



Kristie Fiegen, Chairperson
Gary Hanson, Vice Chairman
Chris Nelson, Commissioner

South Dakota

PUBLIC UTILITIES COMMISSION

500 East Capitol Avenue
Pierre, South Dakota 57501-5070
<https://puc.sd.gov>

(605) 773-3201

Consumer Hotline
1-800-332-1782

Email
puc@state.sd.us

July 5, 2023

Dwaine Schipper

Sioux Falls SD 57108

Mr. Schipper,

This is in response to your letter of June 30, 2023, regarding the carbon pipelines' permit requests currently being reviewed by the Public Utilities Commission.

Enclosed you will find a document titled **Pipeline Siting Information Guide**. This is posted online at PUC.SD.gov, where you will also find all commission dockets and links to the state statutes and administrative rules that govern the commission. This is the most economical and accessible way for the commission to make its work, as well as for the state legislature to make its laws, available to the public. See excerpts from the Guide below.

This guide is intended to offer a simple overview of the Public Utilities Commission's process in making a decision to approve or deny the construction of pipeline facilities specific to South Dakota Codified Laws Chapter 49-41B (www.sdlegislature.gov/Statutes/Codified_Laws) and South Dakota Administrative Rules Chapter 20:10:22 (www.sdlegislature.gov/Rules/RulesList). This guide is informational and does not address all situations, variations and exceptions in the pipeline siting process and proceedings of the PUC.

PUC Authority

The South Dakota Legislature gave the PUC authority to issue permits for certain pipelines. South Dakota pipelines within the commission's siting jurisdiction include those designed to transport coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or carbon dioxide, for example. In considering applications, the commission's primary duty is to ensure the location, construction and operation of the pipeline will produce minimal adverse effects on the environment and the citizens. The commission determines these factors based on definitions, standards and references specified in South Dakota Codified Laws and Administrative Rules. In pipeline siting cases, the commission has one year from the date of application to make a decision.

In rendering its decision, the commission may grant the permit, deny the permit, or grant the permit with terms, conditions or modifications of the construction, operation or maintenance as the commission finds appropriate and legally within its jurisdiction. The commission does not have authority to change the route or location of a project. The decision of the commission can be appealed to the circuit court and, ultimately, to the South Dakota Supreme Court.

The PUC is not involved in the easement acquisition process that occurs between applicants and landowners. Likewise, the PUC does not have a role in the eminent domain process, which is handled in the circuit court system. Landowners with concerns about these issues should seek advice from their personal attorney. Applicant Responsibility The applicant that seeks the PUC's approval must show its proposed project: • will comply with all applicable laws and rules; • will not pose a threat of serious injury to the environment nor to the social or economic

condition of inhabitants or expected inhabitants in the siting area; • will not substantially impair the health, safety or welfare of the inhabitants; and • will not unduly interfere with the orderly development of the region with due consideration having been given to the views of the governing bodies of affected local units of government.

The commission strives to issue a reasoned decision and conditions, where appropriate, that uphold the law and discourage a potentially expensive and lengthy appeal process.

The commission currently has two pipeline siting dockets open before it. The SCS Carbon Transport LLC pipeline siting permit application is docket HP22-001, filed Feb. 7, 2022, and the Navigator Heartland Greenway, LLC pipeline siting permit application is docket HP22-002, filed Sept. 27, 2022. The many documents posted in both dockets are available online.

The commission's annual reports are also available online and you will find the commission's mission statement printed in each annual report. It follows.

MISSION

The South Dakota Public Utilities Commission will serve and protect South Dakota consumers by ensuring safe reliable and high quality utility services. The commission will exercise its authority and influence to ensure that residential and business consumers have access to utility services at fair and reasonable rates. The commission will be proactive and solutions-oriented in striving to maximize consumer utility value and education while working to enhance the economic and environmental well-being for citizens of the state of South Dakota.

It would take a lengthy statement to contain every aspect of authority the commission oversees. As you can see by reading the 2022 report, the commission not only handles the items referenced in its mission statement, but it also licenses and regulates grain buyers and grain warehouses; it handles intrastate pipeline safety inspections in agreement with the U.S. Department of Transportation's Pipeline Safety and Hazardous Materials Administration; it has a Consumer Affairs staff that works with consumers that need assistance with the various issues with which the commission has jurisdiction such as investor-owned electric and natural gas utilities, telecommunications companies, etc. An introductory page of the 2022 Annual Report titled **About the PUC** may be helpful and is enclosed.

The decision on whether to issue a permit, deny a permit, or issue a permit with conditions will be based on whether a project complies with the criteria established in SDCL 49-41B-22. You may access the laws at SDLegislature.gov online, including the chapter that provides most laws governing the commission, Title 49, Public Utilities and Carriers; and the Administrative Rules including the relevant Definitions, in Article 20:10.

The commissioners will gather an understanding of the facts of each of these pipeline projects or dockets through a contested case evidentiary hearing process. Those hearings are scheduled in late July/early August for Navigator, and in September for SCS. The final decisions of the commission may be appealed to the court system. In such an appeal, the court will evaluate whether the commission based their decision on the established facts and the applicable law.

Since commissioners will ultimately vote on these siting permit applications, any communication with a commissioner about these must be done in a public, noticed meeting or made available via the online docket. As such, your letter and this response will be posted under Comments and Responses in each of these dockets.

Thank you for reaching out and allowing me to provide you with the information you seek.

Sincerely,



Kristie Fiegen