

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

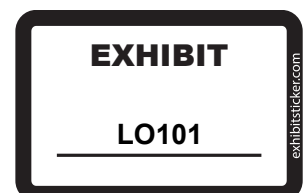
IN THE MATTER OF THE APPLICATION OF NAVIGATOR HEARTLAND GREENWAY, LLC FOR A PERMIT UNDER THE SOUTH DAKOTA ENERGY CONVERSION AND TRANSMISSION FACILITIES ACT TO CONSTRUCT THE HEARTLAND GREENWAY PIPELINE IN SOUTH DAKOTA	HP22-002 PAMELA J. RICHART SURREBUTTAL TESTIMONY IN SUPPORT OF LANDOWNER INTERVENORS
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Q: Please state your name and purpose for providing testimony in these proceedings.

A: My name is Pamela Richart. I have not provided testimony before in this docket. I am responding to John Godfrey, Mark Hereth, Jeffery Pray, Steve Brendenburg, Stephen Lee, Monica Howard, and Michael Harrison. **The purpose of my testimony is to show all of the aforementioned persons testimony are irrelevant due to glaring facts no Navigator expert witness can address and that is the status of Navigator’s CO2 Pipeline and Sequestration Project in Illinois, which remains uncertain, given the lack of clarity over 1) pore space currently under lease agreement with Navigator, 2) the ongoing opposition by farmers and residents in counties where sequestration is planned, and 3) the lack of legislation in Illinois that defines both owner and control of pore space.**

Q: What experience, education, training, or background qualify you to provide opinions and your concerns as you have hearing?

A: I am a land use planner and Co-Director of Eco-Justice Collaborative (EJC), a non-profit based in Champaign, Illinois. EJC advocates solutions to today’s most



environmental challenges that incorporate social, economic, and environmental justice.

Over the past 17 months, I have led the Coalition to Stop CO2 Pipelines, a network of environmental organizations, landowners, and Illinois residents concerned about the threat of under-regulated CO2 pipelines planned in Illinois. This work has included educating landowners and elected officials about the hazards of CO2 pipelines and carbon sequestration. It has included organizing landowners to ask municipal and county Boards to: 1) adopt moratoriums on CO2 pipelines, tied to the completion of PHMSA's rule-making process, and 2) to intervene in the Illinois Commerce Commission proceedings. In Illinois, the only way to express concern over CO2 pipeline impacts is to intervene.

I also helped form the non-profit Citizens Against Heartland Greenway Pipeline (CAHGP) as a means for landowners, organizations, and local governments to intervene in the proceedings related to Navigator's application to the Illinois Commerce Commission for a Certificate of Authority. I served as an advisor to CAHGP, for Navigator's Case 22-0497 (withdrawn), and am serving in that same capacity for Case 23-061, which is pending before the ICC).

In January 2023, I worked with Earthjustice and Sierra Club to draft legislation to regulate carbon capture, transport, and sequestration in Illinois. HB3119 and SB242 were introduced in February 2023, and address regulatory gaps in Illinois legislation, while maximizing protections for CCS projects in Illinois. Since then, I have helped educate Illinois state senators and representatives about the importance of this bill, and explained how it differs from industry's bill, HB2202, which deals solely with carbon sequestration.

Most recently, I have been working with the Governor's Office as part of a negotiating team, with the goal of developing a bill that would address industry needs to define ownership and control of pore space while ensuring the protections proposed by HB3119/SB2421. This process is ongoing. However, the ability to create and pass a compromise bill in time for veto session (late fall, 2023) is uncertain, given the substantial divides between industry and the environmental community. Also, any bill submitted during veto session would require a supermajority vote, making the passage of any bill more difficult.

Q: Does Attachment No. 1 to this testimony describe your opinions and concerns that you want the PUC to be aware of relative to the proposed CO2 pipeline in question?

