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**PUBLIC**

DIRECT TESTIMONY

OF

MARK MAPLE

ENERGY ENGINEERING PROGRAM  
SAFETY & RELIABILITY DIVISION  
ILLINOIS COMMERCE COMMISSION

Application pursuant to the Carbon Dioxide Transportation and Sequestration Act 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

NAVIGATOR HEARTLAND GREENWAY LLC

DOCKET NO. 23-0161

JUNE 15, 2023

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

2 A. My name is Mark Maple and my business address is Illinois Commerce  
3 Commission, 527 East Capitol Avenue, Springfield, Illinois 62701.

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

5 A. I am employed by the Illinois Commerce Commission (“Commission”) as a Senior  
6 Gas Engineer in the Energy Engineering Program of the Safety & Reliability  
7 Division.

8 **Q. Please state your educational background.**

9 A. I hold a Bachelor of Science degree in Mechanical Engineering and a minor in  
10 Mathematics from Southern Illinois University - Carbondale. I also received a  
11 Master’s degree in Business Administration from the University of Illinois at  
12 Springfield. Finally, I am a registered Professional Engineer Intern in the State of  
13 Illinois.

14 **Q. What are your duties and responsibilities as a Senior Gas Engineer in the  
15 Energy Engineering Program?**

16 A. My primary responsibilities and duties are in the performance of studies and  
17 analyses dealing with the day-to-day, and long-term, operations and planning of

18 the gas utilities serving Illinois. For example, I review purchased gas adjustment  
19 clause reconciliations, rate base additions, levels of natural gas used for working  
20 capital, and utilities' applications for Certificates of Public Convenience and  
21 Necessity. I have also testified in multiple pipeline cases involving eminent  
22 domain.

23 **Q. What is the purpose of this proceeding?**

24 A. On February 24, 2023, Navigator Heartland Greenway LLC (“NHG” or the  
25 “Company”) filed an Application requesting the Commission issue to it a certificate  
26 of authority pursuant to the Carbon Dioxide Transportation and Sequestration Act  
27 (“CO<sub>2</sub> Act”) (220 ILCS 75/1 *et seq.*) to construct, install, operate, and maintain the  
28 Illinois portions of the Heartland Greenway pipeline system (“HGPS”) and related  
29 facilities. Additionally, NHG is seeking an order authorizing it to take and acquire  
30 easements and interests in private property in the manner provided for by the law  
31 of eminent domain, as provided in Section 20(i) of the CO<sub>2</sub> Act.

32 **Q. What is your role in this proceeding?**

33 A. My role is to determine whether NHG meets the requirements under the CO<sub>2</sub> Act  
34 to obtain a certificate of authority from the Commission to construct and operate a  
35 carbon dioxide pipeline. I will also determine whether NHG meets the

36 requirements to obtain authority to exercise eminent domain to acquire easements  
37 for the HGPS project (“Project”), as provided in Section 20(i) of the CO<sub>2</sub> Act.

38 **Q. Have you determined whether NHG meets the statutory requirements for the**  
39 **issuance of a certificate of authority by the Commission?**

40 A. I have determined that NHG does not meet the requirements for the issuance of a  
41 certificate of authority, for reasons that I will discuss below. It is my  
42 recommendation that the Commission deny NHG’s request for a certificate of  
43 authority to construct and operate a carbon dioxide pipeline.

44 **Q. Do you have any exhibits or attachments to your testimony?**

45 A. Yes. I have included the following attachments to my testimony:

46 Attachment 1 NHG Response to Staff data request (“DR”) MEM 1.02,  
47 Attachment 3, June 2023 Update

48 Attachment 2 NHG Response to Citizen and County Intervenors DR  
49 CCI 2.15

50 Attachment 3 NHG Response to Staff DR MEM 1.05, Attachment 5,  
51 June 2023 Update

52 Attachment 4 NHG Response to Staff DR MEM 1.07, May 1, 2023  
53 Supplement (PUBLIC and CONFIDENTIAL)

54 Attachment 5 NHG Response to Staff DR MEM 1.06, Attachment 1

55 **Q. What findings must the Commission make to approve a request for a**  
56 **certificate of authority for a carbon dioxide pipeline?**

