

Staff Briefing Papers

Meeting Date: May 19, 2022

Agenda Item **2

Docket: U-999/CI-21-847

In the Matter of a Commission Investigation into Potential Rule Amendments
Related to Liquefied Carbon Dioxide

Issues:

- Should the Commission open a rulemaking proceeding to amend the definition of “hazardous liquid” in Minn. R. 7852.0100, subp. 18, to include liquefied carbon dioxide?

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✓ Relevant Documents	Document ID	Date
Petition for Environmental Assessment	20221-181420-01, -02, -	11/09/21
Worksheet – Summit Carbon Solutions, Midwest Carbon Express Project (filed in Docket 21-879)	03, -04, -05, -06, -07, -08, -09	
Petition for Environmental Assessment	20221-181421-01, -02, -	11/09/21
Worksheet – Navigator CO2 Ventures, Heartland Greenway Project (filed in Docket 21-880)	03, -04, -05, -06, -07, -08, -09, -10, 20221-181422-01, -02, -03, -04	
PUC Letter to EQB (filed in Docket 21-836)	202112-180731-01	12/15/21
Navigator CO2 Ventures Letter to PUC (filed in Docket 21-836)	202112-180732-01	12/15/21
Notice of Comment Period on Potential Carbon Dioxide Pipeline Rulemaking	202112-180900-01	12/21/21

The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

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✓ Relevant Documents	Document ID	Date
PUC Letter to Summit Carbon Solutions (filed in Docket 21-879)	20221-181375-01	01/11/22
PUC Letter to Navigator CO2 Ventures (filed in Docket 21-880)	20221-181377-01	01/11/22
Public Comments Received (See Section IV of these Briefing Papers)	---	---

I. STATEMENT OF THE ISSUES

- Should the Commission open a rulemaking proceeding to amend the definition of “hazardous liquid” in Minn. R. 7852.0100, subp. 18, to include liquefied carbon dioxide?

II. BACKGROUND

Nationally there is increasing interest in carbon capture, usage, and storage technologies that may involve the transportation of liquefied carbon dioxide (CO₂) through a pipeline system. End uses of CO₂ vary but may include underground storage and sequestration or other processes intended to reduce CO₂ emissions into the atmosphere. In particular, two separate carbon capture pipeline projects have been announced that would transport liquefied CO₂ within Minnesota and the surrounding states of North Dakota, South Dakota, Nebraska, Iowa, and Illinois. The two projects are the Midwest Carbon Express and the Heartland Greenway.¹

The Midwest Carbon Express pipeline project proposed by Summit Carbon Solutions would consist of 2,000 miles of pipeline across Iowa, Nebraska, Minnesota, South Dakota, and North Dakota and would transport liquefied CO₂ from 30 ethanol plants to a sequestration site in North Dakota. Approximately 153 miles of pipeline are anticipated in Minnesota.²

The Heartland Greenway pipeline project proposed by Navigator CO₂ Ventures would consist of 1,300 miles of pipeline across Illinois, Iowa, Nebraska, Minnesota, South Dakota, and North Dakota and would transport liquefied CO₂ to a sequestration site in Illinois. Approximately 12 miles of pipeline are anticipated in Minnesota.³

¹ At this time, no formal permit applications for the two projects have been filed with the Minnesota Public Utilities Commission.

² Summit Carbon Solutions. <https://summitcarbonsolutions.com> (April 14, 2022).

³ Navigator CO₂ Ventures. <https://heartlandgreenway.com> (April 14, 2022).

On November 9, 2021, two separate petitions were submitted to the Environmental Quality Board (EQB) requesting the preparation of environmental assessment worksheets (EAW) on the Midwest Carbon Express (Docket 21-879) and Heartland Greenway (Docket 21-880) projects.

On November 12, 2021, the EQB notified the Commission that it is being designated as the responsible government unit (RGU) for the prospective pipeline projects.

On December 15, 2021, the Commission notified the EQB that it cannot act on either petition because no permit applications have been filed.

On December 21, 2021, the Commission issued a Notice of Comment Period on Potential Carbon Dioxide Pipeline Rulemaking. An initial comment period was open until January 31, 2022, and a reply comment period was open until March 4, 2022.

On January 11, 2022, the Commission sent letters to Summit Carbon Solutions and Navigator CO2 Ventures notifying them of the actions that have taken place concerning their respective projects.

