

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

**IN THE MATTER OF THE
APPLICATION BY NAVIGATOR
HEARTLAND GREENWAY, LLC
FOR A PERMIT UNDER THE
SOUTH DAKOTA ENERGY
CONVERSION AND
TRANSMISSION FACILITIES ACT
TO CONSTRUCT THE
HEARTLAND GREENWAY
PIPELINE
IN SOUTH DAKOTA**

**DOCKET HP 22-002

LANDOWNER INTERVENORS’
PROPOSED
STATEMENT OF FACTS
AND
CONCLUSIONS OF LAW**

STATEMENT OF FACTS

1. Navigator filed an Application for a Energy Transmission Facility Permit on September 27, 2022.
2. Navigator is a Delaware Limited Liability Company. The controlling shareholder of Navigator is BlackRock’s third fund of Global and Energy Power Infrastructure Fund (GEPIF III). GEPIF III represents approximately 84% of the equity investment in Navigator. 14.6% of the fund is owned by MIC CCS One, LLC, which while a “US Taxpayer,” is actually based in the United Arab Emirates in the middle east. The United Arab Emirates and other middle eastern influences dominate this investment fund. Middle eastern sovereign wealth funds are also involved in the investment in some form.
3. The primary economic benefactors of the Project are the anonymous BlackRock shareholders and unknown middle eastern sheiks and strongmen.
4. A potential increased price of corn paid by ethanol producers to farmers is speculative.
5. The Project creates temporary construction jobs. The Project creates only ten permanent jobs in South Dakota.
6. The Project will receive significant federal subsidies through 26 U.S.C. 45Q tax credits. The tax credits are \$85.00 per ton of carbon captured and sequestered. This Project

unnecessarily and substantially increases the debt of the United States Federal Government when it is already too high due to decades of federal government overspending on unnecessary subsidies and wasteful programs.

7. Intervening Landowners are and represent South Dakota farmers, ranchers, volunteer first responders, hunters, fishermen, teachers, engineers, retirees, systems analyst, homeschool educators, nurses. Intervening Landowners either own land along the route or live close to the route.
8. The South Dakota Public Utilities held three public input meetings along the pipeline path on November 21, 2022 and November 22, 2022.
9. Navigator did not provide timely notice of the public input meetings to 204 South Dakota landowners.
10. Between Christmas Day and New Year's Eve 2022, Navigator sent a letter to the 204 South Dakota landowners.
11. The Project is a combination of a 6 inch-in-diameter pipeline and a 8 inch-in-diameter hazardous liquid pipeline transporting carbon dioxide at high pressure levels from eastern South Dakota to central Illinois. There are 112 route miles in South Dakota.
12. There are thousands of miles of Natural Gas and other hazardous liquid pipelines in the United States. There are only approximately 5,000 miles of carbon dioxide pipelines in South Dakota. While these pipelines may be similar in construction, the pipelines are different because of the hazardous liquids transported in the pipelines. They
13. Carbon dioxide is an asphyxiant and intoxicant that is colorless, odorless, heavier than air so that it sinks and concentrates in lower elevation areas and near ground level where people and animals are located.
14. Human exposure levels to CO₂ concentrated above 10,000 ppm and up to 30,000 ppm is considered unhealthy. The impact of exposure can include increased heart rate and blood pressure, shortness of breath, dizziness, confusion, and unconsciousness.
15. Human exposure levels to CO₂ concentrated above 30,000 ppm and up to 50,000 ppm pose serious health risks, including death.
16. The project affects residents in the following communities: Canton, Harrisburg, Worthington, Lennox, Sioux Falls, Brandon, Valley Springs, Garretson, Trent, Egan, and Aurora, and

the residents who reside in the rural areas of Lincoln, Minnehaha, Moody, and Brookings Counties. The Project also affects Palisades State Park.