57 A. Section 20(b) of the CO<sub>2</sub> Act states:

58 (b) The Commission, after a hearing, may grant an application for a certificate of  
59 authority authorizing the construction and operation of a carbon dioxide pipeline if  
60 it makes a specific written finding as to each of the following:

- 61 1) [T]he application was properly filed;
- 62 2) [T]he applicant is fit, willing, and able to construct and operate the  
63 pipeline in compliance with this Act and with Commission regulations  
64 and orders of the Commission or any applicable federal agencies;
- 65 3) [T]he applicant has entered into an agreement with a clean coal  
66 facility, a clean coal SNG [Substitute Natural Gas] facility, or any  
67 other source that will result in the reduction of carbon dioxide  
68 emissions from that source;
- 69 4) [T]he applicant has filed with the Pipeline and Hazardous Materials  
70 Safety Administration of the U.S. Department of Transportation all  
71 forms required by that agency in advance of constructing a carbon  
72 dioxide pipeline;
- 73 5) [T]he applicant has filed with the U.S. Army Corps of Engineers all  
74 applications for permits required by that agency in advance of  
75 constructing a carbon dioxide pipeline;
- 76 6) [T]he applicant has entered into an agreement with the Illinois  
77 Department of Agriculture that governs the mitigation of agricultural  
78 impacts associated with the construction of the proposed pipeline;
- 79 7) [T]he applicant possesses the financial, managerial, legal, and  
80 technical qualifications necessary to construct and operate the  
81 proposed carbon dioxide pipeline; and
- 82 8) [T]he proposed pipeline is consistent with the public interest, public  
83 benefit, and legislative purpose as set forth in this Act [ . . . ]

84 220 ILCS 75/20(b)(1)-(8).

85 **Q. Does the CO<sub>2</sub> Act require the Commission to consider any other evidence**  
86 **before approving an application for a certificate of authority?**

87 **A. Yes.** Section 20(b)(8) of the CO<sub>2</sub> Act also requires the Commission to consider  
88 the following:

89 (A) [A]ny evidence of the effect of the pipeline upon the economy,  
90 infrastructure, and public safety presented by local governmental  
91 units that will be affected by the proposed pipeline route;

92 (B) [A]ny evidence of the effect of the pipeline upon property values  
93 presented by property owners who will be affected by the proposed  
94 pipeline or facility, provided that the Commission need not hear  
95 evidence as to the actual valuation of property such as that as would  
96 be presented to and determined by the courts under the Eminent  
97 Domain Act;

98 (C) [A]ny evidence presented by the Department of Commerce and  
99 Economic Opportunity regarding the current and future local, State-  
100 wide, or regional economic effect, direct or indirect, of the proposed  
101 pipeline or facility including, but not limited to, ability of the State to  
102 attract economic growth, meet future energy requirements, and  
103 ensure compliance with environmental requirements and goals;

104 (D) [A]ny evidence addressing the factors described in items (1) through  
105 (8) of this subsection (b) or other relevant factors that is presented  
106 by any other State agency, the applicant, a party, or other entity that  
107 participates in the proceeding, including evidence presented by the  
108 Commission's staff; and

109 (E) [A]ny evidence presented by any State or federal governmental  
110 entity as to how the proposed pipeline will affect the security,  
111 stability, and reliability of energy.

112 220 ILCS 75/20(b)(8)(A)-(E).

113 **Q. Are there any other provisions of the CO<sub>2</sub> Act that are relevant to your**  
114 **testimony?**

115 A. Yes. Section 20(g) of the CO<sub>2</sub> Act provides as follows:

116 A final order of the Commission granting a certificate of authority  
117 pursuant to this Act shall be conditioned upon the applicant obtaining  
118 all required permits or approvals from the Pipeline and Hazardous  
119 Materials Safety Administration of the U.S. Department of  
120 Transportation, U.S. Army Corps of Engineers, and Illinois  
121 Department of Agriculture, in addition to all other permits and  
122 approvals necessary for the construction and operation of the  
123 pipeline prior to the start of any construction. The final order must  
124 specifically prohibit the start of any construction until all such permits  
125 and approvals have been obtained.

126 220 ILCS 75/20(g).