On April 22, 2022, the Commission held a Special Planning Meeting to discuss CO2 Pipeline Rulemaking with Minnesota Tribal Nations. The Commission heard from representatives and leaders from the Bois Forte Band of Chippewa, Fond du Lac Band of Lake Superior Chippewa, Grand Portage Band of Lake Superior Chippewa, Lower Sioux Indian Community, and the Mille Lacs Band of Ojibwe. Tribal representatives present stressed the importance of early involvement of tribal governments and of ongoing participation. Tribal representatives generally supported a Commission rulemaking to amend the definition of hazardous liquid citing to safety concerns associated with high-pressure CO2 pipelines; potential impacts to the health and welfare of tribal members, natural resources, and cultural resources; and the benefit of regulatory oversight and environmental review requirements.

III. LEGAL STANDARD

A. Pipeline Routing Permits

The Commission's authority to issue routing permits for the construction of pipelines is set forth in Minnesota Statutes, chapter 216G and Minnesota Rules, chapter 7852.

Minn. Stat. § 216G.02, subd. 2, specifies that, "A person may not construct a pipeline without a pipeline routing permit issued by the Public Utilities Commission unless the pipeline is exempted from the commission's routing authority under this section or rules adopted under this section."

Under Subdivision 1 of that same section, a pipeline is defined as, “(1) pipe with a nominal diameter of six inches or more that is designed to transport hazardous liquids, but does not include pipe designed to transport a hazardous liquid by gravity, and pipe designed to transport or store a hazardous liquid within a refining, storage, or manufacturing facility; or (2) pipe designed to be operated at a pressure of more than 275 pounds per square inch and to carry gas.”

Minn. R. 7852.0100, subp. 18 defines a hazardous liquid as, “petroleum, petroleum products, or anhydrous ammonia.”

Minn. R. 7852.0100, subp. 16 defines a gas as, “natural gas, flammable gas, or gas which is toxic or corrosive.”

B. Rulemaking

State agencies must follow certain procedures when they adopt administrative rules. These procedures are contained in the Administrative Procedure Act in Minnesota Statutes, chapter 14.

IV. SUMMARY OF COMMENTS

The Commission received initial and reply comments from the below state government agencies, tribal governments, businesses, labor unions, organizations/associations, and interested persons. Below is a list of the commenters with hyperlinks to the respective documents on the eDocket system.

State Government Agencies

[Minnesota Department of Agriculture](#)

[Minnesota Department of Commerce Energy Environmental Review and Analysis](#)

[Minnesota Department of Natural Resources](#)

[Minnesota Department of Transportation](#)

[Minnesota Office of Pipeline Safety](#)

Tribal Governments

[Fond du Lac Band of Lake Superior Chippewa](#)

[Lower Sioux Indian Community](#)

[Upper Sioux Community](#)

Businesses

Navigator Heartland Greenway, LLC

Summit Carbon Solutions, LLC (1)(2)

Valero Renewables Fuels Company, LLC

Labor Unions

International Union of Operating Engineers Local 49 (1)(2)

Laborers' International Union of North America Minnesota and North Dakota (LIUNA) (1)(2)

Organizations/Associations

Clean Up the River Environment (1)(2)

Great Plains Institute

Legalelectric, Inc. (Carol Overland) (1)(2)(3)

Minnesota Center for Environmental Advocacy

Minnesota Environmental Partnership

Minnesota Interfaith Power and Light (1)(2)

MN350

Public Employees for Environmental Responsibility (1)(2)

Science for the People

Interested Persons (44)

Baker L., Beckel B., Bellamkonda V., Burmeister C., Campbell A., Carroll S., Chamblin R., Delattre S., Eger A., Frechette C., Furshong P., Hallberg M., Hannah K., Hartley K., Hensley M., Isaacman S., Japs S., Knaeble B., Krenn J., Kuchenreuther M., Larsson A., LaVigne D. (1)(2), Lippert C., Loverud G., MacLennan C., Madden A., Magree J., Martin P., Maybanks S., Meinholz J., Miller K., Nauerth J., Popowski C., Roelofs J., Ross J., Schicker R., Schuler K., Slama K., Swift M., Tjepkema J., Weisberg J., Wenderlich M., Wheeler D., Wojtaewicz B.

