

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

IN THE MATTER OF THE APPLICATION OF)	ORDER DENYING
NAVIGATOR HEARTLAND GREENWAY,)	APPLICANT’S MOTION TO
LLC FOR A PERMIT UNDER THE SOUTH)	PREEMPT COUNTY
DAKOTA ENERGY CONVERSION AND)	ORDINANCES UNDER SDCL
TRANSMISSION FACILITIES ACT TO)	49-41B-28
CONSTRUCT THE HEARTLAND)	
GREENWAY PIPELINE IN SOUTH DAKOTA)	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 5 states, including 3 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 March 2, 2023, the procedural schedule was amended, establishing July 25, 2023, as the date upon which the evidentiary hearing would commence in this docket. On June 26, 2023, Navigator filed Applicant’s Motion to Preempt County Ordinances Under 49-41B-28 (Motion to Preempt). In the Motion to Preempt, Applicant sought an order from the Commission preempting ordinances in Minnehaha and Moody counties pursuant to SDCL 49-41B-28. In response to Applicant’s Motion to Preempt, Minnehaha County sought and was granted limited intervention for the purpose of contesting the Motion to Preempt.¹

An evidentiary hearing in this docket was held on July 25 through August 8, and August 24 through 25, 2023. At the evidentiary hearing, the Commission voted to set aside two days to hear testimony related to the Motion to Preempt. Pursuant to that decision, all testimony and evidence related to preemption of county ordinances was heard on August 24 through 25, 2023. Parties submitted briefs on the matter of the Motion to Preempt pursuant to a briefing schedule established by the Commission in its Order Establishing Post-Hearing Briefing Schedule and Decision Date.

At its regularly scheduled meeting and in conjunction with its oral decision in this docket, the Commission considered the Motion to Preempt on September 6, 2023. At that meeting, the Commission heard oral argument from the Parties.

¹ Moody County was an existing party, having been granted intervention by Commission Order dated December 7, 2022.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-41B, specifically SDCL 49-41B-28.

Having heard and considered all of the testimony and evidence in the record and having considered all written and oral argument of the Parties, the Commission voted unanimously to deny Applicant's Motion to Preempt. The Commission noted that its preemption authority pursuant to SDCL 49-41B-28 is discretionary and is an extreme remedy. The Commission understands the legislative intent of Chapter 49-41B as found in SDCL 49-41B-1 is "so that the energy requirements of the people of the state are fulfilled." The Commission determined that it was not appropriate to exercise this extreme remedy in this matter, finding that Applicant's project was not being constructed to meet the energy requirements of the people of the state. The Commission also finds that Applicant failed to prove that the Moody County or Minnehaha County ordinances prohibited construction of the Project and, therefore, Applicant should have made greater attempts to resolve its issues at the county level prior to requesting that the Commission exercise its discretion to preempt county ordinances. The Commission also found that because Applicant failed to show that it had exhausted its ability to work with the counties to comply with the ordinances and because the Applicant failed to demonstrate that it could not comply with the ordinances, the record does not demonstrate that the ordinances in question are unreasonably restrictive in view of existing technology, factors of cost, or economics, or needs of parties where located in or out of the county.

It is therefore

ORDERED, that Applicant's Motion to Preempt County Ordinances Under 49-41B-28 is hereby denied.

Dated at Pierre, South Dakota, this 13th day of September 2023.

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>Adam DeHueck</u>
Date:	<u>9/13/23</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Kristie Fiegen
KRISTIE FIEGEN, Chairperson

Gary Hanson
GARY HANSON, Commissioner

Chris Nelson
CHRIS NELSON, Commissioner