



and LeAnn Severson, Glenn Scott, Kathy Jo Serck, Art and Beverly Richert, Daniel and Jillian Paulson, Rick and Ray Luze, Cathy Lu Miller, Marilyn Olson, Tony Venural et al, and Warran Jackson.

For instance, a comparison of the testimony of Denis and Janet Andersen and Daniel and Diana Nelson illustrates the common testimony and verbatim repetition. Both start with the same initial questions. The landowners provide different answers to the same question about how their land would be affected by the pipeline, and both offer a different description of their property. The testimonies are otherwise identical and supported by the same exhibits. This is remarkable in many ways. These landowners have exactly the same concerns about the pipeline, the easement, and the compensation offered to them, expressed in exactly the same words. It is obvious that each did not write the same testimony, and it is highly doubtful that each landowner whose name is attached to this identical testimony shares all of the same opinions about every issue addressed in the testimony. Equally troubling is the penultimate question and response:

Q: Have you fully expressed each and every opinion, concern, or fact you would like the PUC Commissioners to consider in their review of Navigator's Application?

A: No, I have not. I have shared that which I can think of as of the date I signed this document below, but other things may come to me or my memory may be refreshed and I will add and address those things at the time of the Hearing and address any additional items at that time as is necessary. Additionally, I have not had an adequate amount of time to receive and review all of Navigator's answer to our discovery and the discovery of others, so it was impossible to competently and completely react to that in my testimony here and I reserve the right to also address anything related to discovery that has not yet concluded as of the date I signed this document below. Lastly, certain documents requested have not yet been produced by Navigator and therefore I may have additional thoughts on those I will also share at the hearing as needed.

In other words, having signed a piece of testimony that each could not have written, each landowner who has signed this common testimony reserves the right to appear at the hearing and testify about anything else they want to at the time.

This should not be allowed. First, the Commission should not allow cumulative and duplicative testimony, especially verbatim testimony. When one witness has presented this testimony and has been cross-examined on the opinions stated in the testimony, no other landowner witness should be heard on the same issues. Because the testimony on the common issues is identical, it would be a waste of time and resources. The rules of evidence apply to the hearing, and it is within the Commission's discretion to preclude cumulative and redundant testimony. *See* SDCL § 1-26-19 (rules of evidence apply and “[i]rrelevant, incompetent, immaterial, or unduly repetitious evidence shall be excluded”); SDCL § 19-19-403 (“The court may exclude evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”). Evidence is cumulative when it is “of the same character as evidence previously produced and which supports the same point.” *State v. Knecht*, 1997 S.D. 53, ¶ 7, 563 N.W.2d 413, 417. Here, allowing multiple witnesses to take the stand and adopt verbatim testimony would cause undue delay, waste time, and would needlessly present cumulative evidence. No better example of that could be provided than the landowner testimony in this docket.

Second, it would defeat the purpose of prefiled testimony to allow landowners to fulfill their stated intention to testify about whatever else they think of between the time of their testimony and the hearing. That is what rebuttal and surrebuttal testimony is for. Navigator is entitled to reasonable notice of who will testify and about what.

Thus, with respect to the testimony filed by these witnesses, Navigator asks: (1) that not more than one landowner be allowed to adopt on the stand the duplicative and cumulative verbatim testimony included in the docket; (2) that counsel for the landowners who offered the

testimony identify who that witness will be in advance of the hearing; and (3) that landowner testimony be restricted to the scope of what they have offered in pre-filed testimony, whether direct, rebuttal, or surrebuttal.

## **2. Curtis Jundt.**

Mr. Jundt is a landowner from North Dakota whose land is affected by the proposed pipeline to be constructed by Summit Carbon Solutions. Mr. Jundt is not affected by Navigator's pipeline. He testified before the North Dakota Public Utilities Commission. His testimony can be viewed on YouTube. <https://www.youtube.com/watch?v=h9yBVdPAwDY> Viewing his testimony and comparing it to his prefiled testimony in this docket reveals that part of his North Dakota hearing testimony was transcribed and "Navigator" was substituted for "Summit" where appropriate. Nowhere in his prefiled testimony does Mr. Jundt state that he is familiar with Navigator's proposed pipeline, that he has reviewed Navigator's permit application and supporting testimony, or that he has reviewed any of the testimony or evidence already in this docket.