All commenters except for one generally supported the Commission initiating a rulemaking proceeding to amend the definition of hazardous liquid. Staff specifically refers to letters submitted by The Upper Sioux Community, Clean Up the River (CURE), The Fond du Lac Band of Lake Superior Chippewa (Fond du Lac Band), Minnesota Interfaith Power and Light, The Lower Sioux Indian Community, and Minnesota Center for Environmental Adequacy.

Following were the reasons given for the Commission to initiate a rulemaking that were common to the majority of the comment letters:

- Potential safety risks and risks to human health and natural resources should a release occur. Numerous commenters referred to a liquefied CO₂ pipeline incident in Satartia, Mississippi in February 2020.
- The design elements of liquefied CO₂ pipelines: high-pressure requirements, high corrosion potential, longitudinal failure potential, compressor station requirements, and high overall energy consumption to operate.
- Carbon capture, utilization, and storage (CCUS) technology is relatively new and was not contemplated when the original definition of “hazardous liquid” was adopted.
- Liquefied CO₂ is currently regulated by the federal government and several states to varying degrees.

State agencies such as the Department of Agriculture, Department of Commerce, Department of Natural Resources, and Department of Transportation also reasoned that the Commission’s pipeline routing process provides a comprehensive forum for evaluating impacts and identifying mitigation measures, and that the process is relied on by state agencies, private landowners, and the citizens of Minnesota. Additionally, MnDOT maintained that a CO₂ pipeline would involve the same extensive impacts of any other pipeline already defined and, therefore, should not be excluded.

Similarly, LIUNA echoed the opinions of the state agencies, maintaining that Commission jurisdiction would, “ensure use of uniform standards and processes for consideration and public input across the route, improving the quality of the process, strengthening public confidence, and reducing the risk of regulatory disruptions to the permitting process.”

The Fond du Lac Band also agreed indicating that the “Commission provides critical regulatory oversight for pipelines that carry hazardous liquid and safeguards the public’s and the environment’s safety. Extending jurisdiction to the commission also ensures that the public can comment on proposed pipelines and provides opportunities for the Band and other interested parties to intervene in proceedings to ensure their rights are protected and their concerns are heard.”

The one exception was the Great Plains Institute (GPI) which argued that that classification as a hazardous liquid mischaracterizes CO₂ and may hinder development of CCUS projects. GPI reasoned that that CO₂ is not hazardous by itself rather it is the potential physical damage that can occur when any substance is pressurized in a pipeline; supercritical CO₂ adopts properties of gas and liquid states; CO₂ pipeline releases result in large formations of dry ice and rapid dissipation into the atmosphere; potential risks can be avoided with properly sited, constructed, and maintained CO₂ pipelines; and that there has never been a fatality resulting from CO₂ pipeline operations or damages.

Staff highlights several of the comment letters below, which included unique and distinct opinions and observations concerning the Commission's authority to permit CO2 pipelines and the possible scope of a rulemaking.

Minnesota Office of Pipeline Safety (MNOPS)

MNOPS pointed out that it has the jurisdictional authority over the safe operation of natural gas and hazardous liquid intrastate pipelines in Minnesota. MNOPS pointed to Minn. Stat. § 299F.641, that adopts the federal safety standards of CFR 49 Part 195 which "applies to pipeline facilities and the transportation of hazardous liquids or carbon dioxide associated with those facilities. . ." and defines CO2 as "a fluid consisting of more than 90 percent carbon dioxide molecules compressed to a supercritical state."

MNOPS maintained that an amendment to Minnesota Statutes Chapter 216G or Minnesota Rules 7852 to include CO2 would ensure consistency between the Commission's routing authority and MNOPS's safety regulatory authority.

Minnesota Department of Commerce Energy Environmental Review and Analysis (EERA)

EERA recommended that the Commission proceed with rulemaking, but under the expedited rulemaking process set forth in Minn. Stat. §14.398, to ensure timely clarification to the definition of hazardous liquids.

EERA also offered language for the definition of hazardous liquid that it believes would be more comprehensive and inclusive of other potential hazardous liquids.

"Hazardous liquid" means a substance transported in pipelines and associated facilities, including pipelines and associated facilities only affecting intrastate commerce that otherwise would be subject to regulation under Code of Federal Regulations, title 49, section 195.1, as amended.

