

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

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| IN THE MATTER OF THE APPLICATION OF |) | ORDER GRANTING MOTION |
| NAVIGATOR HEARTLAND GREENWAY, |) | TO ADDRESS PROCEDURAL |
| LLC FOR A PERMIT UNDER THE SOUTH |) | ISSUES IN PART; ORDER |
| DAKOTA ENERGY CONVERSION AND |) | GRANTING MOTION TO LIMIT |
| TRANSMISSION FACILITIES ACT TO |) | OR EXCLUDE TESTIMONY IN |
| CONSTRUCT THE HEARTLAND |) | PART; ORDER GRANTING |
| GREENWAY PIPELINE IN SOUTH DAKOTA |) | MOTION FOR PREHEARING |
| |) | CONFERENCE; ORDER |
| |) | GRANTING MOTION FOR TIME |
| |) | CERTAIN |
| |) | |
| |) | HP22-002 |

On September 27, 2022, the South Dakota Public Utilities Commission (Commission) received an Application for a Permit under the South Dakota Energy Conversion and Transmission Facilities Act to Construct the Heartland Greenway Pipeline in South Dakota (Application) from Navigator Heartland Greenway, LLC, a limited liability company owned by Navigator CO2 Ventures LLC (Navigator or Applicant). Applicant proposes to construct and operate a carbon dioxide (CO2) transmission pipeline (Project). The Project is approximately 1,300 miles of pipelines for the transportation of CO2 from more than 21 ethanol and fertilizer plants across five states, including three ethanol plants in South Dakota, that will transport captured carbon dioxide for permanent and secure underground sequestration in Illinois and/or to off-take facilities for commercial/industrial use. The Project consists of 111.9 miles of carbon dioxide pipeline in South Dakota that will cross the counties of Brookings, Moody, Minnehaha, Lincoln, and Turner.

On November 21 and 22, 2022, the Commission held public input meetings in Canton, Flandreau, and Sioux Falls. Party status has been granted to numerous individuals and entities. On January 19, 2023, the Commission issued an Order Setting Procedural Schedule. On March 2, 2023, the Commission issued an Order Granting Request to Withdraw Party Status; Order Amending Procedural Schedule; Order Granting Motion for Protective Order. On June 26, 2023, Navigator filed a Motion to Address Procedural Issues, a Motion to Limit or Exclude Certain Testimony (Motion to Exclude), a Motion to Preempt County Ordinances § 49-41B-28 (Motion to Preempt), and a Motion for Prehearing Conference. No final action has been taken on Navigator's Motion to Preempt.

On June 29, 2023, the Commission received a Motion for an Order Allowing Witness Mike Mikich to Appear at a Time Certain to Authenticate His Pre-Filed Testimony and to Submit to Cross-Examination (Motion for Time Certain) filed by United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (Union Intervenor).

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 15-6, and 49-41B and ARSD Chapter 20:10:01 and 20:10:22. The Commission may rely upon any or all of these or other laws of this state in making its determination.

At its regularly scheduled meeting on July 11, 2023, the Commission considered the following Motions: Applicant's Motion to Address Procedural Issues, Applicant's Motion to Exclude, Applicant's Motion for Prehearing Conference, and Union Intervenor's Motion for Time Certain.

MOTION TO ADDRESS PROCEDURAL ISSUES

After reviewing Applicant's Motion to Address Procedural Issues, responsive briefs from other parties, and hearing oral argument, the Commission makes the following findings:

- 1) it is consistent with administrative law and the Commission's practice to only allow counsel to conduct cross-examination if the party is represented by counsel,
- 2) it is appropriate to limit cross-examination to the scope of direct examination,

(the Commission voted 2-1, with Commissioner Fiegen dissenting, to approve the request to limit cross-examination to the scope of direct examination)
- 3) it is unnecessary to limit cross-examination and re-direct examination to one round,

(the Commission voted, 2-1, Commissioner Nelson dissenting, to deny the request to limit cross-examination and re-direct examination to one round)
- 4) it is premature to memorialize August 5, 2023, as the hearing's end date, and
- 5) that limiting the time allowed for any party to cross-examine a witness is unnecessary.

The Commission notes that the findings above apply to the parties and are not intended to bind the Commission itself.

