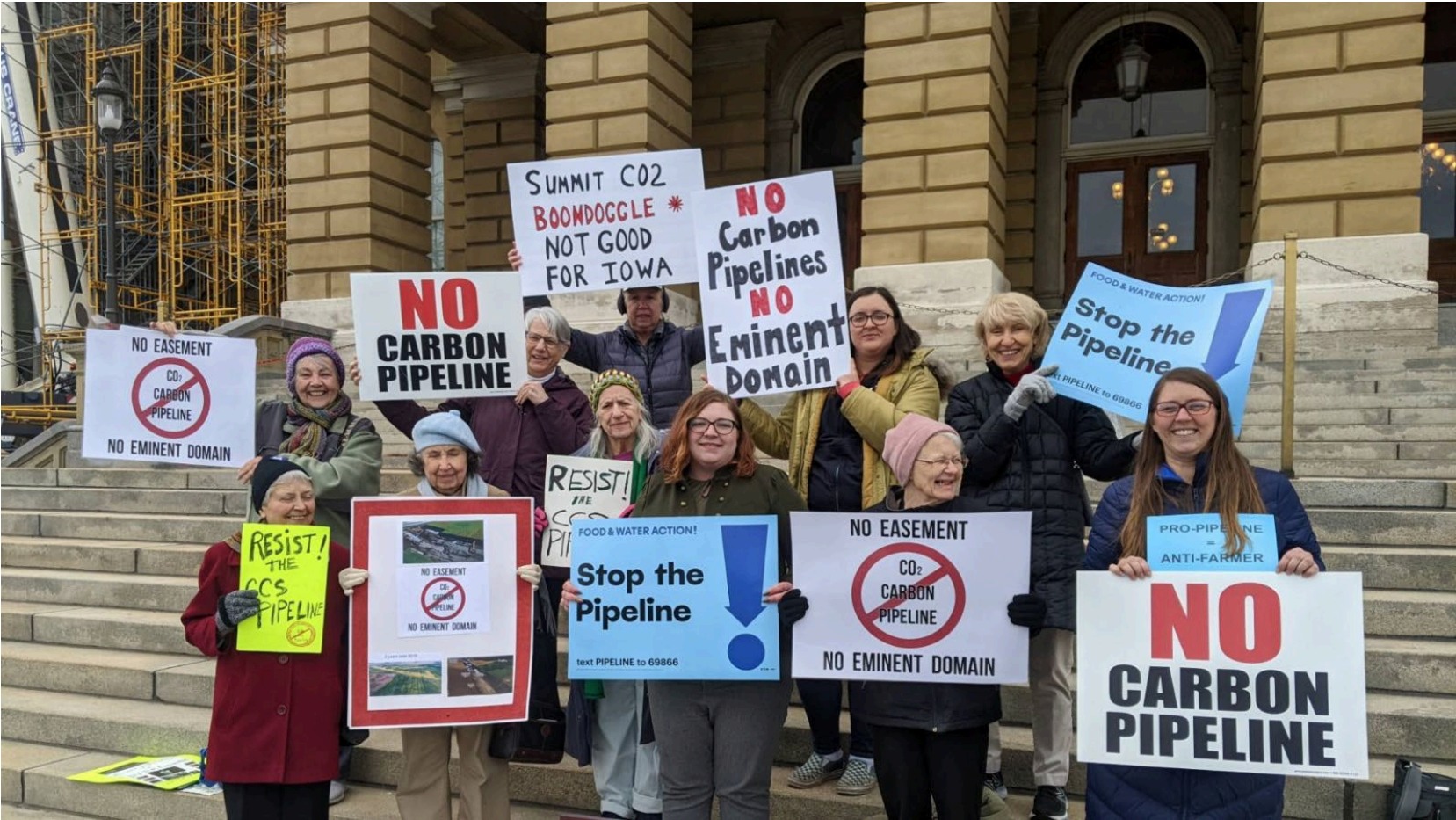
Inherent Challenges

- High capital costs
- Need for regional, shared capacity
- Uncertainty related to STB requirements and applicability
- Potential for conflicting state rules regarding tariffs



Source: GAO analysis of information from industry and non-governmental reports. | GAO-22-105274

Protest & Public Use



Ordering Open Access?

What is the problem we are trying to solve?

- Assuring facilities developed with eminent domain are for the public use
 - State
 - Federal
- Preventing monopolization, encouraging efficient use of resources
 - BLM
 - ICA



Feasibility and Challenges

- Apportionment
 - CO₂ streams do not decline
 - Apportionment could mean that some point sources would have to vent CO₂
- Purity
 - Addressed in draft PHMSA rules
 - Requires monitoring equipment at point of intake
 - Terms of carriage should address liability
- Financing
 - Future demand is likely to exceed existing demand as new emitters invest in capture or ambient capture facilities are developed
- Co-mingling
 - Source of CO₂ may determine the regulatory requirements for injection
 - Credit values may depend on whether CO₂ is injected for geologic storage or EOR

Questions?