Legalelectric, Carol Overland

Ms. Overland argued that the Commission should go beyond rulemaking for purposes of changing the definition and should consider amending the pipeline routing rules to: (1) require a full environmental impact statement; and (2) incorporate Minnesota's Buy the Farm eminent domain provision of Minn. Stat. §216E.12, Subd. 4.

Public Employees for Environmental Responsibility (PEER)

PEER asserted that CO2 is not technically transported through a pipeline in a liquid state, rather it is in a supercritical state (dense vapor phase) and retains the properties of a gas and a liquid simultaneously. PEER explained that should a pipeline transporting supercritical CO2 rupture, the release would be a vapor cloud heavier than air. Following that logic, PEER argued that the

Commission under current Minnesota statute may regulate CO₂ in a pipeline either as a hazardous liquid or a pressurized gas.⁴

PEER argued that the current routing definition in statute covers all hazardous liquids so long as the pipeline has a diameter of six inches or more.⁵ That is, the statute does not reference a limited list of hazardous liquid substances. Carbon dioxide is certainly hazardous and retains the properties of a liquid; therefore, PEER asserted that the Commission's rules must be updated to account for CO₂ as a hazardous liquid or risk creating an exception that was not authorized in statute.

PEER suggested that the Commission could amend the definition through a good cause exemption under Minn. Stat. 14.388, as the amendment addresses a serious and immediate threat to the public health, safety, or welfare from imminent CO₂ pipeline projects, and does not alter the sense, meaning, or effect of the rule.

Alternatively, PEER argued that the Commission's existing regulations already require a routing permit for pipes designed to be operated at a pressure of more than 275 pounds per square inch that transport toxic and corrosive gas. As previously stated, PEER contended that supercritical CO₂ retains the properties of a gas and a liquid and is undoubtedly toxic. Therefore, PEER asserted that supercritical carbon dioxide pipelines are already regulated under existing Minnesota law.

In reply comments, PEER recommended that the Commission adopt EERA's proposed definitional language under the good cause exemption or expedited rulemaking.⁶

Navigator Heartland Greenway, LLC

As previously indicated, Navigator Heartland Greenway, LLC (Navigator) is the developer of the Heartland Greenway Project, an anticipated 1,300-mile pipeline located in Illinois, Iowa, Nebraska, Minnesota, South Dakota, and North Dakota. Approximately 12 miles of the pipeline would be located within Martin County, Minnesota.

Navigator maintained that Minn. Stat. Ch. 216G does not currently grant the Commission routing authority over liquefied CO₂ pipelines. Navigator indicted that it has already started

⁴ Staff also refers to LIUNA's comment letter, which provided similar reasoning.

⁵ 216G.02, subd. 1(1).

⁶ PEER proposed the addition of a comma to EERA's language as follows: "'Hazardous liquid' means a substance transported in pipelines and associated facilities, including pipelines and associated facilities only affecting intrastate commerce[,] that otherwise would be subject to regulation under Code of Federal Regulations, title 49, section 195.1, as amended."

preapplication discussion with several federal, state, and local agencies with regulatory jurisdiction.⁷ It will also prepare an environmental assessment worksheet (EAW) for the project.

Although, not opposed to the Commission's possible rulemaking, Navigator raised concerns over the timing of the rulemaking and the potential regulatory uncertainty it would create. Because it will likely have already begun permitting processes with other agencies, Navigator argued that any rulemaking by the Commission should not apply to projects undergoing permit review in accordance with existing regulations.⁸ Navigator stressed that changes to current Minnesota regulatory requirements midway through its permitting efforts could have significant impacts on the overall project.

If the Commission were to proceed with rulemaking, Navigator suggested possible language that would minimize the impact on projects already in their respective permitting process. Navigator suggested that the Commission could:

- Exempt pipelines that are under a certain length, or that would be located in only one county;
- Establish an effective date for the amended regulation; or
- Exempt projects that have already filed substantive permit applications with other regulatory authorities by a certain date.

Summit Carbon Solutions, LLC

As previously indicated, Summit Carbon Solutions, LLC (Summit) is the developer of the Midwest Carbon Express Project, an anticipated 2,000-mile pipeline located in Iowa, Nebraska, Minnesota, South Dakota, and North Dakota. Approximately 153 miles of the pipeline would be located across eight different Minnesota counties.

