

**BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

**DOCKET HP22-002**

**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**

**DIRECT TESTIMONY OF JON THURBER  
ON BEHALF OF THE COMMISSION STAFF  
MAY 25, 2023**

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## **EXHIBITS**

Exhibit\_JT-1 Navigator's Responses to Staff Discovery

Exhibit\_JT-2 South Dakota Department of Transportation Consultation Letter

Exhibit\_JT-3 South Dakota Department of Public Safety Consultation Letter

1 I. INTRODUCTION AND QUALIFICATIONS

2  
3 **Q. Please state your name and business address.**

4 A. Jon Thurber, Public Utilities Commission, State Capitol Building, 500 East Capitol  
5 Avenue, Pierre, South Dakota, 57501.  
6

7 **Q. By whom are you employed and in what capacity?**

8 A. I am a utility analyst for the South Dakota Public Utilities Commission (“Commission”). I  
9 am responsible for analyzing and presenting recommendations on utility dockets filed  
10 with the Commission.  
11

12 **Q. Please describe your educational and business background.**

13 A. I graduated summa cum laude from the University of Wisconsin – Stevens Point in  
14 December of 2006, with a Bachelor of Science Degree in Managerial Accounting,  
15 Computer Information Systems, Business Administration, and Mathematics. My  
16 regulated utility work experience began in 2008 as a utility analyst for the Commission.  
17 At the Commission, my responsibilities included analyzing and testifying on ratemaking  
18 matters arising in rate proceedings involving electric and natural gas utilities. In 2013, I  
19 joined Black Hills Corporation as Manager of Rates. During my time at Black Hills  
20 Corporation, I held various regulatory management roles and was responsible for the  
21 oversight of electric and natural gas filings in Wyoming, Montana, and South Dakota. In  
22 July of 2016, I returned to the Commission as a utility analyst. In addition to cost-of-  
23 service dockets, I work on transmission siting, energy conversion facility siting, and wind  
24 energy facility siting.  
25

26 In my fourteen years of regulatory experience, I have either reviewed or prepared  
27 approximately two hundred regulatory dockets. These dockets include twenty siting  
28 permit applications filed in accordance with SDCL Chapter 49-41B, specifically fourteen  
29 wind energy facilities, three transmission lines, two solar facilities, and one natural gas  
30 combustion turbine generator. I have provided written and oral testimony on the  
31 following topics: the appropriate test year, rate base, revenues, expenses, taxes, cost  
32 allocation, rate design, power cost adjustments, capital investment trackers, PURPA

1 standards, avoided costs, electric generation resource decisions, and wind energy  
2 facility siting dockets.

3  
4 **II. PURPOSE OF TESTIMONY**

5  
6 **Q. What is the purpose of your direct testimony?**

7 A. The purpose of my direct testimony is to discuss the review performed by Commission  
8 Staff ("Staff") of the Application, identify any issues or concerns with the representations  
9 made in the Application or by the Applicant, and provide Staff's recommendation on  
10 whether the permit should be granted.

11  
12 **III. REVIEW OF THE APPLICATION**

13  
14 **Q. Have you reviewed Navigator Heartland Greenway, LLC's ("Navigator" or  
15 "Company" or "Applicant") Application for a permit of a carbon dioxide ("CO<sub>2</sub>")  
16 pipeline, Docket HP22-002?**

17 A. Yes. I also reviewed the Company's prefilled testimony, appendixes, figures, and  
18 responses to data requests produced by all parties as it pertains to the issues that I am  
19 addressing.

20  
21 **Q. Were other Staff involved in the review of the Application?**

22 A. Yes. Staff Analyst Darren Kearney and Staff Attorney Kristen Edwards also assisted in  
23 reviewing the Application.

24  
25 **Q. Please explain the review process performed by Staff in Docket HP22-002.**

26 A. After receiving the Application, Staff completed a review of the contents as it relates to  
27 the Energy Facility Siting statutes, SDCL 49-41B, and Energy Facility Siting Rules,  
28 ARSD 20:10:22. Staff then identified information required by statute or rule that was  
29 either missing from the Application or unclear within the Application and requested  
30 Navigator to provide or clarify that information. Please see Exhibit\_JT-1 for Navigator's  
31 Responses to Staff Discovery.