A: Yes, Attachment No. 1 is a true and accurate copy of my account of the viability of Navigator's CO2 pipeline project in Illinois and by extension the viability of the project in South Dakota. Navigator has no sufficient pore or sequestration space and it is my view that it follows that every state agency such as the South Dakota PUC should deny Navigator's application given they do not have a viable project and there is no reasonable indication they ever will. I stand by my positions and opinions discussed therein and am competent to testify about them as necessary. I urge the PUC to carefully consider this testimony during the Hearing in this matter and in your deliberations. I further reserve the right to amend or modify these opinions upon presentation of any additional information that may justify such a change.

/s/ Pamela J. Richart
Pamela J. Richart

ATTACHMENT # 1

Status of Navigator's CO2 Pipeline and Sequestration Project in Illinois

Navigator CO2 Ventures (Navigator) intends to build 292 miles of CO2 pipeline through Illinois as part of its larger 1,342 mile long pipeline that, if approved, would be constructed through would transport high-pressure, liquified CO₂ from ethanol and fertilizer plants in South Dakota, Nebraska, Minnesota, Iowa and into Illinois, where it would be stored deep underground in Christian County. Navigator and its affiliate Heartland Carbon Storage LLC (HGCS) intend to sequester carbon dioxide in Illinois at multiple locations. The purpose of this document is to show that, as of this date, Navigator does not have access to storage it needs to be able to build its carbon pipeline, and that concern for, and opposition to, its carbon transport and storage project in Illinois remains high.

Christian County opposition begins before Navigator files with the ICC

Navigator CO2 held public information meetings in Illinois in January and February of 2022. Residents and farmers in Christian County immediately began organizing to educate landowners in Navigator's proposed sequestration area, asking them to avoid signing lease agreements that would allow the storage project to move forward. Local opposition was, and continues to be largely based on concerns related to potential migration of carbon dioxide upwards from the Mount Simon Saline Aquifer along injection wells or faults or cracks in the caprice that could potentially mix with, and then contaminate drinking water. Navigator's planned sequestration area is located under an aquifer that serves those residents and farmers, the City of Taylorville, and six rural communities.

By April of 2022, 85 percent of the landowners in Navigator's proposed sequestration area had agreed they would not negotiate with Navigator who was attempting to sign leases for pore space, nor would they sell property for injection or monitoring wells.

Navigator also faced opposition from the County Board, despite continued attempts to negotiate both community benefit agreements and a zoning ordinance for sequestration that would have provided sizable sums of money to the County. On May 17, 2022, the Christian County Board adopted a [six-month moratorium](#) on the issuance of special use permits for underground storage of carbon sequestration facilities, allowing Board members time to more fully investigate the project and prepare a zoning ordinance that would regulate the location, development, operation, and modification of any carbon sequestration facility in Christian County. The [moratorium was extended](#) for another six months on October 18, 2022.

Illinois Commerce Commission Proceedings, Docket 22-0497

It was in this context of County opposition that, on July 25, 2022, Navigator filed is application with the Illinois Commerce Commission, pursuant to the Carbon Dioxide Transportation and Sequestration Act (220 ILCS 75/1 et seq.) for a Certification of Authority to Construct and Operate a Carbon Dioxide Pipeline and when Necessary to take Interests in Property as Provided by the Law of Eminent Domain. Their application stated that their project would capture, transport, and annually store 10 MMT CO₂ via approximately 1,300 miles of pipeline to Christian County, where it would be injected and stored more than a mile underground in 25,000 acres of "available" pore space north of Taylorville. Once fully expanded, the project would capture, transport and store up to 15MMT CO₂, annually. See, [Navigator Heartland Greenway](#)

[Application for a Certificate of Authority](#), Docket 22-0497. While carbon capture and sequestration are not subject to approval by the ICC, they are part of the overall project, and therefore were included in Navigator's application.

