

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, :

**REBUTTAL TESTIMONY OF  
JEFFREY L. PRAY**

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**1. Please state your name and business address.**

Answer: Jeffrey Pray. 2300 W. 49<sup>th</sup> Street Sioux Falls, SD 57105

**2. What is your current occupation?**

Answer: Insurance Agent with Fischer, Rounds & Associates, Inc.

**3. Please describe your educational and professional background.**

Answer: I earned a Bachelor of Science Degree with a major in Business Administration, and a Concentration in Real Estate & Insurance in 1982 from Mankato State University in Mankato, Minnesota. I began my insurance career in 1982 with U.S. Insurance Group. I continue in this profession without interruption.

**4. How are you affiliated with Navigator Heartland Greenway, LLC?**

Answer: I was retained by Navigator to review certain testimony offered by landowners in this proceeding about insurance-coverage issues.

**5. Did you offer direct testimony in this proceeding?**

Answer: No.

**6. To whose testimony are you responding in your rebuttal?**

Answer: I am responding to the direct testimony of many landowners who raised concerns that if the proposed Navigator Heartland Greenway pipeline were constructed across their property, they could be subject to liability for damages that they could not insure, or that they would lose coverage they currently have.

**7. How do you respond to concerns like those stated by Denis and Janet Andersen on pages 14-15 of the testimony, that landowners who are insured would not be covered under their policies based on various scenarios involving damage to the pipeline or a leak?**

Answer: The first principle is that whether insurance coverage exists for a particular landowner under a particular policy based on damage to a pipeline or a pipeline leak depends on the particular facts involved, including the terms of the policy and the facts of the incident. Coverage opinions in the insurance business are based on the terms of a policy applied to particular facts and are usually determined after a loss occurs. Without addressing particular policy provisions in the context of particular facts, it is difficult to generalize about the applicability of coverage. For instance, even though most policies I am familiar with contain a Pollution Liability exclusion, this does not preclude coverage for negligent damage to the pipeline itself by the landowner.

**8. Some of the landowners are concerned that a pollution exclusion clause in their policy would exclude coverage for damage to the pipeline or caused by a release from the pipeline. Do you agree?**

Answer: It depends. None of the landowners who raised concerns about insurance coverage provided copies of their policies. In my experience, nearly all farm liability policies would provide coverage for damage to a pipeline caused by the negligence of a landowner or a

landowner's invitee, but policies containing a standard pollution exclusion clause would not provide coverage for the damage caused by a release from the pipeline. With respect to most standard policy terms with which I am familiar, a landowner would be protected against liability for damage caused to the pipeline itself, but not for damage caused by a resulting pipeline release. This would be true for any pipeline regardless of what sort of hazardous material is transported by the pipeline, e.g., crude oil, natural gas, or carbon dioxide.

**9. Is it possible for landowners to obtain coverage for pollution caused by a pipeline release?**

Answer: Pollution Liability is available in the marketplace by specialty carriers. It may also be secured by endorsement to the Farm Liability policy by some insurance companies, however each company's endorsement may vary in its extent of coverage. The landowner wanting that coverage could likely obtain it. I have reviewed Navigator's standard easement form, however, and understand that Navigator has agreed that it will be financially responsible for damage caused by a release from the pipeline. If a landowner wants protection beyond the hold harmless and indemnity within the easement, they could seek their own Pollution Liability policy.

**10. How do you respond to the concern that a landowner whose property is crossed by the Navigator Heartland Greenway pipeline may not be able to obtain liability insurance to protect the landowner from damages in the event of a pipeline leak, as described in Marvin Abraham's testimony?**

Answer: I reviewed the letter attached to Marvin Abraham's testimony. Mr. Abraham, who lives in North Dakota and is not affected by the Navigator Heartland Greenway pipeline, received a letter signed by the President and CEO of Northwest German Farmers Mutual

Insurance Company in Eureka, South Dakota. Northwest GF is a relatively small company with market share of 1.3167% in 2022 in South Dakota based on direct premiums written. Although a company may elect to non-renew existing policies at the time of renewal subject to the terms of the policy and applicable state law, I am not aware of a similar letter from any other insurance company to an insured advising that a policy would not be renewed if a properly permitted pipeline were constructed across the insured's property.

**11. Loren Staroba attached to his testimony a letter from Farmers Union Insurance in North Dakota with comments about insurance coverage. How do you respond to the concerns stated in that letter?**

Answer: With respect to the undated letter attached to Mr. Staroba's testimony, it does not state that the insured's policy would be subject to nonrenewal or that the insured would not have coverage in any circumstance involving damage to or a release from the Navigator Heartland Greenway pipeline. Rather, the letter includes many of the same observations I have made here, including: (1) that whether coverage exists for any particular incident depends on the terms of the policy and the particulars of a claim; (2) that the policy at issue contains exclusions for losses caused by pollutants, which is common; and (3) that "any utility, pipeline, or other third-party exposure presents a substantial exposure to you from a liability perspective, unless the third party provides clear, contractual language which specifically holds you harmless." Navigator's standard easement form provides that Navigator will be financially responsible for damage caused by a release from the pipeline.

**12. Intervenors Arnold Erickson and Kay Burkhart attached to their testimony a letter from DeSmet Farm Mutual Insurance Company. How do you respond to the issues raised in that letter?**

Answer: The bulletin from DeSmet Farm Mutual does not refer to a specific policy, as it appears to be a general notice on the topic, perhaps issued to their agents or members (policyholders). As such, this bulletin is not suggesting that the company will not renew Farm Liability policies or that they will no longer offer new policies to anyone with an underground pipeline of any kind. Instead, it simply quotes a standard pollution exclusion clause that is consistent with my testimony in paragraph 8.

I do take issue with the closing sentence of the bulletin that states, “Having a pipeline running through a member’s property, carrying a pollutant, subjects them to substantial uninsurable exposure.” This exposure may be uninsurable by DeSmet Farm Mutual Insurance Company, but that does not mean another insurance company won’t insure the exposure, as noted in my response to question 9.

**13. Does this conclude your testimony?**

Answer: Yes.

Dated this 26th day of June, 2023.

/s/ Jeffrey L. Pray  
Jeffrey L. Pray