127 Further, Section 20(i) of the CO<sub>2</sub> Act provides as follows:

128 (i) A certificate of authority to construct and operate a carbon dioxide  
129 pipeline issued by the Commission shall contain and include all of  
130 the following:

131 (1) a grant of authority to construct and operate a carbon dioxide  
132 pipeline as requested in the application, subject to the laws of this  
133 State; and

134 (2) a limited grant of authority to take and acquire an easement  
135 in any property or interest in property for the construction,  
136 maintenance, or operation of a carbon dioxide pipeline in the manner  
137 provided for the exercise of the power of eminent domain under the  
138 Eminent Domain Act. The limited grant of authority shall be restricted  
139 to, and exercised solely for, the purpose of siting, rights-of-way, and  
140 easements appurtenant, including construction and maintenance.  
141 The applicant shall not exercise this power until it has used  
142 reasonable and good faith efforts to acquire the property or  
143 easement thereto. The applicant may thereafter use this power when  
144 the applicant determines that the easement is necessary to avoid  
145 unreasonable delay or economic hardship to the progress of  
146 activities carried out pursuant to the certificate of authority.

147 220 ILCS 75/20(i).

148 **Q. Why is Section 20(g) of the CO<sub>2</sub> Act relevant to your testimony?**



149 A. As I detail below, there are certain forms, permits, or permissions that, for various  
150 reasons, NHG has not obtained prior to the filing of my direct testimony. However,  
151 the Commission's Final Order must be conditioned upon NHG obtaining these  
152 forms, permits, or permissions before starting any construction on its proposed  
153 pipeline. Therefore, in my non-legal opinion, NHG's failure to obtain certain forms,  
154 permits, or permissions at this point in time does not, on its own, disqualify it from  
155 obtaining a certificate of authority from the Commission.

156 **Q. Why is Section 20(i) of the CO<sub>2</sub> Act relevant to your testimony?**

157 A. As I detail below, NHG's low rate of easement acquisition for the proposed pipeline  
158 relates to NHG's efforts to negotiate in good faith with landowners and further  
159 displays the unpopularity and safety concerns of the public associated with the  
160 proposed pipeline, and ultimately supports my recommendation that NHG's  
161 Application be denied.

162 **Properly Filed**

163 **Q. Please explain the notice requirements that NHG must adhere to pursuant to**  
164 **Section 20(e) of the CO<sub>2</sub> Act.**

165 **A.** Section 20(e) of the CO<sub>2</sub> Act details the landowner notice requirements for  
166 applications for a certificate of authority for carbon dioxide pipelines. Specifically,  
167 Section 20(e) states that "notice of an application for a certificate of authority is

168 provided within 30 days after filing to the landowners along a proposed project  
169 route, or to the potentially affected landowners within a proposed project route  
170 width, using the notification procedures set forth in the Commission's rules." 220  
171 ILCS 75/20(e).

172 **Q. Has NHG complied with the requisite landowner notice requirements as**  
173 **detailed in Section 20(e)? Please explain.**

174 A. No. NHG initially filed its Application on February 24, 2023. Over a month later,  
175 on March 30, 2023, NHG filed an Errata and a Revised Exhibit F to its Application.  
176 Exhibit F is the list of landowners within the notification corridor of the Project  
177 ("Landowner List"). In its errata letter, NHG stated that "due to manual errors in  
178 compiling the Landowner List, some of the addresses provided on Exhibit F were  
179 incorrect." (NHG Errata, 1 (emphasis added).) NHG counsel stated at the first  
180 pre-hearing conference in this docket that "approximately 130 mailings [had]  
181 incorrect addresses," but that NHG had "not yet been able to compile a list of  
182 landowners with incorrect addresses . . . ." (Tr. 21-22, Apr. 4, 2023.) However,  
183 the ALJs stated that the Commission Clerk's office estimated that approximately  
184 300-400 landowners were affected by errors, resulting in significant time and cost  
185 to the Commission to re-send the notices. Id. at 23-24.

186 Noting the requirement of Section 20(e) ensuring that notice of the  
187 Application is provided within 30 days of filing, the ALJs ruled that the Application

188 was not complete until the errata was filed on March 30, 2023. Id. at 36.  
189 Therefore, the ALJs ruled that the 11-month statutory clock in this docket started  
190 on March 30, 2023, rather than February 24, 2023, when the Application was  
191 originally filed. Id.