32  
33 In addition, Staff subpoenaed experts from state agencies to assist Staff with our review.  
34 Hilary Morey, Environmental Review Senior Biologist at the Game, Fish and Parks

1 reviewed the potential impacts to wildlife and associated habitats. Jenna Carlson  
2 Dietmeier, Review and Compliance Coordinator at the State Historic Preservation Office  
3 (SHPO) reviewed the project to ensure historic properties are taken into consideration.  
4 Tim Cowman, State Geologist, and Lucy Blocker and Jaclyn McGuire, Environmental  
5 Scientists, of the Department of Agriculture and Natural Resources (DANR), reviewed  
6 the potential impacts to the environment and discuss the agency's response in the event  
7 of a release.

8  
9 Further, Staff hired two consulting firms to assist with reviewing the Application. The first  
10 consulting firm, Environmental Resource Management, Inc., has expertise with  
11 environmental permitting and environmental impact analyses and mitigation. The  
12 second consulting firm, RCP Inc., has expertise with the Pipeline and Hazardous  
13 Materials Safety Administration regulations the pipeline will be subject to. Staff  
14 facilitated the preparation of testimony from these consultants by providing questions  
15 that Staff believed were relevant to the review of the Application.

16  
17 Finally, Staff assisted the intervenors and affected landowners by providing responses to  
18 numerous questions on the CO<sub>2</sub> pipeline, the siting process established by South Dakota  
19 law, and the opportunities available for these individuals to be heard by the Commission.  
20 If the landowners had specific concerns with the CO<sub>2</sub> pipeline, Staff often recommended  
21 that those individuals file comments in the docket for the Commission's review. Where  
22 appropriate, Staff also included some of the landowners' questions or concerns in Staff's  
23 data requests sent to Navigator to have them address the issue.

24  
25 **Q. What is the purpose of Staff's expert witnesses in this proceeding?**

26 A. Staff sought experts within their respective fields to assess the merits and deficiencies of  
27 the Application. Staff requested that the experts address whether the information  
28 submitted by Navigator aligns with industry best practices, and if they agreed with the  
29 conclusions Navigator made regarding the potential impacts from the project.

30  
31 **Q. Did Staff request assistance from any other state agencies in review of the  
32 Application?**

33 A. Yes. Staff consulted with the Department of Public Safety ("DPS") and the Department  
34 of Transportation ("DOT"). Staff reached out to certain state agencies that may be

1 impacted by the project and/or have a specific subject matter expertise to provide an  
2 opportunity for comments, concerns, or recommendations during the Application  
3 process. Please see Exhibit\_JT-2 and Exhibit\_JT-3 for their responses via letter.  
4 Although the consultation letters reference the Summit Carbon Transport's pipeline,  
5 Docket HP22-001, Staff confirmed that the same comments apply to Navigator's  
6 Application.

7  
8 **Q. Please summarize Staff's consultation with DOT and DPS.**

9 A. The DOT requires compliance with ARSD 70:04:05 for any installation of pipeline  
10 crossing State Highways or Interstates, and an Application for Utility Permit needs to be  
11 submitted for each crossing location to the responsible Area Office. The consultation  
12 with DPS included the State Fire Marshal, Captain of the South Dakota Highway Patrol,  
13 and Director of the Office of Emergency Management. DPS will primarily serve a  
14 support role in assisting, coordinating, and providing resources for the local emergency  
15 service offices. DPS advised the Commission to consult with local first responders as  
16 the "response starts and ends at the local level."

17  
18 **IV. FINAL PIPELINE ROUTE**

19  
20 **Q. Is the pipeline route filed in the Application subject to change?**

21 A. Yes. On Page 3 of Stephen Lee's direct testimony, Navigator stated it would update its  
22 exhibits during this proceeding to show any changes to the proposed route.

