

From: PUC

Sent: Monday, August 7, 2023 2:18 PM

To: [REDACTED]

Subject: HP22-002

Mr. and Ms. Kennedy,

This is in response to your Aug. 6, 2023 email regarding the Navigator Heartland Greenway, LLC docket, [HP22-002](#).

You share your concerns about permanent easements or eminent domain with regard to this pipeline project. Please reference the [Pipeline Siting Info Guide](#) that is posted in this pipeline docket as well as on the commission website home page, explaining the South Dakota Public Utilities Commission's processing of siting dockets such as these. 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.

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.

There are many concerns and details that must be addressed regarding each requested permit for a CO₂ pipeline, including concerns you referenced. As you will see by reviewing the documents posted thus far in the docket, many issues are being addressed by formal parties involved in this siting docket. These issues are being dissected and have or will be robustly discussed and cross-examined during the remainder of the evidentiary hearing.

Commissioners have and will continue to ask many questions during the hearing, as will other parties involved in each docket, ultimately assisting the commissioners in determining whether each will vote yes or no on a permit or consider conditions with a permit. I encourage you to follow along throughout this process for the docket in seeking answers to your questions.

My fellow commissioners and I will make a determination on the permit based on facts presented by parties to the docket. Our decision must be based on evidence, not hearsay. We must make a decision that is within the commission's legal jurisdiction as provided by the South Dakota Legislature, and one we believe will be upheld should our decision be appealed to circuit court. I cannot speak to the state of Nebraska's laws or county ordinances dealing with siting and eminent domain.

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. Thus, your email and my response will be posted under Comments and Responses in the docket, and any future communication such as this should be sent to PUC@state.sd.us.

Thank you for writing to share your concerns and allowing me to explain our commission's jurisdiction, the purpose of the evidentiary hearing, and the processing of the CO₂ pipelines' siting permit applications in South Dakota.

Kristie Fiegen, Chairperson
South Dakota Public Utilities Commission
PUC.sd.gov