

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:	
NAVIGATOR HEARTLAND GREENWAY LLC	DOCKET NO. HLP-2021-0003

**ORDER ADDRESSING REQUEST FOR ENVIRONMENTAL IMPACT STUDY**

**PROCEDURAL BACKGROUND**

On June 2, 2022, the Winnebago Tribe of Nebraska (Winnebago Tribe) filed with the Utilities Board (Board) a request for an environmental impact study (EIS) in dockets for both Summit Carbon Solutions, LLC (Summit Carbon), and Navigator Heartland Greenway LLC (Navigator), Docket Nos. HLP-2021-0001 and HLP-2021-0003, respectively.<sup>1</sup>

On August 15, 2022, Navigator filed a response to the request for an EIS. On August 22, 2022, Sierra Club filed comments on the request for an EIS. There have also been numerous additional filings within Docket No. HLP-2021-0003 requesting an EIS be conducted.

**REQUEST FOR ENVIRONMENTAL IMPACT STUDY**

**A. Winnebago Tribe**

In its EIS request, the Winnebago Tribe requests that the Board; the U.S. Army Corps of Engineers; the Dakota County, Nebraska, Commissioners; the Woodbury

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<sup>1</sup> The Board addressed the request for an EIS for Summit Carbon in a separate order issued in Docket No. HLP-2021-0001 on October 6, 2022.

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County, Iowa, Commissioners; and any additional entities impacted by the Summit Carbon and Navigator pipelines require an EIS before issuing a permit to either company. The Winnebago Tribe states the pipelines would cross land on or near the Winnebago Tribe and the Missouri River. The Winnebago Tribe asserts that the Board, or the general public, cannot make an informed decision about either proposed project until an EIS is completed.

### **B. Navigator**

In its response, Navigator states the request is premature because Navigator had not filed its application for a permit, and testimony had not been presented. Navigator asserts it is committed to the protection of the environment, and the proposed project will meet or exceed all federal and state environmental laws and regulations. Navigator also states the EIS is not part of the Board's role, which is siting a pipeline, and the EIS is the exclusive jurisdiction of other agencies. Navigator also asserts the EIS will duplicate an environmental impact statement that is part of the National Environmental Policy Act (NEPA) review process. Navigator also references Docket No. HLP-2014-0001, in which the Board acknowledged that Iowa does not have a statute requiring or authorizing an EIS, and that the Board's current process has been sufficient to address environmental issues. Navigator also references Board rule 199 Iowa Administrative Code 13.12, providing that environmental agencies may have a jurisdictional interest in the project.

### **C. Sierra Club**

In its filing, Sierra Club states that even assuming Navigator's assertion that the request is premature, the request puts the Board and Navigator "on notice" that an EIS

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should be required. Sierra Club also states the Winnebago Tribe is requesting an environmental study, not a NEPA study. Sierra Club further states only the Board has the authority to address the environmental impact of the entire project and Sierra Club has previously provided this type of information to the Board; however, the Board has relied on other agencies — the Iowa Department of Natural Resources, the Environmental Protection Agency, and the Corps of Engineers — and the Board has asserted it has limited jurisdiction on the issue. Sierra Club joins the Winnebago Tribe's request for an EIS.

### **BOARD DISCUSSION**

Iowa Code § 478B.1 states:

It is the purpose of the general assembly in enacting this law to grant the utilities board the authority to implement certain controls over hazardous liquid pipelines to protect landowners and tenants from environmental or economic damages which may result from the construction, operation, or maintenance of a hazardous liquid pipeline or underground storage facility within the state, to approve the location and route of hazardous liquid pipelines, and to grant rights of eminent domain where necessary.

The Board has reviewed the information and will not require Navigator to conduct an EIS. The Board addressed similar requests with regard to Dakota Access, LLC's, (Dakota Access) hazardous liquid pipeline in Docket No. HLP-2014-0001, and Summit Carbon's proposed hazardous liquid pipeline in Docket No. HLP-2021-0001. As the Board stated in Dakota Access, and repeated in Summit Carbon, "there is no explicit legal requirement, in statute or in rule, for an independent environmental impact report as a part of this proceeding." *In re: Dakota Access, LLC, Final Decision and Order*, Docket No. HLP-2014-0001, at 53 (March 10, 2016); *In re: Summit Carbon Solutions*,

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*LLC, Order Addressing Request for Environmental Impact Study*, Docket No.

HLP-2021-0001, at 3-4 (Oct. 6, 2022).

The Board will consider the specific environmental issues raised in this docket and whether Navigator has addressed the environmental concerns sufficiently as part of the Board's consideration of whether to grant a permit to Navigator. The Board does not consider a separate EIS to be necessary to fulfill its statutory requirements in considering whether to grant the permit requested.

Navigator will be required to file testimony and exhibits that address the environmental permits and authorizations it needs to construct the proposed pipeline and what actions Navigator is taking to ensure that the pipeline meets those requirements. Other parties may file testimony and exhibits in response to the evidence presented by Navigator, and cross-examination of witnesses concerning the environmental issues can be conducted at the hearing. The evidence presented through prefiled testimony and cross-examination will then be considered by the Board in determining whether Navigator should be granted a permit to construct, operate, and maintain its proposed hazardous liquid pipeline in Iowa.

As found by the Board in the Dakota Access and Summit Carbon dockets, the Board does not consider a separate EIS beyond the statutory requirements in Iowa Code chapter 479B to be necessary. Compliance with the statutory requirements in that chapter and meeting the requirements for permits and authorizations from other state and federal agencies are sufficient to address any environmental issues raised during the proceeding.

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## ORDERING CLAUSE

### IT IS THEREFORE ORDERED:

The request for an environmental impact study to be conducted by Navigator Heartland Greenway LLC, filed on June 2, 2022, by the Winnebago Tribe of Nebraska, is denied.

## UTILITIES BOARD

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Richard Lozier Date: 2022.11.17  
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### ATTEST:

Louis Vander Streek  
Louis Vander Streek  
2022.11.18 08:48:26  
-06'00'

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Josh Byrnes Date: 2022.11.17  
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Dated at Des Moines, Iowa, this 18th day of November, 2022.