

**From:** PUC  
**Sent:** Thursday, August 10, 2023 2:30 PM  
**To:** Sara [REDACTED]  
**Subject:** HP22-002

Ms. Steever,

This is in response to your Aug. 8, 2023 email and letter regarding the Navigator Heartland Greenway, LLC docket, [HP22-002](#).

You write about the grueling hearing for this docket, and I could not agree with you more. The evidentiary hearing process is grueling, particularly for the lay person who is not an attorney and who does not spend most of their working days in a courtroom setting.

It is important that the South Dakota Public Utilities Commission treats this docket's evidentiary hearing in an appropriate, respectful, lawful manner. That is exactly what we have been striving to do, despite the long hours, testimony under oath, and uncomfortable cross-examination. This is a serious process and one that my fellow commissioners and I do not take lightly. We want to process this and every docket correctly according to the law. Each of us took an oath to follow the laws of the state of South Dakota after being elected. That is of vital importance to us.

The evidentiary hearing is in contrast to the three public input meetings that were held in November in Canton, Flandreau and Sioux Falls for this siting docket. The public input meetings are more informal and are designed so that commissioners, PUC staff, the applicant, and others hear from those affected and concerned individuals that live and work near the project route.

You state that landowners participating in the hearing were asked to just stick to the facts, not get emotional, and: "*And shorten it to two minutes please because the expert rebuttal witnesses from out of state need extra time.*" No such time limit was imposed on landowners at the evidentiary hearing by the commissioners. As commissioners, we strived to ensure all parties represented at the hearing that wished to testify were allowed to do so, even though that contributed to long days being extended into evenings and adding three hearing days beyond the original schedule.

My fellow commissioners and I specifically set aside days, one of which was out-of-order, for landowners to testify so that they would not need to spend multiple days at the hearing. In some cases, we simply ran out of time for that day before all the landowners had testified and some returned for another day. The length of our hearing days is limited based on the physical ability of our court reporter to handle transcription. We will not push her past the exhaustion point.

I encourage you to read the state statutes and rules that establishes the evidentiary hearing process and provides the commission's jurisdiction, according to laws passed by the South Dakota Legislature.

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](http://www.sdlegislature.gov/Statutes/Codified_Laws)) and South Dakota Administrative Rules Chapter 20:10:22 ([www.sdlegislature.gov/Rules/RulesList](http://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.*

Please also refer to the [Commission Counsel Email to All Parties](#) and [Intervenor Guide](#), sent to all intervenors and their attorneys on Feb. 6, 2023, and posted in the docket. See excerpts below.

***Remember:*** *This proceeding is akin to a lawsuit. From this perspective, Navigator is suing for a permit and the Public Utilities Commissioners are the judges. Every step and application of law that the commission takes in this contested administrative law proceeding is a professionally bound quasi-judicial administrative action done under the Administrative Procedures Act. This is conducted in the spirit and methods of the state's judicial branch of government in effort to comply with the separation of powers within the legislative, administrative, executive, and judicial systems. Reliance on and use of civil rules of procedure and evidence are requisites for the commission and you.*

***Intervenor:*** *As you understand, are beginning to understand, or will soon come to understand, this journey to trial is a major commitment. The discovery process alone, with its data requests and interrogatories will, at times, leave you feeling like you didn't relax at all last weekend and how can you still have a substantial to-do list and email backlog? It is imperative that you read and respond to your email daily. 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.*

***Participating in a Contested Case Proceeding*** *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...*

*Understand the rules of evidence in contested case proceedings ([SDCL 1-26-19](#) and [SDCL Chapter 19](#)).*

This [Ex Parte Communications Guidelines](#) from the commission's website provides more information that may be helpful in understanding the commission's process. As you will see from reading all of this, a commission hearing is conducted like a court trial. It is a contested case hearing involving those that have been granted party status to participate in the formal evidentiary hearing.

Commissioners have and will continue to ask many questions during the hearing, 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 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, and one we believe will be upheld should our decision be appealed to circuit court.

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 letter 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, the purpose of the evidentiary hearing, and the processing of this CO<sub>2</sub> pipeline's siting permit application.

Kristie Fiegen, Chairperson  
South Dakota Public Utilities Commission  
[PUC.sd.gov](http://PUC.sd.gov)