23  
24 **Q. When does Navigator anticipate filing an updated pipeline route?**

25 A. In response to Staff data request 4-1, Navigator committed to filing updates with  
26 supplemental testimony. Supplemental testimony is due May 25, 2023, for Navigator.

27  
28 **Q. What type of route modifications are Navigator proposing?**

29 A. At the time of the response to Staff data request 4-1, Navigator stated the route changes  
30 are minor, do not affect any new landowners, and reflect landowner preferences and/or  
31 constructability factors.

1 **Q. What is driving some of these route changes?**

2 A. Navigator asserted that landowner negotiations and 2023 surveys may drive route  
3 changes.

4  
5 **Q. Does Navigator have access to survey the proposed pipeline route?**

6 A. In response to Staff data request 3-6, Navigator stated that although they have “provided  
7 notice to landowners that they have survey rights under SDCL 21-35-31, Applicant is  
8 choosing not to survey those landowners that are emphatically resistant to grant survey  
9 permission and/or those landowners represented by counsel that have stated that no  
10 surveys take place on their property without proceeding through the injunction process.”

11  
12 **Q. How much of the pipeline route is not available to survey?**

13 A. According to the response to Staff data request 3-6, 8.6 miles of the pipeline route  
14 needed to complete the cultural surveys in federal jurisdictional areas are not accessible.  
15 It is unclear how survey access is impacted for each outstanding survey.

16  
17 **Q. Which surveys could cause the route to change?**

18 A. Navigator did not specifically identify which surveys may cause the route to change.  
19 Below is a list of outstanding surveys that Staff is monitoring:

20

Survey	ETA	Source
Wetland Delineation	June 2023	Staff DR 1-25
Bat Acoustic	June 2023	Staff DR 1-29
Eagle/Raptor Nest	June 2023	Staff DR 1-29
Topeka Shiner	June 2023	Staff DR 1-29
Lined Snake	June 2023	Staff DR 1-29
Dakota Skipper Habitat	June 2023	Staff DR 1-29
Pollinator Habitat	June 2023	Staff DR 1-29
Cultural Resource	June 2023	Staff DR 1-33

21  
22  
23 **Q. Do you have any concerns about Navigator’s ability to provide a final route with  
24 their supplemental testimony?**

25 A. Yes. Since these surveys are not going to be complete until at least June 2023 and  
26 supplemental testimony is due on May 25, 2023, it is difficult to understand how  
27 Navigator will be able to provide the final route with its supplemental testimony.

1 **Q. Do you have any concerns about the outstanding survey work?**

2 A. SDCL 49-41B-11(11) requires the Applicant submit environmental studies prepared  
3 relative to the facility. Staff's witnesses cannot form a complete assessment of the  
4 impacts to the environment until these surveys are complete. The Applicant needs to  
5 provide the results from these surveys with enough time prior to the evidentiary hearing  
6 so that our witnesses can review and form an opinion.

7

8 **Q. Do you have any other concerns about Navigator making changes to the pipeline**  
9 **route?**

10 A. Staff will review the individual route modifications on a case-by-case basis to determine  
11 whether the route modification is considered minor. Each party to this docket may have  
12 a different opinion of what constitutes a minor route modification. For example, in  
13 response to Staff data request 2-30, the Applicant stated a minor route change has the  
14 potential to shift the route onto an adjacent tract of land. The new landowner impacted  
15 by the pipeline route may not consider the shift to be minor. Staff requests Navigator  
16 submit each individual route modification as an exhibit and clearly identify the shift in  
17 pipeline route.

18

19 In the event of a route modification, Staff also wants to ensure that the landowners  
20 located within one-half mile of the proposed site are notified pursuant to SDCL 49-41B-  
21 5.2.