192 While the ALJs deemed the Application as “complete,” to my knowledge, NHG has  
193 not provided to the parties an updated and accurate number of how many  
194 landowners on the initial Landowner List included incorrect data nor a comparison  
195 to the revised Landowner List to ensure that all landowners received proper notice  
196 under Section 20(e).

197 **Q. In your opinion, has NHG properly filed its Application for a certificate of**  
198 **authority to construct and operate a carbon dioxide pipeline pursuant to 220**  
199 **ILCS 75/20?**

200 A. While I am not an attorney, I understand that Section 20(b)(1) provides the  
201 discretion to the Commission to grant an application if it makes a specific written  
202 finding that the application was properly filed, and in turn, the Commission can  
203 deny an improperly filed application in its Final Order. Due to NHG’s extensive  
204 errors in the Landowner List, and other issues with its Application as detailed  
205 herein, it is my opinion that NHG’s Application was not properly filed. Therefore, I  
206 recommend the Commission deny the Application and find that the Application was  
207 not properly filed. Staff counsel will address this issue further in briefs.

208 **Fit, Willing, and Able**

209 **Q. Has NHG demonstrated that it is willing to pursue the Project pursuant to**  
210 **220 ILCS 75/20(b)(2)? If yes, please explain how.**

211 A. Yes. NHG has filed its Application for a certificate with the Commission, and it is  
212 also pursuing permits and applications with numerous agencies and organizations.  
213 (NHG Ex. 4.4.) NHG has also held multiple public meetings, both in-person and  
214 online, demonstrating its willingness to construct the pipeline. (NHG Ex. 2.0, 3.)

215 **Q. Has NHG demonstrated that it is technically fit and able to construct the**  
216 **Project pursuant to 220 ILCS 75/20(b)(2)?**

217 A. Yes. However, as I further explain below, I am concerned that the current  
218 construction guidelines for CO<sub>2</sub> pipelines do not adequately address public safety.

219 **Q. How has NHG demonstrated that it is technically fit and able to construct**  
220 **and operate a carbon dioxide pipeline?**

221 A. The Company has stated that “NHG and its affiliated entities have not previously  
222 constructed any CO<sub>2</sub> pipelines.” (Attach. 2.) However, NHG has stated in  
223 testimony that the Company’s management team holds experience in other  
224 pipeline projects. In his direct testimony, NHG witness David Giles explained that  
225 the management team overseeing the Project has over 200 years of combined

226 experience, including technical expertise across pipelines transporting multiple  
227 commodities, and with a strong safety track record. (NHG Ex. 1.0, 13.) He also  
228 states that the management team has acquired or constructed, and safely  
229 operated, approximately 1,300 miles of pipeline and associated infrastructure. Id.  
230 at 15. Some members of the management team developed the approximately  
231 670-mile Big Spring Gateway system, which included pipeline gathering, pipeline  
232 transmission, as well as storage and trucking capabilities. Id. Management team  
233 members also managed the purchase of the approximately 260-mile Glass  
234 Mountain Pipeline and expanded the system by adding 450 miles of pipeline  
235 gathering, pipeline transmission and storage capabilities. Id. at 15-16.

236 Additionally, NHG witness Stephen Lee explained in his direct testimony that  
237 experienced companies have been or will be hired to help design the pipeline.  
238 DNV GL USA and Integrity Solutions Ltd. have been retained to assist with the  
239 safety and design of the pipeline. (NHG Ex. 6.0, 20.) LJA Engineering Inc. has  
240 been retained to perform detailed engineering design for the project. Id. Trimeric  
241 Corporation has also been retained to help finalize the overall engineering related  
242 to carbon dioxide capture facilities and to provide additional quality and technical  
243 reviews. Id. Finally, Terracon Consultants, Inc. has been retained to complete a  
244 Geohazard Assessment Study for the pipeline route. Id. Mr. Lee also stated that  
245 when the Company evaluates potential construction firms, it will review factors  
246 such as the contractors' experience, previous projects in the region, ability to work

247 in the respective region, labor and equipment resources, financial strength, safety  
248 record, and outstanding litigation. Id. at 22.