Allowing Mr. Jundt to testify based on his North Dakota testimony about Summit's pipeline would be improper. First, it lacks foundation because it is not based on Navigator's proposed pipeline. Second, it is irrelevant because it is not specific to Navigator's pipeline. For instance, on page 4 of his prefiled testimony, Mr. Jundt answers a question about shutting down a 24-inch pipeline and what a leak from that would look like, even though Navigator's pipeline in South Dakota will be either six or eight inches in diameter. He answers in general terms about how long it might take to shut the valves, without any evidence specific to Navigator's pipeline. Third, although he has training and experience as an engineer, Mr. Jundt's current qualifications are unknown and he has not been qualified as an expert witness. Lay witnesses may not offer

opinion testimony that is based on scientific, technical, or other specialized knowledge. SDCL § 19-19-701. His testimony should be excluded.

**3. Loren Staroba.**

Loren Staroba is a North Dakota landowner whose property would be affected by Summit's pipeline in North Dakota. His prefiled testimony concerns existing pipelines on his property that were constructed long ago, one in 1975 and one in 1998. (Staroba Testimony at p. 1.) His testimony concerns crop loss that he claims is related to the construction of those pipelines, as well as his concern about obtaining liability insurance to protect him from damages caused by escaped CO<sub>2</sub>. (*Id.* at 2-3.) Mr. Staroba's testimony should be excluded as irrelevant and without foundation.

First, he is not an Intervenor in this case and is not affected by the proposed Navigator pipeline in South Dakota, so his testimony about how other pipelines constructed long ago impacted his property is not relevant.

Second, he is a lay person and therefore not qualified to offer expert opinions about matters based on scientific, technical, or other specialized knowledge. SDCL § 19-19-701. His testimony about crop yields may be factual with respect to his property and the pipelines built across his property in 1975 and 1998, but it is not relevant to Navigator's pipeline and this proceeding unless supported by some testimony that Navigator's proposed construction and remediation methods are likely to result in the same occurrence for any South Dakota landowner. His prefiled testimony does not include any evidence to support such a conclusion, and he is not qualified as a lay person to offer such testimony, which would depend on scientific, technical, or specialized knowledge. His testimony does not indicate that he has studied Navigator's pipeline,

permit application, Environmental Construction Guidance, or any other evidence that might allow even an expert witness to offer such testimony.

**4. Marvin Lugert.**

Marvin Lugert is a North Dakota landowner in Richland County whose land may be affected by the proposed Summit pipeline. (Lugert Testimony at 1.) He says that he has two unspecified pipelines that cross his land and “they promised to put the land back the way it was supposed to be separate the topsoil from the bottom soil not to leave any debris behind and they did not do a very good job of separating the top from the bottom.” (*Id.*) Mr. Lugert does not identify the companies involved or when construction occurred. He says that he still has soil loss and yield loss 20 years later, but he offers no specifics. He states he does not see how Navigator’s contractor will do any better, and in his opinion, “South Dakota landowners are similarly at risk.” (*Id.* at 2.)

This testimony should be excluded for the same reasons as Mr. Staroba’s. It lacks foundation, is not relevant to Navigator’s proposed pipeline, and Mr. Lugert is not an expert witness qualified to offer opinions that his experience will translate to any landowner in South Dakota affected by the Navigator pipeline.

**5. Marvin Abraham.**

Mr. Abraham is also a North Dakota landowner who is concerned about liability and insurability issues. Attached to his testimony is a letter he received from Northwest German Farmers Mutual Insurance Company about the possible consequences for his policy if a carbon-dioxide pipeline is built across his property. A copy of his policy is not attached.

This testimony is not relevant to any issue in this proceeding. There are South Dakota landowners affected by the Navigator pipeline who have expressed concerns about insurance

coverage. Mr. Abraham's testimony would be cumulative to theirs, and without knowing anything more about his policy or whether his insurance company insures any South Dakota landowners affected by Navigator's pipeline, and whether the coverage opinion is the same for Navigator's South Dakota landowners, it is not relevant.

**6. Landowners who have not established that they are impacted by Navigator's route.**

Many of the landowners who have offered prefiled testimony attached to their testimony a property sketch containing a tract identification number from Navigator. In the 12 common attachments submitted to the prefiled testimony of landowners represented by Brian Jorde, these sketches are Attachment 1. Fourteen landowners submitted testimony without such an exhibit: Mark Javers, Roger Van Dyke, Berton Risty, Beverly and Scott Nelson, Richard Lacey, Becky Poss, Jessica and Patrick Deering, Julie Burkhart, David Larson, Keith and Bonnie Myrlie, Spenser and Todd Jacobson, Marlys Stensaas, Tab Peper, and Walter Theis. It is unknown why these landowners did not include Attachment 1 to their testimony, but their failure to do so highlights one of the issues Navigator has had in this case, which is identifying all of the landowners represented by Mr. Jorde and which parcels are affected by the pipeline. In discovery, Navigator asked Mr. Jorde's clients to identify the affected parcels each owns and the legal name in which title to the property is held. They refused.