22

23 **V. PLUME MODELING**

24

25 **Q. How has Navigator used plume modeling to inform siting the pipeline route?**

26 A. On Pages 7 and 8 of the Application, Navigator stated it used plume modeling as a  
27 criterion for selecting the pipeline route against alternatives pursuant to ARSD  
28 20:10:22:12(1). In addition, Navigator stated "setback distances from inhabited  
29 structures, gathering places, and population centers based on initial plume modeling  
30 were established for micro routing efforts."

31

32 **Q. Did Navigator submit its plume modeling as part of the Application?**

33 A. No. Staff received a high-level summary of the plume modeling and some associated  
34 documentation confidentially in response to Staff data request 1-7.



1 **Q. What are the setback distances from inhabited structures, gathering places, and**  
2 **population centers based on initial plume modeling?**

3 A. In response to Staff data request 2-7, Navigator stated that it is proposing setback  
4 distances from inhabited structures, gathering places, and population centers of 321 feet  
5 from a 6-inch pipe, and 417 feet from an 8-inch pipe.  
6

7 **Q. What is the distance in feet of the closest occupied residence from the pipeline?**

8 A. In response to Staff data request 4-11, Navigator stated that based on the current route,  
9 the nearest residence is located approximately 190 feet from the proposed pipeline.  
10

11 **Q. Is 190 feet from an occupied residence a violation of Navigator’s self-established**  
12 **setback of at least 321 feet?**

13 A. In response to Staff data request 6-1, Navigator characterizes the setback as a “goal,  
14 but not always practicable due to other routing criteria, physical limitations, as well as  
15 landowner-specific location requests.” Navigator’s proposed setback is not a strict  
16 restriction.  
17

18 **Q. How many other occupied residences are within the setbacks proposed by**  
19 **Navigator?**

20 A. In response to Staff data request 6-2(a) and 6-3(a), Navigator stated it “does not  
21 currently have a count of occupied residences within the expressed distances because  
22 of the continued environmental surveys and landowner negotiations, which can affect  
23 the location of the pipeline.”  
24

25 **Q. If a landowner requests that the pipeline be routed closer to the residence than**  
26 **what Navigator’s modeling recommends, does Navigator explain the additional**  
27 **risk to the landowner?**

28 A. I do not know. I will submit discovery to gain a better understanding of the process.  
29

30 **Q. What additional safety measures is Navigator implementing when the pipeline is**  
31 **placed within the setback supported through the plume model?**

32 A. In response to Staff data requests 6-2 and 6-5, Navigator states it “uses design and  
33 construction controls to maintain the same level of safety and risk when routing buffers  
34 cannot be maintained, for example, increased design factor, heavier wall pipe, or

1 increased depth of cover.” Specifically, Navigator may increase the standard design  
2 factor of 0.72 per 49 CFR Part 195.106 to 0.60. Also, Navigator could increase the 6-  
3 inch pipeline wall thickness from 0.250 inches to 0.288 inches or increase the 8-inch  
4 pipeline wall thickness from 0.277 inches to 0.322 inches. Please see the response to  
5 Staff data request 6-5 for other potential measures.  
6

7 **Q. What is Staff’s opinion on the plume modeling that supports Navigator’s proposed**  
8 **setback?**

9 A. Matthew Frazel, Principal Consultant at Environmental Resource Management, Inc.,  
10 reviewed Navigator’s plume modeling and risk assessment, and will provide an  
11 assessment on behalf of Staff.  
12

13 **Q. Has any party in Docket HP22-002 filed a request to make the plume modeling**  
14 **information available to the public?**

15 A. Staff has received numerous phone calls from interested citizens and landowners  
16 represented by counsel Brian Jorde requesting to view the plume modeling, and Staff  
17 has suggested that they or their attorney make a request to the Commission if they  
18 desire to view the information. To date, no request has been made.  
19

20 **Q. Why has Staff not filed a request to make the plume modeling information**  
21 **available to the public?**

22 A. Staff has access to the information so it would be difficult for Staff to argue that we are  
23 prejudiced by not having the information publicly available to review.  
24