249 **Q. Based on the information you reviewed, is it your opinion that NHG is fit,**  
250 **willing, and able to construct and operate the carbon dioxide pipeline?**

251 A. Yes, however, it is my opinion that the current construction guidelines for CO<sub>2</sub>  
252 pipelines do not adequately address public safety.

253 **Agreements with Carbon Dioxide Producers**

254 **Q. Has NHG entered into any agreements with any sources of carbon dioxide**  
255 **that will result in the reduction of carbon dioxide emissions from those**  
256 **sources pursuant to 220 ILCS 75/20(b)(3)?**

257 A. Yes. NHG witness Laura McGlothlin stated in her direct testimony that NHG and  
258 its affiliated companies have entered into long-term contracts or letters of intent for  
259 transportation on the HGPS with five counterparties covering twenty-one (21)  
260 carbon dioxide-emitting sources to be served in the first phase of HGPS's  
261 operations. (NHG Ex. 3.0, 3.) Twenty (20) of the sources are ethanol production  
262 facilities and one is a fertilizer production facility. Id. Twenty (20) of the twenty-  
263 one (21) facilities are located outside of Illinois. Id. at 5; Application, 11. NHG  
264 anticipates transporting all of the carbon dioxide emissions from the twenty-one  
265 (21) facilities, totaling approximately 6.6 million metric tons ("MMT") per year, on

266 the HGPS, which has an initial capacity of 10 MMT per year. Id. Additionally, NHG  
267 states that it has an agreement covering an additional ten (10) facilities that could  
268 be served in future phases of HGPS's operations. Id. at 3.

269 **Pipeline and Hazardous Materials Safety Administration**

270 **Q. Has NHG filed with the Pipeline and Hazardous Materials Safety**  
271 **Administration (“PHMSA”) of the U.S. Department of Transportation all**  
272 **forms required in advance of constructing a carbon dioxide pipeline**  
273 **pursuant to 220 ILCS 75/20(b)(4)?**

274 **A.** Yes. According to NHG's June update to Staff DR MEM 1.02 (Attach. 1), NHG  
275 received its Operator Identification Number in November 2021, and also updated  
276 its Notification Type F in February 2023.

277 **U.S. Army Corps of Engineers**

278 **Q. Has NHG filed with the U.S. Army Corps of Engineers all applications for**  
279 **permits required in advance of constructing a carbon dioxide pipeline**  
280 **pursuant to 220 ILCS 75/20(b)(5)?**

281 **A.** Yes, according to NHG's June update to Staff DR MEM 1.02. (Attach. 1.)

282 **Q. Has NHG obtained all applications and permits from the U.S. Army Corps of**  
283 **Engineers required in advance of constructing a carbon dioxide pipeline**  
284 **pursuant to 220 ILCS 75/20(b)(5)?**

285 A. No. According to NHG's June update to Staff DR MEM 1.02, it expects to obtain  
286 one permit in the last quarter of 2023 and the other permit in the first quarter of  
287 2024. (Attach. 1.)

288 **Q. Is NHG's lack of permits from the U.S. Army Corps of Engineers a reason to**  
289 **deny its requested certificate of authority?**

290 A. No.

291 **Q. What is the basis for your opinion that NHG's lack of permits from the U.S.**  
292 **Army Corps of Engineers does not preclude it from receiving a certificate of**  
293 **authority from the Commission?**

294 A. In my experience, companies are often unable to file for some permits until they  
295 have completed certain tasks such as surveying the land and choosing a final route  
296 for the pipeline. I am advised by counsel that, by statute, if the Commission were  
297 to grant a certificate of authority to NHG, the Commission must condition its Final  
298 Order, in part, on NHG receiving the necessary U.S. Army Corps of Engineers'  
299 permits prior to starting construction on the pipeline. See 220 ILCS 75/20(g).