Landowners who are not affected by Navigator's proposed pipeline should not be allowed to testify as lay witnesses because their testimony is not relevant and there are many other landowners who have established their connection to Navigator's project who have offered nearly identical testimony, as explained above. While each of the landowners addressed in this motion says that he or she owns land that would be negatively affected by Navigator's pipeline,

before being allowed to testify, they should identify where they own property and establish how it is affected by Navigator.

### **Conclusion**

Identifying who will testify, limiting the scope of testimony to what has been submitted in prefiled testimony, avoiding redundant testimony, eliminating testimony from landowners who have no connection to Navigator's proposed project in South Dakota, and not allowing expert opinion testimony without sufficient foundation are necessary based on the rules of evidence. Taking these steps will ensure that the hearing is conducted timely, efficiently, and fairly. Navigator respectfully requests that the testimony identified in this motion be limited or excluded as requested.

Dated this 26th day of June, 2023.

WOODS, FULLER, SHULTZ & SMITH P.C.

By /s/ James E. Moore

James E. Moore  
P.O. Box 5027  
300 South Phillips Avenue, Suite 300  
Sioux Falls, SD 57117-5027  
Phone (605) 336-3890  
Fax (605) 339-3357  
Email: [James.Moore@woodsfuller.com](mailto:James.Moore@woodsfuller.com)  
*Attorneys for Navigator Heartland Greenway*



## CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of June, 2023, a true and correct copy of the foregoing Applicant's Motion to Limit or Exclude Certain Testimony was served via e-mail upon the following:

Ms. Patricia Van Gerpen  
Executive Director  
South Dakota Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501  
[patty.vangerpen@state.sd.us](mailto:patty.vangerpen@state.sd.us)

Ms. Kristen Edwards  
Staff Attorney  
South Dakota Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501  
[Kristen.edwards@state.sd.us](mailto:Kristen.edwards@state.sd.us)

Mr. Darren Kearney  
Staff Analyst  
South Dakota Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501  
[darren.kearney@state.sd.us](mailto:darren.kearney@state.sd.us)

Mr. Jon Thurber  
Staff Analyst  
South Dakota Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501  
[jon.thurber@state.sd.us](mailto:jon.thurber@state.sd.us)

Mr. Kevin Strehlow  
Executive VP & General Counsel  
Navigator Energy Services  
2626 Cole Ave, Suite 900  
Dallas, TX 75204  
[kstrehlow@nesmidstream.com](mailto:kstrehlow@nesmidstream.com)

Ms. Sarah Dempsey  
Assistant General Counsel  
Navigator CO2  
13333 California St., Ste 202  
Omaha, NE 68154  
[sdempsey@navco2.com](mailto:sdempsey@navco2.com)

Ms. Kara Semmler  
General Counsel  
South Dakota Telecommunications Association  
320 E. Capitol Ave.  
Pierre, SD 57501  
[karasemmler@sdtanonline.com](mailto:karasemmler@sdtanonline.com)

Mr. Robert W. Hill  
Brookings County Commission  
520 3rd St., Ste. 210  
Brookings, SD 57006  
[rhill@brookingscountysd.gov](mailto:rhill@brookingscountysd.gov)

Mr. Thomas H. Frieberg  
Frieberg, Nelson & Ask LLP  
115 N. Third St., PO Box 511  
Beresford, SD 57004  
[tfrieberg@frieberlaw.com](mailto:tfrieberg@frieberlaw.com)

Mr. William H. Golden  
Lincoln County  
104 N. Main St., Ste 200  
Canton, SD 57013  
[wgolden@lincolncountysd.org](mailto:wgolden@lincolncountysd.org)

Ms. Carla Bruning  
Moody County Commission  
101 E. Pipestone Ave., Ste. D  
Flandreau, SD 57028  
[doe-zoning@moodycounty.net](mailto:doe-zoning@moodycounty.net)

Dr. Jarod Larson  
Brandon Valley School District  
300 S. Splitrock Blvd.  
Brandon, SD 57005  
[Jarod.larson@k12.sd.us](mailto:Jarod.larson@k12.sd.us)