Lack of Access to Pore Space Prompts ICC staff to Recommend Denial of the Project

On November 15, 2022, Mark Maples, ICC staff member and case manager for Navigator's proposed project, recommended the Illinois Commerce Commission deny the company's request for a certificate of authority, without prejudice to refile for a later date. One of the primary reasons he cited was that the viability of the entire pipeline project was uncertain, given HGCS's failure to obtain land rights or permits to build the sequestration facility. Without a sequestration site both identified and available, the end point of the pipeline was not able to be determined, making the entire route uncertain.

Mr. Maples cited the following reasons for project denial:

Land rights not obtained. In its November 2, 2022 supplemental response to Staff DR MEM 2.06, the Company responded that "...HGCS has acquired or executed letters of intent for approximately 50% of the pore space for sequestration of 7MMT/year and is actively negotiating additional acreage ..."

Required permits not obtained. HGCS had not yet acquired any of the 14 approvals required to built its project, and at least half of the items would not be resolved until late 2023, which was past the statutory deadline for the docket.

Viability of the pipeline project in question. In documents submitted by Navigator, the company had indicated that their CO2 pipeline project was not viable without a sequestration site. Specifically, Navigator responded to Staff DR MEM 2.05 indicating "the Heartland Greenway Pipeline System is only viable with both a pipeline and a sequestration site. NHG will not move forward with pipeline construction until both the pipeline and the sequestration site are permitted and necessary land rights have been secured."

Potential for pipeline rerouting. In the event Navigator had to identify an alternative sequestration site, the pipeline would likely need to be rerouted (which it was when Navigator refiled with the ICC in February 2023). Depending on the extent of the route change, the list of affected landowners would also need to change. Those along the new route would not have been given notice of the project, and therefore would not have had the opportunity to participate in the original certification process.

Potential for pipeline not to be built. If sequestration site could not be obtained, then the pipeline would not be built, making the issues in the proceeding moot.

Hardship for landowners. Navigator's pursuit of a project that might not be built, and any subsequent legal action that might take place from this action would impose costs, potentially substantial, on landowners. Landowners impacted by a CO2 pipeline or sequestration project are likely to spend time researching these technologies. Those

who intervene would spend time writing testimony, attending hearings, meeting with land agents, and incur legal fees.

Project is not in the Public Interest. Mr. Maples concluded that, unless Navigator's could guarantee that its project was viable and would be constructed as planned, the CO2 pipeline project could not be considered beneficial or in the public interest of Illinois residents.

Mr. Maples concluded that Navigator was premature in its filing request for a certificate of authority, and should have waited until HGCS had secured all the necessary land rights (100 percent) and permits necessary to construct the sequestration site, which drives the route selection. By failing to provide sufficient assurance and information that the sequestration site will in fact be built, Mr. Maples maintained that Navigator was asking the Commission to blindly accept the company's assertions about the viability of their project, and in so doing, was imposing unnecessary hardship on the landowners. (See [Staff Exhibit 1.0 - Direct Testimony of Mark Maple.](#))

Navigator withdraws its application

After Mr. Maple's recommendation for project denial, intervening groups prepared motions to dismiss, based largely upon the lack of a sequestration site. Intervenors referred to Staff witness Mark Maple's position to support their position - specifically noting that without rights to a sequestration facility, Navigator's entire route remains uncertain. Without this certainty, Navigator's CO2 pipeline project could not meet the legislative purpose of the Carbon Dioxide Transportation and Sequestration Act.

On January 6, ICC staff recommended the Commission deny Navigator's Application, without prejudice to refile at a later date, if the Commission finds that the application was improperly filed, as claimed by intervening groups. Alternatively, Staff recommended Navigator withdraw its Application without prejudice to refile at a later date. On January 20, Navigator officially withdrew its application. (See [Motion to Withdraw.](#))

Montgomery County

In August of 2022, residents in Montgomery County began to be approached by land agents representing HCGS. Soon thereafter, with the help of Christian County farmers, residents in Montgomery County began to organize to alert landowners in Audubon Township of the potential hazards of carbon sequestration and CO2 pipelines. Their goal was, and continues to be to encourage landowners not to sign leases for sequestration, or voluntary easement agreements that would allow Navigator to build its CO2 pipeline.