Summit indicated that it is not opposed to the Commission pursuing routing authority over liquefied CO₂ pipelines and in fact agreed that the Commission has general expertise in the routing of pipelines; however, Summit argued that that this matter is a policy question more appropriately addressed through legislation, not through a rulemaking. Summit questioned whether the Commission even has the authority to modify its rules to expand its routing jurisdiction to include CO₂ pipelines.

⁷ Navigator explained that a complete list of permits is not yet know, but at a minimum will include a conditional use permit from Martin County; public lands crossings, public waters crossings, and water appropriation permits from the DNR; and construction stormwater, water discharge, water quality certification, and air emissions permits from the MPCA.

⁸ As provided in its comments, Navigator anticipates submitting permit applications in summer and fall 2022, with construction to begin in early 2024.

Summit also argued that simply expanding the definition of “hazardous liquids” to include CO₂ will not accurately reflect important differences between CO₂ and other products. Summit pointed out that CO₂ is defined separately by the federal government and states that currently regulate CO₂; it is not included within their definitions of hazardous liquid for the purpose of pipeline regulation.

Lastly, Summit pointed out that amending the definition of hazardous liquids in Minn. R. 7852.0100 will unlikely address all questions regarding the regulation of CO₂ pipelines. Summit explained that its anticipated project will include multiple pipeline diameters, some segments smaller than the 6-inch diameter minimum identified in Minn. Stat. § 216G.02. Summit cautioned that, even if the Commission successfully amends the hazardous liquid definition, there would still be segments of its project that would fall under jurisdiction of local governments and would lead to fragmented review with duplicative and potentially conflicting outcomes.

Valero Renewables Fuels Company, LLC

Valero Renewables Fuels Company, LLC (Valero) is the owner of an ethanol plant in Welcome, Minnesota, and is the only ethanol plant in Minnesota that will connect to Navigator’s Heartland Greenway pipeline. Valero took no position on the need for a rulemaking. Valero instead raised concerns that the Commission’s actions could impact the timely permitting and construction of the project, the ability to meet federal government tax credit deadlines, and ultimately Valero’s ability to participate in the project.

V. STAFF DISCUSSION

Based on the record, the Commission is asked to determine whether: 1) existing law and rule requires CO₂ pipelines to be permitted by the Commission; 2) CO₂ pipelines should be permitted by the Commission, and the agency should amend its rules to require it; or 3) CO₂ pipelines should be permitted at the county level.

A. Regulatory Authority Examples

Of the states potentially accommodating one or both of the two potential CO₂ pipeline projects being developed (Illinois, Iowa, Nebraska, Minnesota, South Dakota, and North Dakota), only Iowa, South Dakota, and North Dakota have legal provisions related to CO₂.

Iowa Code, Ch. 479B.2

““Hazardous liquid” means crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, liquefied carbon dioxide, alcohols, and coal slurries.”

South Dakota Codified Laws, Ch. 49-41B-2.1

“A transmission facility is . . . (2) A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or carbon dioxide.”

North Dakota Century Code 49-19-01

A common pipeline carrier is defined as a person “Owning, operating, or managing any pipeline or any part of any pipeline within this state for the transportation of crude petroleum, gas, coal, or carbon dioxide to or for the public for hire, or engaged in the business of transporting crude petroleum, gas, coal, or carbon dioxide by pipelines.”

Minnesota Office of Pipeline and Safety (MNOPS) and Pipeline

MNOPS has safety regulatory authority for the transportation of CO₂ for intrastate pipelines pursuant to Minn. Stat. §§ 299F and 299J, that adopted 49 CFR Part 195 which “applies to pipeline facilities and the transportation of hazardous liquids or carbon dioxide associated with those facilities in or affecting interstate or foreign commerce...” That same regulation defines CO₂ as “a fluid consisting of more than 90 percent carbon dioxide molecules compressed to a supercritical state.”

B. CO₂ in Pipelines⁹

- There are approximately 50 CO₂ pipelines in the U.S. with a combined length of over 4,500 miles.
- CO₂ is commonly transported through pipelines in a supercritical state.
- A substance is in a super critical when it is heated above its critical temperature and compressed above its critical pressure.
- A substance in a supercritical state is said to exhibit the properties of both a liquid and a gas.

⁹ United States Department of Labor, Occupational Safety and Health Administration.

<https://www.osha.gov/chemicaldata/183> (Accessed May 10, 2022).