Mr. Tony Penn  
Mr. Nathaniel Runke  
Great Plains Laborers' District Council and  
International Union of Operating  
Engineers, Local 49  
4208 W. Partridge Way, Unit 2  
Peoria, IL 61615  
[gpldc@aol.com](mailto:gpldc@aol.com)  
[nrunke@local49.org](mailto:nrunke@local49.org)

Mr. William Taylor  
Taylor Law Firm  
4820 E. 57th St., Ste. B  
Sioux Falls, SD 57108  
[Bill.taylor@taylorlawsd.com](mailto:Bill.taylor@taylorlawsd.com)

Mr. Jeremy Duff  
Taylor Law Firm  
4820 E. 57th St., Ste. B  
[Jeremy.duff@taylorlawsd.com](mailto:Jeremy.duff@taylorlawsd.com)

Ms. Cathy Lu Miller  
1214 Rockbend Parkway  
Saint Peter, MN 56082  
[catm981@hotmail.com](mailto:catm981@hotmail.com)

Mr. David Reker  
47975 239th St.  
Trent, SD 57065  
[dcreker@proton.me](mailto:dcreker@proton.me)

Mr. Hunter Winklepleck  
Bethany Home Brandon  
3012 E. Aspen Blvd.  
Brandon, SD 57005  
[hwinklepleck@bethanylutheranhome.com](mailto:hwinklepleck@bethanylutheranhome.com)

Mr. William G. Haugen, Jr.  
DEH III, LLC  
PO Box 90442  
Sioux Falls, SD 57109  
[Wh401889@hotmail.com](mailto:Wh401889@hotmail.com)

Ms. Anna Friedlander  
United Association of Journeymen and Apprentices  
of the Plumbing and Pipe Fitting Industry  
of the United States and Canada, AFL-CIO  
3 Park Place  
Annapolis, MD 21401  
[afriedlander@odonoghuelaw.com](mailto:afriedlander@odonoghuelaw.com)

Mr. John Taylor  
Taylor Law Firm  
4820 E. 57th St., Ste. B  
Sioux Falls, SD 57108  
[John.taylor@taylorlawsd.com](mailto:John.taylor@taylorlawsd.com)

Mr. Eric H. Bogue  
47832 U.S. Hwy 18  
Canton, SD 57013  
[ehbogue@gmail.com](mailto:ehbogue@gmail.com)

Ms. Lesley Pedde  
132 Springtree Bend  
Cibolo, TX 78108-3261  
[lesley@pedde.com](mailto:lesley@pedde.com)

Ms. Gwen Reker  
47975 239th St.  
Trent, SD 57065  
[gwenreker@proton.me](mailto:gwenreker@proton.me)

Ms. Kathy Jo Serck  
*POA for Lois Jean Rollings*  
619 Hubbard St., PO Box 416  
Hudson, SD 57034  
[kjs@alliancecom.net](mailto:kjs@alliancecom.net)

Mr. Alfred Slaathaug  
48198 Kim Cir.  
Brandon, SD 57005  
[Al\\_evie@outlook.com](mailto:Al_evie@outlook.com)

Mr. Ricky A. Veldkamp  
48014 240th St.  
Trent, SD 57065  
[rgveld@goldenwest.net](mailto:rgveld@goldenwest.net)

Mr. John P. Peterson  
Peterson Law Office  
6201 E. Silver Maple Circle, Ste. 102  
Sioux Falls, SD 57110  
[peterlaw@midconetwork.com](mailto:peterlaw@midconetwork.com)

Ms. Darla Pollman Rogers  
Riter Rogers, LLP  
319 S. Coteau; PO Box 280  
Pierre, SD 57501  
[dprogers@riterlaw.com](mailto:dprogers@riterlaw.com)

Ms. Ellie Bailey  
Riter Rogers, LLP  
319 S. Coteau; PO Box 280  
Pierre, SD 57501  
[e.bailey@riterlaw.com](mailto:e.bailey@riterlaw.com)

Mr. Brian E. Jorde, Attorney  
Mr. Ryan Cwach, Attorney  
Domina Law Group  
2425 S. 144th St.  
Omaha, NE 68144  
[SDCO2@dominalaw.com](mailto:SDCO2@dominalaw.com)  
[ryan@birmcwachlaw.com](mailto:ryan@birmcwachlaw.com)  
[JCuster@dominalaw.com](mailto:JCuster@dominalaw.com)

And via U.S. Mail postage prepaid to the following:

Mr. Leslie Downer  
1935 3rd St.  
Brookings, SD 57006

/s /James E. Moore  
*One of the Attorneys for Navigator Heartland  
Greenway LLC*