

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

**POST-HEARING BRIEF ON
BEHALF OF SOUTH DAKOTA
RURAL ELECTRIC ASSOCIATION**

Background

The South Dakota Rural Electric (SDREA) intervened in this docket to protect the interests of its member rural electric cooperatives in provisioning the valuable resource of safe and reliable electric power to South Dakotans. *See* Exhibit E1, page 1, lines 22-26. SDREA was granted party status in this docket by Order of the South Dakota Public Utilities Commission (hereinafter “the Commission”) on December 7, 2022. SDREA submitted pre-filed testimony of Mr. Ted Smith on May 24, 2023 and its Witness and Exhibit List on July 18, 2023. SDREA participated in the evidentiary hearing before this Commission beginning on July 25, 2023 and its witness, Mr. Smith, testified before the Commission on August 2, 2023. SDREA now files this post-hearing brief to request that if a permit is issued to Navigator by the Commission, the permit includes safeguards to protect SDREA members’ existing and future resources.

Authority

As the Commission emphasized throughout the hearing, Applicant’s burden of proof is set forth in SDCL 49-41B-22. Of particular relevance here are subsections three and four. Subsection three requires Applicant to prove by a preponderance of the evidence that its pipeline “will not substantially impair the health, safety or welfare of the inhabitants[.]”. Subsection four requires Applicant to prove by a preponderance of the evidence that its pipeline “will not unduly

interfere with the orderly development of the region[.]”. Satisfying both these subsections will require that minimum safety standards and requirements be incorporated into any permit issued by this Commission.

Application

SDREA members known to be impacted by Navigator’s proposed pipeline route at the time of the hearing are Sioux Valley Energy and Southeastern Electric. Hearing Transcript (hereinafter “TR”) 1755. Ultimately, SDREA is asking that Navigator work with its members to minimize the potential impacts the proposed pipeline would have on the members’ resources. *See* Exhibit E3, page 3, lines 73-75. As such, SDREA requests that the following conditions be incorporated into any permit issued by this Commission:

1. Vertical crossings between SDREA buried lines and the Navigator Pipeline shall be a minimum of 24 inches.
2. Parallel routing between SDREA utility lines and the Navigator Pipeline shall be a minimum of 10 feet apart.
3. The above conditions shall apply to all current and future crossings.
4. Navigator shall enter into crossing agreements with all impacted SDREA members. Such agreements shall be finalized prior to any construction on the Navigator Pipeline within the State of South Dakota.
5. Navigator shall reimburse SDREA members for all damages to their infrastructure caused by Navigator.
6. Any mutually agreed upon relocation of SDREA members’ infrastructure shall be at the expense of Navigator.

Given the vital importance of electricity to South Dakotans, failure to appropriately safeguard SDREA resources will substantially impair the health, safety or welfare of the inhabitants served by SDREA members. *See* SDCL 49-41B-22(3). As such, SDREA respectfully requests that the above safeguards be incorporated into any forthcoming permit issued to Navigator.

Further, failure to require that these minimum standards apply not only to current crossings but also to all future crossings will unduly interfere with the development of the regions impacted by the pipeline. *See* SDCL 49-41B-22(4). The application of these specifications to future crossings will better enable SDREA members to continue to successfully develop, grow, and serve South Dakota communities.

Of course, the proposed crossing agreement set forth in Exhibit E5 outlines many other specifications and details that require further collaboration between the parties prior to any construction taking place. As such, SDREA has modified its initial request that the full crossing agreement be incorporated into any permit issued. *See* E1, page 3, line 64. Thus, SDREA has included those parameters that are most critical for the Commission to incorporate in order to safeguard and protect SDREA members' resources.

Conclusion

SDREA respectfully requests that if this Commission grants the permit application currently pending, that it incorporate the above-referenced six parameters as a component of the permit conditions. Such conditions are crucial to adequately protect existing and future SDREA members' resources.

Dated this 28th day of August, 2023.

RITER ROGERS, LLP

BY: 

Darla Pollman Rogers
Ellie J. Bailey
319 S. Coteau – P. O. Box 280
Pierre, SD 57501-0280
605-224-5825