300 **Illinois Department of Agriculture**

301 **Q. Has NHG entered into an agreement with the Illinois Department of**  
302 **Agriculture (“IDOA”) that governs the mitigation of agricultural impacts**  
303 **associated with the construction of the pipeline pursuant to 220 ILCS**  
304 **75/20(b)(6)?**

305 **A. Yes. NHG filed the agreement as NHG Exhibit 4.5 on April 7, 2023.**

306 **Financial, Managerial, Legal, and Technical Qualifications**

307 **Q. Did you review whether NHG has the required financial, managerial, legal,**  
308 **and technical qualifications to construct and operate a carbon dioxide**  
309 **pipeline pursuant to 220 ILCS 75/20(b)(7)?**

310 **A. I have reviewed the Company’s managerial and technical qualifications. However,**  
311 **I will not address the Company’s financial qualifications as Staff witness Janis**  
312 **Freetly will address this issue in Staff Exhibit 2.0. I will also not directly address**  
313 **the Company’s legal qualifications but will provide a summary of what NHG has**  
314 **demonstrated in this area so that the Commission will have the necessary**  
315 **information to form an opinion on the matter.**

316 **Q. How has NHG demonstrated that it has the managerial and technical**  
317 **qualifications to construct and operate a carbon dioxide pipeline?**

318 A. Although the Company has not previously constructed a CO<sub>2</sub> pipeline (Attach. 2),  
319 as I mentioned above, NHG witness David Giles explained that the management  
320 team overseeing the Project has over 200 years of combined experience, including  
321 technical expertise across pipelines transporting multiple commodities, and with a  
322 strong safety track record. (NHG Ex. 1.0, 13.) He also stated that the management  
323 team has acquired or constructed, and safely operated, approximately 1,300 miles  
324 of pipeline and associated infrastructure. Id. Some members of the management  
325 team also developed the approximately 670-mile Big Springs Gateway system,  
326 which included gathering and transmission pipelines as well as storage and  
327 trucking capabilities. Management team members also managed the purchase of  
328 the approximately 260-mile Glass Mountain Pipeline and expanded the system by  
329 adding 450 miles of pipeline gathering, pipeline transmission and storage  
330 capabilities. Id. at 15-16. Mr. Giles included a short work history of fourteen  
331 management team members, which further demonstrates their qualifications and  
332 experience. Id. at 14-15. Additionally, five companies have been or will be hired  
333 to help design the pipeline. NHG witness Stephen Lee's testimony lists their roles  
334 in the design process, along with their credentials. (NHG Ex. 6.0, 20-21.)

335 Finally, NHG witness Stephen Lee stated that when the Company evaluates  
336 potential construction firms, it will review factors such as the contractors'  
337 experience, previous projects in the region, ability to work in the respective region,  
338 labor and equipment resources, financial strength, safety record, and outstanding

339 litigation. Id. at 22. NHG has also signed a Letter of Intent with four labor unions  
340 for the construction and installation of the pipeline in Illinois. Mr. Lee states that  
341 NHG is committed to using a highly qualified and experienced workforce on the  
342 Project. Id. at 26.

343 **Q. Are you providing an opinion regarding whether NHG has the required legal**  
344 **qualifications to construct and operate a carbon dioxide pipeline?**

345 A. No. However, below I summarize what NHG has demonstrated in that area so  
346 that the Commission will have the necessary information to form an opinion on the  
347 matter.

348 **Q. Are you aware of any information that may relate to NHG's legal**  
349 **qualifications?**

350 A. NHG's Application details that its General Counsel has more than 15 years of  
351 experience in the pipeline and infrastructure industries. (Application, 27.) Further,  
352 NHG has also retained experienced outside counsel to assist with federal and state  
353 regulatory, environmental, and other permitting, and real estate matters. Id.  
354 NHG's response to Staff DR MEM 1.02 provides a listing of all federal, state, and  
355 local permits and approvals that the Company is required to obtain in order to  
356 construct its proposed pipeline. (Attach. 1.)

357 **Q. Has NHG demonstrated that it is financially fit to construct and operate the**  
358 **pipeline pursuant to 220 ILCS 75/20(b)(7)?**

359 A. Staff witness Janis Freetly will address the financial issues in this proceeding in  
360 Staff Exhibit 2.0. However, it is my understanding that she has not identified any  
361 issues with NHG's financial fitness to construct and operate the pipeline.

