

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

IN THE MATTER OF THE APPLICATION OF)	ORDER GRANTING
NAVIGATOR HEARTLAND GREENWAY, LLC)	REQUEST TO WITHDRAW
FOR A PERMIT UNDER THE SOUTH DAKOTA)	PARTY STATUS; ORDER
ENERGY CONVERSION AND TRANSMISSION)	AMENDING PROCEDURAL
FACILITIES ACT TO CONSTRUCT THE)	SCHEDULE; ORDER
HEARTLAND GREENWAY PIPELINE IN SOUTH)	GRANTING MOTION FOR
DAKOTA)	PROTECTIVE ORDER
)	
)	
)	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 September 29, 2022, the Commission electronically transmitted notice of the filing and the intervention deadline of November 28, 2022, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. On September 30, 2022, the Commission issued an Amended Notice of Application; Order for and Notice of Public Input Meeting; Notice of Opportunity to Apply for Party Status. 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 January 30, 2023, the Commission issued an Order for and Notice of Motion Hearing on Less than 10 Days' Notice. On February 13, 2023, the Commission issued an Order Denying Motion to Return Application. During the February 9, 2023, Commission meeting, the Commission directed Commission counsel to work with the parties to consider revisions to the procedural schedule and bring any proposals for change to the next Commission meeting. On February 16, 2023, Applicant filed a Motion for Protective Order. On February 21, 2023, Joyce Swanson filed a Request to Withdraw as an Intervenor. On February 21, 2023, Commission Staff filed a Motion to Amend Procedural Schedule. On February 21, 2023, the Commission issued an Order for and Notice of Motions Hearing on Less Than 10 Days' Notice.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 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 February 28, 2023, the Commission considered these matters. Hearing no objection from the parties, the Commission unanimously voted to grant Joyce Swanson's request to withdraw party status. Hearing no objection from the parties, the Commission unanimously voted to grant Commission Staff's Motion to Amend Procedural Schedule. After hearing argument from the parties and revising the second paragraph, the Commission voted unanimously to grant the Motion for Protective Order. It is therefore

ORDERED, that Joyce Swanson's request to withdraw party status is hereby granted. It is further

ORDERED, that the procedural schedule shall be amended as follows:

Intervenor and Staff Testimony, Applicant Limited Supplemental Testimony: May 25, 2023

Rebuttal Testimony and substantive motions: June 26, 2023

Final Discovery Requests (limited to discovery prompted by rebuttal testimony): July 3, 2023

Surrebuttal: July 11, 2023

Witness and Exhibits Filed: July 18, 2023

Hearing dates: July 25 – August 3, 2023

It is further

ORDERED, that Applicant, Intervenor parties, and the Commission's Staff (Parties) shall treat information provided to them by any other Party to the case through discovery that is identified by the providing Party as "Confidential" as confidential information subject to the Commission's rules regarding confidential information and to the following additional protective provisions of this Protective Order:

1. Documents to be filed or provided to a Party pursuant to this Order for which the filing or providing Party seeks confidential treatment shall be stamped or sealed as "Confidential" in accordance with the Commission rules regarding the marking and filing of confidential information or shall be identified as "Confidential" information on the document or in the cover document for such information or file.

2. All documents marked Confidential filed by a Party or provided or disclosed by any Party to any other Party through discovery, including depositions, shall be treated as confidential information by the receiving Party pursuant to SDCL 15-6-26(c) and the rules of civil procedure, except that access to and use of such information by the receiving Party's counsel of record for purposes of preparation for the proceedings in this matter and use in the proceedings shall be permitted subject to the provisions of this Protective Order.

3. Any Party, and their attorney, receiving Confidential information from another Party, or from the Commission in the case of filed documents, is responsible to the Commission and to the providing Party for limiting disclosure only to such Party's attorneys of record, their co-counsel, and professional staff. In addition, expert witnesses retained by the parties entitled to access to confidential information pursuant to the terms of this Protective Order may review confidential documents provided that each such expert is identified to the Applicant in advance of the disclosure and each such expert has signed a Non-Disclosure Agreement.

4. The Parties, their attorneys and other employees, agents, consultants and representatives shall be subject to a standard of good faith in their election to designate information as confidential and their disclosure, receipt, custody and use of Confidential information. The producing Party (i) will only seek confidential treatment for information defined as confidential under ARSD 20:10:01:39, (ii) will make reasonable efforts to narrow the scope of information designated as confidential, and (iii) upon request of the receiving Party, will confer in good faith to narrow the scope of information designated as confidential to the minimum redaction that will not compromise the confidentiality or proprietary value of the information for which confidential treatment is justified.