Centers for Disease Control and Prevention. (September 1978). *Occupational Health Guideline for Carbon Dioxide*. [https://www.cdc.gov/niosh/docs/81-](https://www.cdc.gov/niosh/docs/81-123/pdfs/0103.pdf?id=10.26616/NIOSH PUB81123)

[123/pdfs/0103.pdf?id=10.26616/NIOSH PUB81123](https://www.cdc.gov/niosh/docs/81-123/pdfs/0103.pdf?id=10.26616/NIOSH PUB81123) (Accessed May 10, 2022).

Airgas. Safety Data Sheet. <https://www.airgas.com/msds/001013.pdf> (Accessed May 10, 2022).

U.S. Department of Energy, National Energy Technology Laboratory. (April 21, 2015). *A Review of the CO₂ Pipeline Infrastructure in the U.S.*

U.S. Environmental Protection Agency. Carbon Dioxide Capture and Sequestration: Overview.

https://19january2017snapshot.epa.gov/climatechange/carbon-dioxide-capture-and-sequestration-overview_.html (Accessed May 10, 2022).

- Water and CO₂ are the most common substances used in a supercritical state.
- Low concentrations of CO₂ are not harmful. Higher concentrations can affect respiratory function and heart rate.
- When released from a pipeline CO₂ is a potential asphyxiant and may cause suffocation, as it is heavier than air and will settle in low areas and displace oxygen.
- CO₂ is not flammable, but closed containers may explode if heated.
- Due to the high-pressure requirements, pipelines carrying supercritical CO₂ may be more prone to ductile fractures which can cause physical dangers from blast waves and flying fragments.
- At the release location dry ice can form and direct contact can cause frostbite.
- Free water in a pipeline can react with the CO₂ to create carbonic acid which is corrosive.

C. Does a CO₂ Pipeline Require a Commission-Issued Routing Permit?

There appear to at least be two different interpretations when it comes to the rules and statutes regarding the need for a Commission-issued permit to construct a CO₂ pipeline: (1) the Commission currently has authority, and a rulemaking is not necessary; or (2) the Commission does not have authority and would require a rulemaking or legislative action.

For both positions, one must first look to Minn. Stat. § 216G.02, subd.2, which indicates that a “pipeline” may not be constructed without a permit from the Commission.

Next, one must look to the definition of a “pipeline” in Subdivision 1 of the same section, which defines a pipeline as “pipe with a nominal diameter of six inches or more that is designed to transport hazardous liquids. . .” or “pipe designed to be operated at a pressure of more than 275 pounds per square inch and to carry gas.”

1. Commission has Permitting Authority

For those that believe the Commission currently has authority over permitting, the analysis ends with the statutory definition of “pipeline.” For example, PEER and LIUNA argued, to varying degrees, that liquefied CO₂ is both a liquid and a gas in its supercritical state, is generally transported in pipelines at pressures exceeding 275 pounds per square inch, and is undoubtedly hazardous in certain situations. Thus, it was reasoned that certain CO₂ pipelines potentially fall under both pipeline definitions and would therefore require a routing permit from the Commission.

It was further argued that there is no need to look to the narrow definition of “hazardous liquid” in rule because the Legislature’s definition of “pipeline” in Minn. Stat. Sec 216G covers

all hazardous liquids. That is, there is no limited list of substances deemed hazardous. In fact, PEER asserted that the Commission's rules as currently written create an exception not authorized in statute.

2. A Rulemaking is Necessary

For those that believe the Commission must amend its rules to properly assume jurisdiction over permitting a CO₂ pipeline, one must drill down even farther to Minn. R. 7852 and the definitions of a hazardous liquid and a gas. Minn. R. 7852 defines a hazardous liquid as "petroleum, petroleum products, or anhydrous ammonia" and a gas is defined as "natural gas, flammable gas, or gas which is toxic or corrosive."

It is argued by Navigator, Summit, and several other commenters that the Commission does not have authority to issue a routing permit for a CO₂ pipeline because the definition in the rule does not specifically identify carbon dioxide or liquefied CO₂ as a hazardous liquid.¹⁰ The Commission would need to initiate a rulemaking to amend the definition of hazardous liquid to specifically include carbon dioxide or liquefied CO₂.

Summit further argued that the Commission may not even have authority to modify its rules in a manner that would expand its regulatory jurisdiction without direction from the Legislature.