25 **Q. Did the Applicant provide the plume modeling under objection?**

26 A. Yes. Navigator made multiple objections to this request, including that the request  
27 “seeks information that may be outside the jurisdiction of the PUC based on federal  
28 preemption and to that extent is not relevant to the scope of this proceeding.”  
29

30 **Q. Do you have any comments about the assertion of federal preemption regarding**  
31 **plume modeling?**

32 A. Staff has no Commission decision or court order supporting Navigator’s claim.  
33

1 The South Dakota legislature has tasked the Commission to determine whether the  
2 proposed facility will not substantially impair the health, safety, or welfare of the  
3 inhabitants as part of the Applicant's burden of proof in SDCL 49-41B-22(3). In addition,  
4 SDCL 49-41B-11(6) requires the Applicant provide a statement of the reasons for the  
5 selection of the proposed location. Plume modeling should inform the siting location of a  
6 CO2 pipeline to minimize the safety risk of the facility. Navigator stated that it used  
7 plume modeling as a criterion in determining the location of the pipeline route in the  
8 Application. The Commission needs to evaluate the plume modeling to ensure the  
9 criterion adequately assesses the safety risks for the proposed pipeline route.

10  
11 Absent a legal determination supporting the Applicant's arguments on federal  
12 preemption, Staff will err on the side of the caution and assess the Application consistent  
13 with the Commission's statutory authority.

## 14 15 **VI. EMERGENCY RESPONSE**

16  
17 **Q. Has the Commission received public comment regarding emergency response in  
18 the event of a release?**

19 A. Yes, emergency response is a primary concern of citizens based on public comments.  
20 At the public input meeting in Sioux Falls, SD, on November 22, 2022, Donald Johnson,  
21 the fire chief in Valley Springs, SD, raised concerns about community and first responder  
22 safety in the event of a release. Mr. Johnson indicated that emergency services in rural  
23 areas of South Dakota are largely staffed by volunteers, and the departments do not  
24 have the appropriate gear to effectively respond to a release.

25  
26 **Q. Did Navigator include an Emergency Response Plan with the Application?**

27 A. No. In response to Staff data requests 3-10, Navigator indicated the plan is under  
28 development and a draft should be completed in Q4 2023.

29  
30 **Q. Did Staff ask Navigator to provide the emergency response plan for Commission  
31 consideration prior to the evidentiary hearing?**

32 A. Yes. In response to Staff data request 3-11, Navigator objected to the request and  
33 stated the emergency response plan is within the jurisdiction of PHMSA and preempted  
34 by federal law.

1 **Q. Do you have any comments about the assertion of federal preemption regarding**  
2 **the emergency response plan?**

3 A. Staff has no Commission decision or court order supporting Navigator’s claim.  
4

5 The South Dakota legislature has tasked the Commission to determine whether the  
6 proposed facility will not substantially impair the health, safety, or welfare of the  
7 inhabitants as part of the Applicant’s burden of proof in SDCL 49-41B-22(3). In addition,  
8 ARSD 20:10:22:23 (6) requires the Applicant to include its plans to coordinate with the  
9 local and state office of disaster services in the event of a release from the proposed  
10 facilities. An emergency response plan is simply required by rule.  
11

12 Absent a legal determination supporting the Applicant’s arguments on federal  
13 preemption, Staff will err on the side of the caution and assess the Application consistent  
14 with the Commission’s statutory authority.  
15

16 **Q. On Page 59 of the Application, Navigator states it will “maintain emergency**  
17 **response equipment and personnel at strategic points along the route and train**  
18 **their personnel to respond to any pipeline emergencies.” What type of emergency**  
19 **response equipment will be maintained at strategic points along the route?**

20 A. In response to Staff data request 3-10, the Applicant states the Emergency Response  
21 Plan will include that specific information. Emergency response equipment is under  
22 review. There is a series of baseline equipment that will be maintained across the  
23 footprint, which includes but is not limited to stationary/personal monitors and self-  
24 contained breathing apparatuses.  
25

26 **Q. How many strategic points has the Applicant identified along the route?**

