



Kristie Fiegen, Chairperson
Gary Hanson, Vice Chairman
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South Dakota

PUBLIC UTILITIES COMMISSION

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September 1, 2023

Darold Hehn



Rapid City SD 57701

Mr. Hehn,

This is in response to your letter to the South Dakota Public Utilities Commission relaying your views regarding the Navigator Heartland Greenway LLC and SCS Carbon Transport, LLC dockets, HP22-001 and HP22-002.

The commission has no authority in South Dakota Codified Law dealing with eminent domain. Please refer to the enclosed Pipeline Siting Information Guide posted on the commission's website, PUC.sd.gov, and in these online dockets. See excerpts 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).

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.

I encourage you to read the relevant state statutes and rules that provide the commission's jurisdiction according to laws passed by the South Dakota Legislature. My fellow commissioners and I will make a determination on permits based on facts presented by parties to the dockets, and we will consider the factors specified by law. Our decision must be based on evidence, not hearsay. We must make a decision that is within the commission's legal jurisdiction and one we believe will be upheld should our decision be appealed to circuit court.

Each commissioner took an oath to follow the state's laws upon being elected, and we will carry out the laws by fully processing and considering each docket prior to voting on a requested permit.

Since commissioners have decision-making authority on these dockets, any communication with us about an open or imminent docket must be done in an open forum, such as a public meeting or hearing with notice given to the formal parties or made available via the docket. Your letter and my response will be posted under Comments and Responses in the docket.

Thank you for writing, allowing me to explain the commission's legal jurisdiction and processing of these siting permit request dockets.

Sincerely,

A handwritten signature in cursive script that reads "Kristie Fiegen". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Kristie Fiegen