17. Municipalities in Minnehaha County and the unincorporated areas of Minnehaha County are seeing significant economic development and expansion. This urban growth will continue into the path of the proposed route.
18. South Dakota volunteer first responder departments are shrinking membership and already overburden based on present demands. The Egan volunteer fire department disbanded. Increased training demands is one of the reasons volunteer departments have a difficult time recruiting new volunteer members.
19. The presence of the Project will impose increased training demands upon already strained volunteer first responder departments.
20. Navigator did not adequately identify the impact of the proposed route on any High Consequence Areas along the route.
21. High Consequence Areas do exist as do other sensitive and developing areas. The proposed route traverses through regions that have and continue to develop rapidly in Minnehaha and Lincoln Counties. The pipeline also approaches numerous existing residences within 1,855 feet of either side of the centerline of the pipeline.
22. Navigator's air dispersion modeling is incomplete, fails to account for changes in topography, wind gusts,, and other necessary input variables for appropriate modeling of the potential impact of a guillotine rupture along the route.
23. Navigator's air dispersion modeling likely understates the impact of a guillotine rupture in certain locations. These locations, however, are unknown because Navigator failed to identify HCAs.
24. A guillitone rupture poses a serious threat of serious injury to inhabitants. Under certain conditions, people will die. Navigator does not have an ERP to show the Commission that this threat can be mitigated to prevent substantial impairment to the health, safety, and welfare of inhabitants.
25. Navigator's present Emergency Response Plan is insufficient at this time.
26. Navigator provided the Emergency Response Plan to Commission Staff only 7 days before the start of the hearing. This was inadequate.
27. Navigator has not adequately engaged South Dakota's first responders along the route.

28. The Project will reduce property values along the route.
29. The Project will reduce the value of housing eligibilities along the route.
30. The Project will reduce the construction of new homesteads, acreages, and housing developments in unincorporated areas along the route.
31. The Project has prevented area landowners from making improvements on their farm and diversifying their farm.
32. Navigator's only evidence that the pipeline would not affect land values or housing eligibilities were several dated natural gas pipeline studies. Navigator also relied on a photo of a school, park, and houses in Minnehaha County next to a natural gas pipeline. This evidence is not probative of the specific impact of a carbon dioxide pipeline on land values or housing eligibilities. Living next to a lake is more desirable than living next to a sewage pit, even though both are liquid bodies. Navigator should have presented specific evidence on the effects of carbon dioxide pipelines on land values and housing eligibilities.
33. One landowner has already experienced a public auction no-sale on one of her parcels only because the pipeline may run through it at a future date. Numerous landowners testified that they would not buy a parcel with a carbon dioxide pipeline running through it, or they would pay less for it.
34. Navigator has an Agriculture Protection Plan ("APP"). The Commission specifically finds that the APP inadequately addresses tile repair and vegetation restoration.
35. Many landowners along the route have a tiling system of various ages. The construction of the Project will cause damage to tiling system that will need to be repaired.
36. After repairs, landowners are likely to experience a reduction in yields. In some situations, this can be a permanent reduction in yields.
37. The APP lacks assurances that Navigator will fully restore damaged tile. Navigator has not hired a tile restoration person or company so it is not possible to validate if the contractor is an appropriate person or company for tile restoration.
38. The APP only requires vegetation restoration of up to 70% previous vegetation. The APP requires the landowner to obtain the remaining 30% of restoration while Navigator provides no evidence of compensation to landowner for doing so.
39. The APP does not adequately remediate soil disturbance from construction.