27 A. In response to Staff data request 3-10, the Applicant states the Emergency Response  
28 Plan will include that specific information. Emergency response locations are under  
29 review.  
30  
31  
32  
33

1 **Q. On Page 7 of Vidal Rosa’s direct testimony, Mr. Rosa stated that “Navigator is**  
2 **committed to purchasing necessary equipment for emergency responders so that**  
3 **an emergency can be properly responded to.” Did Navigator provide a list of**  
4 **equipment that it intends to purchase for each local government?**

5 A. No. In response to Staff data requests 3-12(c) and 4-7, Navigator states that developing  
6 the list of necessary emergency equipment is a collaborative process between  
7 emergency responders and Navigator. In the Summer of 2023, Navigator will deploy an  
8 online tool where emergency management service departments can communicate what  
9 equipment they feel they need to respond to an emergency associated with the pipeline.  
10 Navigator committed to assess the requests, continue collaboration, and procure  
11 necessary equipment and/or reimburse departments to procure as warranted such that  
12 all necessary equipment needs are fulfilled prior to operating the system.

13  
14 **Q. Please summarize Navigator’s responses to Staff’s discovery regarding**  
15 **emergency response.**

16 A. Navigator made high level commitments regarding emergency response in the  
17 Application. When Staff tried to get specific, detailed information regarding emergency  
18 response, Navigator stated it will be addressed in the Emergency Response Plan, which  
19 will not be available for the Commission to review at the evidentiary hearing.

20  
21 Emergency response was one of the top concerns of interested citizens, and Navigator  
22 has not provided the information required by administrative rule to review.

23  
24 **VII. LOCAL LAND USE PREEMPTION**

25  
26 **Q. Has Navigator committed to design, construct, operate, and maintain the pipeline**  
27 **and valve stations in compliance with applicable zoning and county permit**  
28 **requirements?**

29 A. Yes. However, Navigator also stated it may request the Commission preempt a local  
30 ordinance pursuant to SDCL 49-41B-28. On Page 52 of the Application, Section 6.8.6,  
31 the Applicant made the following statements regarding local land use controls:

32  
33 The Applicant will design, construct, operate, and maintain the pipeline and valve  
34 stations in compliance with applicable zoning and county permit requirements.  
35 The Applicant may request variances and/or special use permits, as necessary.

1 The Applicant recognizes the existence of South Dakota Codified Law (SDCL)  
2 49-41B-28, regarding local ordinances and their application to the project, and  
3 reserves the right to request the Commission to invoke provisions during the  
4 proceedings in the application should the need present itself.  
5

6 **Q. What is the Commission’s statutory authority pursuant to SDCL 49-41B-28?**

7 A. Pursuant to SDCL 49-41B-28:

8  
9 A permit for the construction of a transmission facility within a designated area  
10 may supersede or preempt any county or municipal land use, zoning, or building  
11 rules, regulations, or ordinances upon a finding by the Public Utilities  
12 Commission that such rules, or regulation, or ordinances, as applied to the  
13 proposed route, are unreasonably restrictive in view of existing technology,  
14 factors of cost, or economics, or needs of parties where located in or out of the  
15 county or municipality. Without such a finding by the commission, no route shall  
16 be designated which violates local land-use zoning, or building rules, or  
17 regulations, or ordinances.  
18

19 **Q. Has Navigator requested supersession of any specific local land use controls by  
20 the Commission?**

21 A. No. In response to Staff data request 1-32(b), Navigator stated it does not presently  
22 seek relief from the Commission under SDCL 49-41B-28 but reserves the right to do so  
23 if any county regulation contradicts any requirements imposed by the PUC.  
24

25 **Q. Has Navigator obtained all applicable local permits required for the project?**

26 A. No, I do not believe so. The pipeline crosses parts of Brookings, Moody, Minnehaha,  
27 Lincoln, and Turner counties. Based on Navigator’s response to Staff data request 1-  
28 32(a), it appears that multiple county permits have not been obtained at the time of the  
29 response.  
30