362 **Q. Based on the information you reviewed, do you believe NHG possesses the**  
363 **managerial and technical qualifications necessary to construct and operate**  
364 **the carbon dioxide pipeline?**

365 A. Yes.

366 **Public Interest, Public Benefit, and Legislative Purpose**

367 **Q. What does the CO<sub>2</sub> Act provide with respect to legislative purpose?**

368 A. Section 5 of the CO<sub>2</sub> Act states the legislative purpose of the CO<sub>2</sub> Act:

369 Pipeline transportation of carbon dioxide for sequestration,  
370 enhanced oil recovery, and other purposes is declared to be a public  
371 use and service, in the public interest, and a benefit to the welfare of  
372 Illinois and the people of Illinois because pipeline transportation is  
373 necessary for sequestration, enhanced oil recovery, or other carbon  
374 management purposes and thus is an essential component to  
375 compliance with required or voluntary plans to reduce carbon dioxide  
376 emissions from "clean coal" facilities and other sources. Carbon  
377 dioxide pipelines are critical to the promotion and use of Illinois coal  
378 and also advance economic development, environmental protection,  
379 and energy security in the State.

380 220 ILCS 75/5 (emphasis added).

381 **Q. Please explain Section 20(b)(8) of the CO<sub>2</sub> Act.**

382 A. Section 20(b)(8) states that the Commission must make a specific finding that “the  
383 proposed pipeline is consistent with the public interest, public benefit, and  
384 legislative purpose as set forth in this Act.” 220 ILCS 75/20(b)(8). The  
385 Commission shall also consider additional evidence as detailed in Section  
386 20(b)(8)(A)-(E). Section 20(b)(8)(D) also specifically allows for the Commission  
387 Staff to present evidence on any “other relevant factors”. As part of my review, I  
388 analyzed the proposed route of the pipeline as an additional relevant factor.

389 **Q. In your opinion, does the proposed pipeline meet the legislative purpose**  
390 **pursuant to 220 ILCS 75/20(b)(8)?**

391 A. No.

392 **Q. Please explain why, in your opinion, the proposed pipeline does not meet**  
393 **the legislative purpose pursuant to 220 ILCS 75/20(b)(8).**

394 A. While I am not an attorney, Section 20(b)(8) requires that the proposed pipeline be  
395 consistent with the public interest, public benefit, and legislative purpose as set  
396 forth in Section 5; specifically, the legislative purpose as defined in Section 5 states  
397 that the pipeline transportation of carbon dioxide for sequestration, among others,

398 is declared to be a public use and service and in the public interest, and a benefit  
399 to the welfare of Illinois and the people of Illinois because pipeline transportation  
400 is necessary for sequestration. 220 ILCS 75/5 (emphasis added).

401 Part of my route analysis included reviewing the end point of the pipeline. The  
402 Company currently does not have a sequestration facility in place; thus, the end  
403 point of the pipeline remains unknown. Without a sequestration facility in place  
404 and the end point being uncertain, the entire route remains in flux, and  
405 consequently, in my opinion, it is not a benefit to the citizens of Illinois nor in the  
406 public interest. As noted in Section 5, pipeline transportation of CO<sub>2</sub> is in the public  
407 interest because the pipeline is providing the transportation necessary for  
408 sequestration. However, if there is no sequestration, in my non-legal opinion, the  
409 result is that the transportation is not in the public interest, and therefore, it is not  
410 consistent with the legislative purpose nor does it satisfy Section 20(b)(8).

411 Further, Section 5 of the CO<sub>2</sub> Act declares that carbon dioxide pipelines are in the  
412 public interest of Illinois citizens, but also states that “[c]arbon dioxide pipelines are  
413 critical to the promotion and use of Illinois coal and also advance economic  
414 development, environmental protection, and energy security in the State.”  
415 (emphasis added.) However, NHG seeks to transport CO<sub>2</sub> from primarily ethanol  
416 processing facilities from several Midwest states, and only one facility located in  
417 Illinois. None of those facilities are coal or SNG facilities. (NHG Ex 3.0, 3  
418 (emphasis added).) Although I am not an attorney, in my opinion, NHG’s proposed