40. Navigator has only obtained easements for 30 percent of the South Dakota route.
41. Navigator's Easement ("Easement") holds Landowners liable to Navigator for accidental damage to the pipeline, including a release of carbon dioxide.
42. Accidental severing of utility lines is common. The most common cause of damage to an underground pipeline, regardless of content, is human error. It is more likely than not that this underground pipeline will one day accidentally be struck.
43. A standard insurance policy includes a pollutants exception clause. Insurance may cover pollutants as an additional rider at an increased cost to the policyholder.
44. The complexities relating to insurance coverage for landowners may pose a serious threat of serious injury to the economic conditions of landowners.
45. The Easement only compensates farmers for five years of crop yield losses while actual losses may continue for many years. Some losses, depending on soil type and other factors, may be permanent after disturbance.
46. The Easement prohibits the orderly development over the Easement Area. The Easement Area may only be used for open spaces and related uses. The Easement requirement for ingress and egress to the Easement Area further restricts the orderly development along the pipeline route.
47. The Easement terms may prohibit other types of development in and around the Easement. The potential for a carbon dioxide plume around the pipeline will also likely restrict orderly development beyond the Easement and Easement Area.
48. The Easement may last beyond the useful life of the Project. Navigator presented no evidence for pipeline removal and restoration after the useful life of the project.
49. Navigator's initial application in Illinois was rejected for being too inadequate.
50. Navigator has not provided sufficient evidence that it has or will be able to comply with certain PHSMA requirements, specifically sub part F of 45 CFR 195 concerning emergency response, operation, and maintenance to the pipeline.
51. Navigator testified that it cannot comply with the ordinances of Minnehaha and Moody Counties.
52. The Project will unduly interfere with the orderly development of the larger Sioux Falls metro region. The route is too close to areas of present and consistent areas of high

growth and present orderly development, specifically the areas between Brandon and Valley Springs, and the communities of Canton, Harrisburg, and Lennox.

53. The Project will unduly interfere with the orderly development of rural areas by limiting the construction of housing. In Moody County, the carbon pipeline is more likely than not to interfere with the preservation of agriculture and agricultural production, a stated goal of their zoning ordinance, specifically relating to animal husbandry.
54. Navigator presented no evidence that the Project will not unduly interfere with the orderly development of Minnehaha, Lincoln, Moody, or Brookings Counties or the communities of Sioux Falls, Harrisburg, Lennox, Brandon, Valley Springs, Garretson, Egan, Trent, Aurora, or any townships or school districts that may be impacted by the proposed Project.
55. The Commission will not presume that the Project will not unduly interfere simply because Navigator submitted no evidence one way or another.

CONCLUSIONS OF LAW

1. Navigator has a mandatory notice requirement under SDCL § 49-41B-5.2. Navigator failed to provide adequate and sufficient notice to 204 landowners within a one-half mile of the proposed route. Navigator's subsequent letter is not in compliance with the statutory mandate. The purpose of this law is for affected landowners to meet with Commissioners to share their concerns. Public input, or at least offering the opportunity for input, for all affected persons as required by statute, is a fundamental and necessary part of the process for the Commission to evaluate an application.
2. Navigator also failed to provide adequate disclosures to Commission staff to evaluate the merits of the Application and supporting documentation. Timely disclosure is also a fundamental and necessary part of the process for the Commission to evaluate the application.
3. Navigator must present a preponderance of evidence that the Project meets the four factors of SDCL § 49-41B-22. Preponderance of evidence means that it is more likely than not that the Project satisfies those requirements.
4. Navigator has failed to present sufficient evidence that the Project will more likely than not comply with all applicable laws and rules.

5. Navigator has failed to present sufficient evidence that the Project will not pose a serious threat of serious injury to the environment nor to the social or economic condition of the inhabitants or expected inhabitants in the siting area.
6. Navigator did not present sufficient evidence that the Project will not substantially impair the health, safety, or welfare of the inhabitants.
7. Navigator did not present sufficient evidence that the Project will not unduly interfered with the orderly development of the region with due consideration given to the view of the governing bodies of affected local units of government.
8. Because Navigator fails to meet its burden of proof on the four factors of SDCL § 49-41B-22, the Commission does not need to rule on Navigator's motion for preemption.

THEREFORE, Navigator's Application for an Energy Transmission Facility in HP 22-002 is hereby rejected.

/s/ Brian E. Jorde

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