31 **Q. Are there any specific county permit requirements that may cause issues with  
32 Navigator’s proposed route?**

33 A. Yes. In response to Staff data request 3-5, Navigator indicated that the Moody County  
34 Planning and Zoning Board extended a pipeline moratorium through March 2024. The  
35 Applicant shared that Moody County may form a working group and hold a series of  
36 public-input meetings to address setbacks, starting in May 2023, with a stated goal of  
37 adopting an ordinance by July 2023. In addition, it is Staff’s understanding that both  
38 Lincoln and Minnehaha Counties are considering ordinances that include setbacks that

1 are more restrictive than Navigator is proposing. Lincoln County is discussing a 2,500-  
2 feet setback and Minnehaha County is discussing a 750-foot setback. In response to  
3 Staff data request 2-7, Navigator stated that it is proposing setback distances from  
4 inhabited structures for a 6-inch pipe of 321 feet and 417 feet for an 8-inch pipe. This is  
5 not an exhaustive list of specific county requirements that could be at issue, but what  
6 Staff is currently aware of.

7  
8 **Q. Do you expect these local land use issues will be resolved prior to key milestones**  
9 **in the procedural schedule for this Application?**

10 A. The local land use ordinances are not going to be finalized prior to Staff's direct  
11 testimony filed on May 25, 2023. These ordinances may not be finalized prior to the  
12 evidentiary hearing that begins on July 25, 2023.

13  
14 **Q. Has Navigator provided the information pursuant to SDCL 49-41B-28 for the**  
15 **Commission to make a finding?**

16 A. No. Navigator has provided no information to support that a local regulation is  
17 unreasonably restrictive in view of existing technology, factors of cost, or economics, or  
18 needs of parties where located in or out of the county or municipality.

19  
20 **Q. Does Staff support Navigator's request to invoke SDCL 49-41B-28 during the**  
21 **proceedings for this Application?**

22 A. No. Navigator has not identified any specific local regulations that it wants the  
23 Commission to supersede and did not file the appropriate supporting information  
24 pursuant to the law. A request for local land use supersession is rare and significant and  
25 should be made in the infancy in the Application process so that all parties, including the  
26 applicable local government, have adequate time to present evidence on the matter.  
27 Since the information pursuant to the law was not provided in the Application or through  
28 discovery in advance of Staff's testimony deadline, Staff recommends that such a finding  
29 be requested in a separate docket when the information is available.

1 **VIII. VIEWS OF LOCAL UNITS OF GOVERNMENT**

2  
3 **Q. Have any counties impacted by Navigator’s proposed route been granted party**  
4 **status?**

5 A. Yes. Lincoln, Moody, and Brookings Counties have all been granted Party Status.  
6

7 **Q. Did any other county participate in this docket?**

8 A. Yes. On March 22, 2023, Minnehaha County submitted a comment regarding the  
9 Heartland Greenway pipeline. Minnehaha County’s is concerned about potential safety  
10 hazards, emergency response training, decommissioning, and landowner liabilities with  
11 the pipeline. Please select the following link to review Minnehaha’s comment:

12 [https://puc.sd.gov/commission/dockets/hydrocarbonpipeline/2022/hp22-](https://puc.sd.gov/commission/dockets/hydrocarbonpipeline/2022/hp22-002/comments/MinnehahaCoResp.pdf)  
13 [002/comments/MinnehahaCoResp.pdf](https://puc.sd.gov/commission/dockets/hydrocarbonpipeline/2022/hp22-002/comments/MinnehahaCoResp.pdf).  
14

15 **Q. Have any cities impacted by Navigator’s proposed route been granted party**  
16 **status?**

17 A. Yes. The City of Canton was granted Party Status.  
18

19 **Q. What is the closest distance from the pipeline to the city border of some of the**  
20 **cities along the proposed route?**

21 A. In response to Staff data request 4-14, Navigator provided the distance of the pipeline  
22 from the following city limits:

- 23 • Aurora – 1,050 feet;
- 24 • Egan – 1,130 feet;
- 25 • Canton – 2,850 feet;
- 26 • Valley Springs – 4,310 feet; and
- 27 • Brandon – 9,420 feet.

