

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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HP 22-002

IN THE MATTER OF THE APPLICATION :
OF 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, :
:
:

**MOTION TO REOPEN
APPLICANT’S CASE IN CHIEF**

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Applicant moves the Commission for approval to reopen its case in chief for the limited purpose of introducing an exhibit responsive to Commissioner questions regarding plume modeling. Specifically, Commissioner Nelson asked witness Matt Frazell if he believed that the Commission would need to review CFD modeling before it could decide that the pipeline project would not “substantially impair” the safety of the inhabitants. (Hearing Transcript (HT) 1979.) Frazell indicated that he did not believe CFD modeling was required, but that “overlaying the dispersion distances on a map and seeing how those are in relation to HCAs or USAs (sic)” would be of greatest benefit. (HT 1980.)

During the testimony of Monica Howard, Commissioner Nelson asked Howard the following question: “And if we as a Commission believe that Navigator providing a plume model map to the public in order to ensure that the project would not substantially impair the safety of the inhabitants of the area, I’m understanding that is your position is that you cannot release such. Is that correct?” Howard indicated that she would need to discuss the issue with

counsel and Navigator executive leadership to respond, but that the information had traditionally be treated as confidential. (HT 3315-16.)

Plume modeling has been kept confidential by Navigator and many other owners and regulators of pipeline infrastructure for security purposes. Plume modeling shows the location or locations along the pipeline where a targeted attack would achieve the highest impact on persons and property. In response to questions by Commissioner Nelson and the testimony of Frazell, Navigator has prepared proposed Exhibit N68 which overlays the dispersion distance identified by Frazell with high consequence areas and inhabited structures for a “could affect” corridor based on a worst case scenario. Proposed Exhibit N68 has been served on the parties to this docket and is currently designated as confidential based on the above-stated security concerns. However, as previously testified at the hearing, Navigator intends to share plume modeling information with first responders and county officials and would similarly share this mapping. Navigator does not object to, and would suggest the Commission include, a permit condition addressing (1) Navigator being required to provide the mapping in Exhibit N68 to first responders and county officials, as well as (2) Navigator notifying all landowners in that corridor and offering access to Navigator’s “Nav-911” system.

Navigator requests leave to offer Exhibit N68. If the Commission believes that it is unable to determine whether the pipeline will substantially impair the safety of inhabitants without the public disclosure of Exhibit N68, then Navigator will file the Exhibit as a public document.

Allowing Navigator to reopen its case for the limited purpose of introducing an exhibit about which the Commission had specific questions will not prejudice the parties and will provide full and complete information to the Commission in making its determination regarding

Navigator’s permit application. Pursuant to the Rules of Civil Procedure, the Commission, like a trial court, is given wide latitude in determining whether to reopen a case. (*See State v. Milk*, 2000 SD 28, ¶ 11, 607 N.W.2d 14, 18 holding “Trial court rulings on motions to reopen civil cases to permit additional evidence are reviewed under the abuse of discretion standard. *Sabhari v. Sapari*, 1998 SD 35, ¶ 27, 576 N.W.2d 886, 895. “While the particular criteria that guide a trial court’s decision to reopen are necessarily flexible and case-specific, it is generally understood that a trial court abuses its discretion if its refusal to reopen works an ‘injustice’ in the particular circumstances.” *Id.* (citing *Rivera-Flores v. Puerto Rico Tele. Co.*, 64 F.3d 742, 746 (1st Cir.1995)). A trial court has a wide discretion in passing on a motion to reopen. *Endres v. Endres*, 532 N.W.2d 65, 72 (S.D.1995) (citing *Rosen’s Inc. v. Juhnke*, 513 N.W.2d 575, 577 (S.D.1994) (quoting 88 C.J.S. *Trial* § 104 (1955))).”) Accordingly, Navigator respectfully requests leave to reopen.

Dated this 23rd day of August, 2023.

WOODS, FULLER, SHULTZ & SMITH P.C.

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