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

**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**

HP22-002

**LANDOWNERS' REPLY TO
APPLICANT'S OBJECTION TO
MOTION TO RETURN
APPLICATION**

Movants, affected Landowners, listed on attached Exhibit "A", collectively reply as follows:

I. The South Dakota Public Utility Commission has the discretion to return Navigator's Application.

1. Landowners are respectfully request that the commission return this application pursuant to SDCL 49-41B-13(2) with instruction to comply with the requirements of SDCL § 49-41B-5.2. Applicant Navigator Heartland Greenway, LLC (hereafter "Navigator") has failed to comply with the requirements of SDCL 49-41B-5.2. Navigator admittedly failed to "notify, in writing, the owner of record of any land that is located within one-half mile of the proposed site where the facility is to be constructed" "within thirty days following the filing of an application." *SDCL § 49-41B-5.2*.
2. Navigator argues that failing to provide the requisite notices pursuant to SDCL § 49-41B-5.2 is not "failure to file an application generally in the form and content required by this chapter and the rules promulgated thereunder." *SDCL § 49-41B-13(2)*. Navigator asserts that the commission does not have the jurisdiction to return an application for Notice failures. This simply cannot be the case.
3. As landowners pointed out in their opening brief, the notice requirements of SDCL §§ 49-41B-5.2, 49-41B-15 and 49-41B-16 are fundamental to the

application and permitting processes. Once an application is filed triggering the twelve-month decision requirement, the PUC is statutorily required to schedule public input hearings and publish notice of those hearings in the appropriate newspapers. The Applicant has the responsibility of notifying all landowners within one-half mile of the public input meetings **and** the general location and purpose of the project. If an applicant fails to provide the necessary notice of the application, then it has failed to submit an application in the “form and content” of this chapter and the Commission has the jurisdiction to dismiss or return the application pursuant to SDCL § 49-41B-13(2).

4. Commission jurisdiction to return the application based on a notice failure is the only reasonable interpretation of SDCL § 49-41B-13(2). Navigator’s argument, taken to its logical conclusion, would mean there is no mechanism for the Commission to remedy a notice deficiency, and any application that isn’t properly noticed would need to be finally adjudicated before the notice deficiency can be addressed. Navigator’s position also prevents the Commission from denying an application based on notice failures. These positions are extreme and are contrary to the overarching principal that these proceedings are full and fair to all parties and the public.
5. There must be some discretionary tool for the Commission to address a notice failure to protect late notified landowners and existing parties. Because SDCL § 49-41B-24.1 does not allow the Commission to extend a deadline to lessen the negative impact of notice deficiencies, its only option is to return and dismiss pursuant to 49-41B-13. Navigator argues there is no tool in the Commission’s toolkit to enforce notice requirements. That tool does exist via 49-41B-13(2).

II. Returning the Application is the most practical step for the Commission

6. In addition to being the correct legal remedy for failing to notify South Dakota landowners, returning Navigator’s application provides time for this

incredibly large docket to progress fairly and completely. This is an unprecedented docket. It will be the Commission's first time considering a CO2 pipeline and the proposed project is one of the largest interstate CO2 pipelines ever proposed in the country.

7. Further, the number of intervenors is extraordinary, and the present schedule inhibits intervenor landowner's ability to fully develop their case. Specifically, the discovery timeline is incredibly difficult given the number of parties. Commissioners and staff members have shared these concerns. A case this size should not be rushed to a conclusion, especially when the plain language of SDCL § 49-41B-5.2 was violated. Fortunately, there is a statutory mechanism to address the notice failure and provide an adequate procedural schedule. That mechanism is SDCL 49-41B-13.

III. Conclusion

8. Navigator failed to provide the initial notices required by SDCL § 49-41B-5.2. Those notice requirements were established by the legislature to protect affected landowners. They also work hand in hand with SDCL § 49-41B-24 to allow a proceeding to be completed within twelve-months of the application. In this case, some landowners received notice 60 days late. Returning the application with instruction to comply with SDCL § 49-41B-5.2 allows an appropriate schedule to be entered and protects South Dakota citizens.
9. Landowners respectfully request the Commission return Navigator's Application with instruction to comply with SDCL 49-41B-5.2

By: /s/ Brian E. Jorde

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CERTIFICATE OF SERVICE

Brian Jorde of Domina Law Group PC LLO hereby certifies that on February 8, 2023, he filed and served via the South Dakota Public Utilities Commission website and electronic mail a true and correct copy of the foregoing in the above-captioned matter to the e-mail service list.

/s/ Brian E. Jorde
Brian E. Jorde

ATTACHMENT A

Angela Teal
Ann Cowart
Arny Erickson
Art Richert
Becky Poss
Beverly Nelson
Beverly Richert
Bonnie Myrlie
Brad Severson
Brian Teal
Bruce Burkhart
Burggraff Farms
Carol Hoines
Chuva Johnson
Clayton Rentschler
Connie Beyer-Lalonde
Crystal Page
Dan Paulson
Dana Bosma
Daniel Janssen
Daniel Nelson
Daryl Nelson
Dave Larson
David Johnson
David Johnson Living Trust
David Vinzant
DeJa View Family Farm
Denis Andersen
Diana Nelson
Don Cowart
Ehtan Javers
Evelyn Schuer Living Trust
Frank Burggraff
Galen Ver Steeg
Gary Haak
Gerald Haak
Glenn Burggraff
Glenn Scott

Helen Le Brun
Jackie Burggraff
Janelle Jarabek
Janet Andersen
Jarabek Special Spousal Living Trust
Jenae Ruesink-Cross
Jessica Deering
Jill Paulson
Joan Nelson
Joanne Jackson Burke
Joyce Risty
Joyce Swanson
Julie Burkhart
Kay Burkhart
Keith Myrlie
Kevin Alberts
Knutson Grandchildren Trust
Leroy Zorr
Linda Burggraff
Linda Dawley
Lisa Knutson
Lonna Smeenk
LuAnn Severson
Lynda Burggraff
Marilyn Olson
Marilyn Schwebach
Mark Javers
Mark Le Brun
Mary Ann Nelson
Maryls Stensaas
Merle Alberts
Merle Alberts Living Trust
Merlin Knutson
Merlyn Smeenk
Michelle Jensen
Mike Hoffman
Miles Lacey
Myron Christopherson
Nelson Living Trust
Overseth-Ruesink Legacy Trust

Patrick Deering
Paula Bell
Paulette Zorr
Ray Luze
Richard Lacey
Richert Family Trust
Rick Bonander
Rick Luze
RJ Wright
Robert Janssen
Robyn Ventura
Roger Van Dyke
Ronald & Angela Teal Revocable Trust
Ronald Teal
RoSchell Vinzant
Rosemary Schwebach
Ryon Smeenk
Schwebach Family Trust
Shelley Larson
Spencer Jacobson
Stephen Nelson
Tab Pepper
Tamara Ford
The Merlyn & Lonna Smeenk Living Trust
Todd & Linda Dawley Living Trust
Todd Dawley
Todd Jacobson
Tom Schwebach
Tony Ventura
Verlyn & Anna Legacy Trust
Walter Theis
Warren Jackson
Wayne Burggraff
Wright Brothers Partnership