28  
29 **Q. What is the distance in feet of the nearest school from the pipeline?**

30 A. In response to Staff data request 4-12, the nearest school is approximately 6,540 feet  
31 from the pipeline.  
32  
33  
34



1 **Q. What is the distance in feet of the nearest gathering place from the pipeline?**

2 A. In response to Staff data request 4-13, the nearest gathering place is approximately  
3 1,530 feet from the pipeline.  
4

5 **Q. Can other local government units still participate in this proceeding?**

6 A. Yes. The Commission accepts public comments during the duration of this proceeding.  
7

8 **Q. Please explain the significance of local government participation in the siting  
9 process.**

10 A. Pursuant to SDCL 49-41B-22(4), the applicant has the burden of proof to establish the  
11 facility will not unduly interfere with the orderly development of the region with due  
12 consideration having been given the views of governing bodies of affected local units of  
13 government. The views of affected local units of government are factored into the  
14 Commission's decision, and the Commission supports their participation in this process.  
15

16 **Q. Does the Commission have the authority to relocate the pipeline route?**

17 A. No. SDCL 49-41B-36 specifically states that the Commission is not delegated the  
18 authority to route a transmission facility. The Applicant proposes the route, and the  
19 Commission either approves or denies the route proposed based on evidence in the  
20 record and the Applicant's burden of proof in SDCL 49-41B-22.  
21

22 **IX. INDEMNITY BOND FOR DAMAGE TO ROADS AND BRIDGES**  
23

24 **Q. Did Navigator have a proposal for an appropriate indemnity bond for road and  
25 bridge damages according to SDCL 49-41B-38?**

26 A. In response to Staff data request 1-37, Navigator proposed an indemnity bond based on  
27 10% of estimated construction cost in South Dakota, which was \$142 million at the time  
28 of the response. The current project schedule anticipates construction commencing in  
29 2024 and continuing into 2025. Navigator suggested an indemnity bond in the amount  
30 of \$7.1 million in 2024 and a bond of the same amount in 2025.  
31

32 **Q. Does Staff agree with Navigator's indemnity bond proposal?**

33 A. Staff agrees that the calculation of the bond amount proposed by Navigator is consistent  
34 with the methodology used in the most recent pipeline permit, Dakota Access Pipeline,

1 Docket HP14-002. However, the estimated construction cost has increased from the  
2 amount filed in the Application and the bond amount should be updated accordingly. In  
3 response to Staff data request 2-5, the construction cost estimate increased to \$158  
4 million. As a result, Staff would recommend an indemnity bond in the amount of \$7.9  
5 million in 2024 and a bond in the amount of \$7.9 million in 2025.

6  
7 **X. APPLICATION COMPLETENESS REVIEW**

8  
9 **Q. Is Navigator's Application considered complete?**

10 A. No. As identified above and in other Staff witness testimony, Staff requested further  
11 information, or clarification, from Navigator which Staff believes is necessary to satisfy  
12 the requirements of SDCL 49-41B and ARSD 20:10:22.

13  
14 **Q. Can Navigator update the Application throughout this proceeding?**

15 A. Staff's position is that ARSD 20:10:22:04(5) allows for Navigator to provide additional  
16 information throughout the Commission's review period. It is not unusual in siting  
17 dockets that an applicant supplements its original application with information as  
18 requested by Staff.

19  
20 **Q. Does Staff recommend the Application be denied because of Staff's issues and  
21 concerns?**

22 A. Not at this time. Because Navigator can address outstanding issues on rebuttal and, to  
23 an extent, through the evidentiary hearing, Staff reserves any position on granting the  
24 permit until such time as we have a complete record upon which to base Staff's position.  
25 Staff would also note that some of the outstanding issues may be addressed through  
26 conditions should the Commission grant a permit.

27  
28 **Q. Does this conclude your testimony?**

29 A. Yes, this concludes my written testimony.