5. The Commission shall treat Confidential Information produced pursuant to this Order as confidential information subject to ARSD 20:10:01:39 through 20:10:01:44, provided that such confidential information is marked as confidential and, in the case of filed documents, filed in accordance

with the Commission's filing rules for confidential information. The Commission shall conduct all hearings involving Confidential Information in camera with only Commission employees, the Parties' attorneys and other authorized persons present during the portion of the hearing in which such information is offered or discussed. Any person, other than a Commission employee or a Party, who desires to have access to Confidential information shall comply with the procedures of ARSD 20:10:01:42 and 20:10:01:43.

6. Persons obtaining access to Confidential Information under this Order shall use the information only in the conduct or settlement of this proceeding and any judicial proceeding arising out of it and shall not use such information for any purpose unrelated to the conduct of this proceeding, including business, governmental, commercial, political, or public relations purposes. Persons obtaining access to Confidential Information under the terms of this Order may disclose, describe, or discuss the Confidential Information in any pleading filed in this proceeding, provided that such pleading is stamped "Confidential" and filed under seal, and provided that a separate public version is filed in which all Confidential Information is redacted.

7. Within ten days after receiving a deposition transcript containing confidential information, a party may designate pages of the transcript and exhibits "confidential" which makes the designated pages subject to the terms of this Order. Arrangements shall be made with the court reporter and videographer transcribing or recording the testimony to separately bind and record the designated "confidential" portions and to mark the cover page and each page of the transcript and any video recording as "Confidential—subject to Protective Order." Any extra charges by the court reporter or videographer shall be borne by the party asserting confidential status. Until expiration of the ten-day period, the entire deposition, exhibits, and video recordings shall be treated as subject to protection under this order.

8. Documents, including Confidential Information, received by a Party through discovery shall be subject to SDCL 15-6-5(g) and shall not be filed except in accordance with the exceptions set forth in that statute or an order of the Commission.

9. If an attorney for purposes of another proceeding, a court, or another administrative agency subpoenas or orders production of the Confidential Information, the Party or person having access to the Confidential information to whom the order or subpoena is directed shall promptly notify the providing Party of the pendency of such subpoena or order.

10. Nothing in this Order shall prevent or otherwise restrict counsel for a Party from rendering advice to their client regarding this proceeding and, in the course thereof, making professional analysis and use of the Confidential Information, provided, that in rendering such advice and otherwise communicating with such client, counsel shall not make disclosure of any confidential fact or assertion except to other counsel of record except in accordance with the procedures set forth in this Protective Order, the Commission's rules, or a subsequent order of the Commission.

11. The Parties and their attorneys are responsible for employing reasonable measures to control, consistent with this order, duplication of, access to, and distribution of copies of the Confidential information. Parties shall not duplicate any stamped information identified by the providing Party as Confidential except working copies and for filing at the Commission under seal.

12. This Order shall not be construed as a determination by the Commission or an agreement or concession by any Party that any document or data provided under the terms of this Order in fact contains Confidential information entitled to protection. This Order is not intended to diminish any Party's right, through appropriate motion, to contest the entitlement of any particular document or data to confidential treatment or to request a more limited scope designation with respect to a document or data, such as redaction of only the particular information required by law, rule or contract to be kept

confidential, sensitive personal identity information, competitively valuable material or other material properly entitled to confidential treatment.

13. This Order is not intended to prohibit any Party from (i) objecting to production, or to production only subject to special protective measures, of any material having particular sensitivity, such as material subject to homeland security or other federal or state statutes, rules or orders, (ii) objecting to production of documents on grounds of relevancy, materiality, admissibility, undue burdensomeness or other recognized grounds for objection to discovery, or (iii) objecting to the relevancy, materiality, or admissibility into evidence in this proceeding of any of the Confidential information furnished or received pursuant to this Order.

14. Within two weeks after final resolution of this proceeding (which includes administrative or judicial review), Parties and their attorney(s) shall return all copies of Confidential information and all analyses or other compilations which contain any of the Confidential information in their possession to providing Parties or their attorneys in accordance with state law or administrative rules pertaining to the retention of records, or destroy all such Confidential information and certify, under penalty of perjury, that such destruction has occurred. In the case of analyses or compilations containing Confidential information, all Confidential information set forth in such document shall be redacted if the document is to be retained and a copy of the redacted version shall be served on the disclosing party(ies) at least ten days before disclosure of the redacted version is made to anyone other than the authorized recipients.

15. The provisions of this Order shall not terminate at the conclusion of this proceeding.

Dated at Pierre, South Dakota, this 2nd day of March 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>3/2/23</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Kristie Fiegen

KRISTIE FIEGEN, Chairperson

Gary Hanson

GARY HANSON, Commissioner

Chris Nelson

CHRIS NELSON, Commissioner