MOTION TO EXCLUDE

Regarding Applicant's Motion to Exclude, Applicant first requested the Commission make a ruling regarding redundant and verbatim testimony, specifically requesting the Commission rule that 1) not more than one landowner be allowed to adopt the verbatim testimony, 2) that counsel for the witnesses who offered that testimony identify the one witness who will adopt the testimony, and 3) that landowner testimony be restricted to the scope of what was offered in prefiled testimony. After reviewing Applicant's Motion to Exclude, responsive briefs from the parties, and hearing oral argument from the parties, the Commission unanimously voted to deny the first two parts of the request. Further, finding that all testimony should be limited to the scope of prefiled testimony, the Commission unanimously voted to grant the third part of the request.

Applicant next requested that the Commission exclude the testimony of Mr. Curtis Jundt. Finding only the portions of his testimony referencing a 24-inch pipeline to be irrelevant, the Commission voted unanimously to deny, in part, the Motion to Exclude as it relates to the full testimony of Curtis Jundt, and grant the Motion to Exclude, in part, as to any testimony referencing a 24-inch pipeline.

Applicant next requested that the Commission exclude the testimony Loren Staroba, Marvin Lugert, and Marvin Abraham. The Commission voted 2-1, with Commissioner Hanson dissenting, to grant the Motion to Exclude, in part, and exclude the testimony of Loren Staroba

and Marvin Lugert. The Commission then voted 2-1, with Commissioner Nelson dissenting, to deny the Motion to Exclude, in part, as it relates to Applicant's request to exclude the testimony of Marvin Abraham, and grant the Motion to Exclude, in part, to exclude Attachment 1 to Marvin Abraham's testimony, finding the attachment to be hearsay.

Finally, the Applicant requested the Commission exclude testimony from certain landowners that Applicant could not identify as being impacted by the Project. After hearing argument from Applicant, at which time the Applicant narrowed its request to two landowners, Becky Poss and Berton Risty, the Commission voted unanimously to exclude the testimony of Berton Risty and Becky Poss.

MOTION FOR PREHEARING CONFERENCE

Finding Navigator's Motion for Prehearing Conference conducive to efficiently facilitating pre-hearing matters, the Commission unanimously granted the motion for a pre-hearing conference and additionally instructed the parties to hold a second pre-hearing conference to stipulate to exhibits.

MOTION FOR TIME CERTAIN

Lastly, finding Union Intervenor's Motion for Time Certain of witness testimony reasonable and hearing no objection from the Parties, the Commission voted unanimously to grant the motion.

It is therefore

ORDERED, if a party is represented by counsel, only counsel may conduct cross-examination. It is further

ORDERED, cross-examination shall be limited to the scope of direct examination. It is further

ORDERED, Applicant's request to limit cross-examination and re-direct examination is denied. It is further

ORDERED, the request to memorialize August 5, 2023, is deferred. It is further

ORDERED, that Applicant's request to limit the time allowed for any party to cross-examine a witness is denied. It is further

ORDERED, that Applicant's request to exclude verbatim landowner testimony is denied and, therefore, the Applicant's request to require counsel for the landowners to identify who will testify on the verbatim testimony is moot. It is further

ORDERED, that testimony at the evidentiary hearing be limited to the scope of what was offered in prefiled testimony. It is further

ORDERED, that Applicant's Motion to Exclude the testimony of Curtis Jundt is granted, in part, only as it pertains to testimony related to a 24-inch pipeline. It is further

ORDERED, the entire testimony of Loren Staroba, Marvin Lugert, Berton Risty, and Becky Poss is excluded. It is further

ORDERED, that Attachment 1 to Marvin Abraham's testimony is excluded. It is further

ORDERED, that two pre-hearing conferences shall occur prior to July 25, 2023. It is further

ORDERED, that Union Intervenor's Motion for Time Certain is granted.

Dated at Pierre, South Dakota, this 14th day of July 2023.

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| CERTIFICATE OF SERVICE |
| The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically. |
| By: <u>Adrian de Huelde</u> |
| Date: <u>7/14/23</u> |
| (OFFICIAL SEAL) |

BY ORDER OF THE COMMISSION:

Kristie Fiegen
KRISTIE FIEGEN, Chairperson
Dissenting in Part

Gary Hanson
GARY HANSON, Commissioner
Dissenting in Part

Chris Nelson
CHRIS NELSON, Commissioner
Dissenting in Part