

From: PUC

Sent: Friday, July 21, 2023 11:00 AM

To: Rod & Joy Hohn <[REDACTED]>

Subject: HP22-002

Ms. Hohn,

This is in response to your comment regarding the Navigator Heartland Greenway, LLC docket, [HP22-002](#).

You request that the commission simply deny the permit requested by Navigator. It would be unconscionable for the three elected commissioners to simply deny the permit without due process.

My fellow commissioners understand, as do I, that you and others are not in favor of this application for multiple reasons, as shared with us via this docket's Comments section. Nonetheless, the company filed an application for a permit which the commission must fully review and process before determining whether or not to issue a permit. Simply denying a permit without going through this exhaustive review process would be unlawful and would likely cost South Dakota taxpayers a great deal of money dealing with court appeals. The commission cannot change South Dakota laws. That is the role of the South Dakota Legislature.

I took an oath to follow the law upon being elected as a commissioner, and I intend to follow the law knowing that there will be those who agree and those who disagree with every decision I make.

As far as being present in-person to provide testimony and be cross-examined as an intervenor, that is standard procedure during a contested evidentiary hearing before the commission and most courts. All intervenors to the docket received messages from the commission's attorney on

Feb. 6, 2023 and March 22, 2023, providing information on preparing for the evidentiary hearing. The attorneys representing intervenors received these messages on behalf of those they represent. Here are excerpts from the message and [Intervenor Guide](#) sent Feb. 6, 2023, posted in the docket:

If you are represented by an attorney in this proceeding, that attorney should be the person who will make filings and communications on your behalf.

If your Application for Party status has been granted by the Commission, you are now a formal party, or intervenor, to a contested case proceeding that will be conducted in accordance with SDCL Chapter 1-26. You should review the contested case statutes in SDCL Chapter 1-26 and other applicable law to understand what is expected of you. Some of the main obligations you now have as an intervenor are listed below.

Example Intervenor Obligations

If your application for party status is granted, you may be required to: 1) Respond to any discovery served upon you (see SDCL 15-6-26). You also have the ability to serve discovery on other parties, including the Applicant. 2) Understand the rules of evidence in contested case proceedings (SDCL 1-26-19 and SDCL Chapter 19). 3) Respond to motions made by other parties (to the extent you choose to). 4) Participate in Commission meetings to support any motions you make to the Commission. 5) Participate in Commission meetings to support or oppose any motions made by other parties (to the extent you choose to). 6) Submit pre-filed written testimony per the procedural schedule. 7) Attend an evidentiary hearing and testify before the Commission. 8) Submit post-hearing briefs per the procedural schedule.

You shared Navigator intervenor Don Cowart's message about the challenges of traveling to the hearing. Mr. Cowart's intervenor application for this docket was submitted by his attorneys on Nov. 28, 2022. These attorneys will be present and be active participants during the hearing.

There is a section of the Navigator docket for individuals who are not intervenors who wish to submit comments to the commission – as you are doing. Individuals have the option of being an intervenor, as well as the option of being represented by an attorney for active participation in the docket, or they may opt to offer comments to the docket as a non-intervenor. As far as any one individual landowner's unique challenges that may have made it impossible to travel to South Dakota to provide in-person testimony, those specific circumstances were never presented to the commission for consideration.

Your email and this response will be posted under Comments and Responses in the HP22-002 docket.

Kristie Fiegen, Chairperson
South Dakota Public Utilities Commission

