

From: PUC
Sent: Thursday, August 24, 2023 2:44 PM
To: [REDACTED]
Subject: HP22-002

Ms. Nosbush,

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

You write about county ordinances concerning this proposed project and application for a siting permit submitted to the Public Utilities Commission on Sept. 27, 2022, currently under review by the commission.

It is important that the South Dakota Public Utilities Commission processes this docket in an appropriate, lawful manner. My fellow commissioners and I took an oath to follow the laws of the state of South Dakota after being elected and that is what we are working to do.

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. I encourage you to read the state statutes and rules that are referenced and that provide the commission's jurisdiction according to laws passed by the South Dakota Legislature. 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.

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 or emotion. 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. The Navigator evidentiary hearing was held July 25-August 8, with two additional days of hearing this week. If you have been listening to the hearing or following along by reading the exhibits and other filings, you know numerous issues including county ordinances are being discussed by the parties to the docket with many questions asked by commissioners.

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.

Thank you for writing to share your concerns and allowing me to explain the commission's jurisdiction and the processing of this CO₂ pipeline's siting permit application.

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