Residents began to express concerns over Navigator's project, knowing the company was meeting with Board Committees in an attempt to obtain Montgomery County Board support. In December, residents have been holding public information meetings to educate the public and ask them not to sign leases or easement agreements. They have continued to attend County Board meetings to express concern over CO2 pipeline safety and the fact that Navigator is moving forward before the Pipeline Hazardous Materials and Safety Administration completes its rule-making process to improve safety and oversight of CO2 pipelines. Like Christian County

residents and farmers, Montgomery County residents also continue to express concerns over the potential contamination of water supplies by leaking CO2.

The Montgomery County Board responded to concerns raised by landowners by [adopting a two-year moratorium](#) for CO2 pipelines in April, 2023. The moratorium is tied to the Pipeline Hazardous Material and Safety Administration’s rule-making process to improve safety and oversight of CO2 pipelines.

As of this date, Navigator is still attempting to secure leases for its pore space in Montgomery County, and voluntary easements along its planned CO2 pipeline route.

Landowner opposition along Navigator’s CO2 Pipeline Route

Landowner opposition along Navigator’s pipeline route has been strong. Between August and December 2022, Navigator made 8,528 offers to landowners. But as of December, when the when Navigator’s Survey Permission History was submitted, the company had obtained just 6 percent of the total easements required executed for its CO2 pipeline project (63 executed, 978

22-0497 NHG Response to Staff MEM 1.22
Attachment 4, January 2023 Update



**Survey Permission History - Illinois
Heartland Greenway Pipeline
Dec-22**



County	Hancock	Adams	Schuyler	Brown	Pike	Scott	Morgan	Sangamon	Christian	McDonough	Fulton	Knox	Henry	TOTALS
Total # of Easement Parcels	127	39	44	97	5	24	129	171	42	110	59	125	6	978
# Parcels contacted this Month	122	35	40	85	5	23	112	137	0	85	55	116	6	821
# Parcels Contacted since August, 18 2022	124	35	42	97	5	24	129	141	10	108	57	124	6	902
# of contacts made this Month	571	134	255	323	30	121	397	594	0	154	132	472	27	3210
# of contacts since August 18, 2022	1,376	413	638	1075	94	394	1514	1113	10	611	238	974	78	8528
Offers Made this Month	4	3	0	3	5	1	21	8	0	10	6	4	0	65
Total Offers Made	123	36	42	93	5	24	126	140	0	108	59	124	6	886
Easements/Options executed this Month	4	1	2	2	0	0	4	4	0	4	1	2	0	24
Total Easements/Options executed	11	1	4	14	0	0	9	6	0	5	11	2	0	63

required).

Navigator refiles its application in February, 2023

On February 24, Navigator refiled its application with the ICC, requesting a Certificate of Authority to build a 1,342 mile long CO2 pipeline that would transport carbon dioxide to sequestration sites in Christian and Montgomery Counties. Sequestering carbon in Montgomery County required the addition of a 42-mile long, pipeline from its main east/west trunk south, through Sangamon County to Montgomery County. [See Docket 23-0161](#) and [Exhibit D, Illinois Map](#).

As before, Navigator is proposing to capture and sequester up to 10 MMT CO2, with the potential to capture and store up to 15 MMT CO2. While the application acknowledges there

will be two sequestration sites (one in Christian County and another in Montgomery County), no information on percent ownership of required pore space required was provided, other than:

- Pore space will cover approximately 30,000 acres and include construction of 5-6 injection wells and 15 monitoring wells (see [Exhibit 2.3](#) of Elizabeth Burns Thompson's direct testimony).
- The applicant is not requesting ICC approval for its sequestration facilities, but the applicant's affiliate HG Carbon Storage LLC (HGCS) has executed agreements for wells and pore space in the sequestration areas to make the project viable. HGCS is continuing its efforts to acquire additional land rights and pore space for sequestration (see [direct testimony of David Giles](#)).