3. No Permitting Authority

Absent Commission permitting authority, a CO₂ pipeline project is subject to substantial regulation by several other federal, state, and local permits. As indicated by Navigator and Summit, a number of those permits processes include opportunity for public review and comment. Further, no permits can be issued by any authority in Minnesota until the pending petition for an EAW is resolved, and for which the Commission has been designated as RGU.

D. Rulemaking Process

Should the Commission choose to initiate a rulemaking it will need to decide which rulemaking procedures to use: the traditional rulemaking process, the expedited rulemaking process, or the "good cause" exemption.

Traditional Rulemaking

Traditional Rulemaking under Chapter 14 is a comprehensive process that requires numerous procedural steps, for example: noticing requirements, comment periods, a statement of need

¹⁰ Staff notes that if liquefied CO₂ in its supercritical state is indeed considered both a liquid and a gas it could fall under the "gas" definition for being toxic and corrosive.

and reasonableness, legal review, and the potential for a public hearing. If the Commission begins a traditional rulemaking, the first step will be for staff to issue a Request of Comments in the State Register with a scope and a draft rule, followed by a Commission hearing at which Commissioners could direct staff to finalize a proposed rule and develop a Statement of Need and Reasonableness.

Expedited Rulemaking

The expedited process is a more streamlined process that can take up to a year to complete. However, this process can only be used if the statute authorizing the Commission to make the rules in question indicates such. Chapter 216G does not refer to the expedited process; therefore, it is staff's understanding that this provision could not be used in this case.

Good Cause Exemption

A good cause exemption under section 14.388 can only be used if the rule amended is to: 1) address a serious and immediate threat to the public health, safety, or welfare; 2) comply with a court order or a requirement in federal law; 3) address changes to statute; or 4) make changes that do not alter the sense, meaning, or effect of a rule. It should be noted that rule amendments made under clauses (1) and (2) of this provision are only effective for two years.

If the Commission wishes to use the good cause exemption process, staff would draft the rules and obtain Commission approval. The process then involves notice to the Governor's Office and review by the Office of Administrative Hearings (OAH), with OAH review taking only 14 days. The good cause exemption process can be as short as a few months, but could take longer if legal challenges arise or if the initial draft is wholly or partially disapproved by the ALJ.

VI. POSSIBLE DECISION OPTIONS

[The Commission should select either Decision Option 1 or Decision Option 4. If the Commission selects Decision Option 1, it can provide additional guidance by selecting from options in 2 and 3.]

Should the Commission initiate a rulemaking to amend the definition of “hazardous liquid” in Minn. R. 7852.0100, subp. 18?

1. Initiate a rulemaking under Chapter 14 to amend the definition of “hazardous liquid” in Minn. R. 7852.0100, subp. 18, to include liquefied carbon dioxide using the
 - a. traditional rulemaking process; or
 - b. expedited process; or
 - c. good cause exemption.

[If the Commission selects Decision Option 1a, it could select either 2a or 2b or both; if the Commission selects Decision Option 1b or 1c, the Commission should select either 2a or 2b.]

2. Authorize staff to incorporate the following changes to the definition of “hazardous liquid” in Minn. R. 7852.0100:
 - a. Include liquefied carbon dioxide as a “hazardous liquid”
 - b. Redefine hazardous liquid to incorporate pipelines covered under 49 Code of Federal Regulations § 195.1.

[If the Commission selects decision options 1a, 1b, or 1c, it could include any of the options in 3, but they are not required.]

3. Authorize staff to incorporate the following changes into the rulemaking:
 - a. Exempt pipelines that have already filed substantive permit applications with other regulatory authorities by December 31, 2022; (*Navigator*)
 - b. Exempt pipelines that are located in only one county; (*Navigator*)
 - c. Exempt pipelines that are less than 25 miles; (*Navigator*)
 - d. Establish an effective date of December 31, 2024; (*Staff interpretation of Navigator*)
 - e. Require a full environmental impact statement for every pipeline; (*Overland*)

- f. Incorporate the provisions of Minnesota's Buy the Farm Statute, Minn. Stat. § 216E.12, subd. 4. (*Overland*)

[OR]

4. Decline to proceed with a rulemaking.

[The Commission does not need to make a decision in the following section, but could do so].

Does the Commission currently have jurisdiction to permit CO2 pipelines?

5. Determine that the Commission has authority to permit CO2 pipelines.
6. Determine that the Commission does not have authority to permit CO2 pipelines.