

From: PUC

Sent: Monday, July 17, 2023 4:59 PM

To: ziebachrod@lakotanetwork.com

Subject: HP22-001, HP22-002

July 17, 2023

Ziebach County Board of Commissioners

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Ziebach County Commissioners,

This is in response to your letters dated July 6, 2023, received in today's mail, expressing your opposition to the use of eminent domain by SCS Carbon Transport, LLC and Navigator Heartland Greenway, LLC for the CO2 pipeline siting application each company filed with the South Dakota Public Utilities Commission. These are commission dockets [HP22-001](#) and [HP22-002](#).

It is important to understand the commission does not have legal authority regarding eminent domain, and therefore, is not involved in eminent domain proceedings. Who can exercise eminent domain and under what circumstances it can be used are defined in state law. Any changes to that law would come from the legislature, not from the PUC. Disputes regarding eminent domain, including questions as to constitutionality, can only be resolved in the court system.

The [Information Guide to Siting Pipelines](#), posted on the commission website home page and in the dockets, explains the processing of siting dockets like these by the commission, with excerpts below.

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.

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.

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).

There are many concerns including public safety that must be addressed regarding a requested permit for a CO₂ pipeline. As you will see by reviewing the documents posted thus far in the dockets, many, many issues are being addressed by formal parties involved in these siting dockets. These issues are being dissected and will be robustly discussed and cross-examined during the evidentiary hearings. Commissioners will ask many questions, as will other parties involved in the docket being heard, 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. 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 each company's filing of their permit application, the commissioners will publicly discuss and vote according to the evidence within the jurisdiction provided 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. Thus, your letters and my response will be posted under Comments and Responses in each docket.

Thank you for your letters, allowing me to explain the commission's legal jurisdiction for siting applications.

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