As of this date, it is not known how much pore space has been acquired in either Christian or Montgomery County, because it is not quantified by the application (other than to say it has executed agreements for enough pore space to make the project viable). Because it is still early in the approval process, testimonies or responses to staff or intervener questions have just begun. Unless Navigator is able to show it has enough storage area to build its project, it is likely that both staff and intervening staff will again question the viability of Navigator's proposed CO2 pipeline.

Other Sequestration Areas

Before refiling with the Illinois Commerce Commission, Navigator held two information meetings to describe the newly-proposed 42-mile Montgomery. These meetings were held virtually on February 15 and 16, 2023. In response to questions raised about sequestration during the February 16, meeting, Navigator's geologist stated that they were securing pore space in Sangamon, Logan, McLean, and Dewitt Counties in addition to Christian and Montgomery Counties. The geologist stated that the purpose of acquiring pore space in these counties was "necessary to provide for redundancy", in the event there were problems with injection wells in Christian Counties.

These additional counties were not identified as part of Navigator's second submittal to the Illinois Commerce Commission (see [Docket 23-0161](#)), and no information has been made available regarding a proposed pipeline route that would access pore space in Sangamon, Logan, McLean, and Dewitt Counties. There is evidence that Navigator is acquiring pore space and well sites in Sangamon, McLean, Logan and Tazewell Counties, but not DeWitt. It is possible that this additional sequestration area is required for planned expansion (capturing and storing up to 15 MMT CO2).

While County Boards have for months, been approached by Navigator, the company has not provided a map that identifies the Area of Review for its sequestration area, identified the purpose of the planned sequestration, nor identified the route of any pipeline that would transport CO2 to this storage site. Based on information provided by concerned residents potentially affected by sequestration in these counties, we know that owners have agreed to lease pore space as follows:

Tazewell County: 684 acres
Logan County: 2,089 acres
McLean County: 4,120 acres

Total: 6,893 acres

All we can say, at this point, is that Navigator is amassing pore space. Whether this is a separate project; or whether the additional pore space would accommodate an expanded project (e.g., from 10MMT to 15MMT CO2 stored), is not known.

Even with ICC approval, Navigator cannot build its pipeline project

Illinois does not currently have legislation or caselaw addressing property rights associated with obtaining title to and control over pore space for CO2 storage. In other words, the question of who owns pore space, and what percent of pore space owners need to agree to a carbon sequestration project has not been determined. Illinois State Representative Tom Bennett attempted to address this question via his sponsorship of the [Carbon Dioxide Geologic Storage Act](#) (HB0166). However, that bill failed in the House in January 2023.

The absence of legislation that defines pore space ownership and control over the use of pores space amidst the growing demand for carbon sequestration in Illinois, prompted the introduction of two bills in February of 2023:

HB2022 / SB2153, the [Underground Carbon Dioxide Storage Act](#), prepared by British Petroleum, states that pore space rights belong to surface owners, and amalgamation of pore space for a sequestration site would be allowed if the storage operators obtained the consent of the owners of the pore space underlying at least 61% of the surface area above the proposed storage facility.

HB 3119 / SB2421, the [Carbon Dioxide Transport and Storage Protection Act](#), prepared by the environmental community, also states pore space rights belong to surface owners. Unlike HB2022 / SB2153, this bill does not allow a sequestration operator to take or acquire any easement or title to any pore space or any portion of an area review under the Eminent Domain Act for amalgamation. In other words, all landowners owners within a sequestration area must agree to a sequestration project before it can be permitted.

Neither bill made it through the required Committee Hearings, and the legislative session ended May 25. Passing a bill during veto session (late November, early December) will require either bill to be attached to another and receive a supermajority vote, which cannot be guaranteed. Without clarification of pore space ownership and control, Navigator CO2 Ventures cannot build its CO2 pipeline and sequestration project.