

From: PUC
Sent: Thursday, June 29, 2023 4:11 PM
To: [REDACTED]
Subject: HP22-001

Mr. Lawrence,

This is in response to your June 27 message regarding Summit Carbon's application for a siting permit, commission docket [HP22-001](#).

You relayed your concern about Summit being a private company that wishes to utilize eminent domain.

The [Information Guide to Siting Pipelines](#), posted on the commission website home page and in the docket, explains the processing of a siting docket like this by the commission. See excerpts below referencing eminent domain.

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.

Your message also relays that oil, natural gas and water are commodities used by the residents of South Dakota, and that carbon sequestering for profit may serve a few individuals, yet not the public at large. Here are excerpts from the Information Guide that reference the commission's authority to issue a permit for a CO₂ pipeline such as the one proposed in HP22-001, with cites to the relevant state laws.

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 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.

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).

In addition, there are several state statutes and rules governing consideration of a siting permit such as this, including those referencing pipeline safety and gas transmission lines, in addition to federal code under the Pipeline and Hazardous Materials Safety Administration with the U.S. Department of Transportation. You may reference further information online via [Pipeline Safety](#) and [SDCL Chapter 49-34B](#).

Note that the commission cannot change a route or location of a siting project except to prohibit the route from being placed in areas that are not appropriate.

As you will see by reviewing the documents posted thus far in this docket, a variety of issues are being addressed by formal parties involved in the siting docket. These issues are being dissected and will be robustly discussed and cross-examined during the upcoming evidentiary hearing, scheduled for Sept. 11-22 and 25-29, 2023. That hearing is when commissioners will ask many questions, as will other parties involved in the docket, ultimately assisting the commissioners in determining whether each will vote yes or no on a permit or consider conditions with a permit. My fellow commissioners and I will make that determination based on facts – evidence – presented by parties to the docket. Our decision must be based on evidence, not on emotions or solely personal concerns. 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.

Following the arduous review process that began with SCS Carbon Transport LLC's filing of their permit application on Feb. 7, 2022, the commissioners will publicly discuss and vote according to the evidence within the jurisdiction provided to the commission by the state legislature in South Dakota Codified Law.

Each commissioner took an oath to follow state law upon acceptance of our responsibilities as a commissioner.

Since commissioners have a decision-making role in docket matters, any communication with us about any open or imminent docket must be done in an open forum, such as a public meeting or hearing, with notice given to all parties or made available via the docket. As such, your email and my response will be posted under Comments and Responses in this docket. As outlined in the Guide referenced above, please direct comments or questions regarding an open docket to commissioners to PUC@state.sd.us.

Thank you for reaching out, allowing me to explain the legal obligations of commissioners with regard to reviewing Summit's permit application.

Gary Hanson, Vice Chairman
South Dakota Public Utilities Commission
PUC.sd.gov