419 pipeline does not match the legislative purpose of the CO<sub>2</sub> Act, which sought to  
420 promote and use Illinois coal. The only other Commission application filed, and  
421 ultimately granted, pursuant to the CO<sub>2</sub> Act that I am aware of is Docket No. 13-  
422 0252. In contrast to the present Application which seeks a 1,350-mile pipeline  
423 collecting CO<sub>2</sub> from twenty facilities outside of Illinois and only one facility in Illinois,  
424 none of which are coal or SNG facilities, the application filed in ICC Docket No. 13-  
425 0252 sought a certificate for a 28-mile pipeline to sequester carbon in Illinois from  
426 an Illinois coal plant. FutureGen Industrial Alliance, Inc., ICC Final Order, Docket  
427 No. 13-0252, 1 (Feb. 20, 2014) (emphasis added). It is my non-legal opinion that  
428 the “other sources” other than Illinois coal or SNG plants referenced by the CO<sub>2</sub>  
429 Act does not appear to align with the primary purpose of the CO<sub>2</sub> Act. Staff counsel  
430 will address this issue further in briefs.

431 **Q. How did NHG select its proposed route?**

432 A. In direct testimony, NHG witness Monica Howard explained that the proposed  
433 route was initially developed using a geographic information system computer  
434 program known as Pivvot. (NHG Ex. 4.0, 6.) NHG obtained numerous data sets  
435 for categories such as existing infrastructure, environment, land use, cultural sites,  
436 and other pertinent categories. Id. at 6-7. After NHG gives different weight to each  
437 characteristic in the data sets, Pivvot then provides a baseline pipeline route  
438 between two points by evaluating those data sets, attempting to minimize  
439 undesirable characteristics in the route. Id. at 8. NHG established a corridor along

440 this route and was able to gather more information along the corridor through  
441 flyovers, meetings with landowners and local officials, surveys, and other means.  
442 Id. NHG was then able to perform, and will continue to perform, micro-routing  
443 adjustments to finetune the route. Id. at 8.

444 **Q. What percentage of the total necessary easements has NHG acquired to**  
445 **date?**

446 A. According to the June update of its response to Staff DR MEM 1.05, NHG has  
447 executed 148 easements or options out of a total of 1104 easements needed, or  
448 13.4%. (Attach. 3.)

449 **Q. Is there a minimum percentage of easements that must be obtained before**  
450 **an applicant can obtain the authority to exercise eminent domain?**

451 A. No. I am not aware of any explicit requirement for an applicant to obtain a certain  
452 percentage of land rights through negotiation.

453 **Q. Do you routinely see the percentage of easements obtained around 13% for**  
454 **other pipeline projects?**

455 A. No. I cannot recall another pipeline construction docket involving eminent domain  
456 where the percentage of easements obtained was anywhere near this low at this  
457 point in the negotiation process. Considering that NHG filed its first application for



458 a Certificate of Authority in July 2022, the Company has had the better part of a  
459 year to negotiate easements with landowners. The current percentage, 13.4%, is  
460 an extraordinarily low success rate given the time that has elapsed. In my opinion,  
461 this calls into question NHG's negotiation processes and is a strong indication of  
462 the unpopularity of the project and the safety concerns held by the Illinois residents  
463 living along the route.

464 **Q. In your opinion, should eminent domain be used to obtain the majority of**  
465 **easements along a pipeline route?**

466 A. No. Typically, in pipeline construction dockets, the applicant can acquire the  
467 majority of easements through negotiations. Eminent domain is used as a last  
468 resort to obtain a small percentage of easements from any holdout landowners  
469 that refuse to negotiate. This prevents a small minority of landowners from  
470 obstructing a large project to which most landowners along the route have given  
471 consent. It is my opinion that is how eminent domain should be evaluated and  
472 utilized. Using eminent domain to obtain an overwhelming majority of the land for  
473 a project demonstrates it is not in the public interest or public benefit. The inability  
474 of NHG to secure easements in this docket calls into question the negotiation  
475 processes as well as the safety and benefits of the pipeline itself. I recommend  
476 the Commission consider the overwhelming landowner sentiment when evaluating  
477 NHG's application and whether NHG "has used reasonable and good faith efforts  
478 to acquire the property or easement thereto." 220 ILCS 75/20(i).

479 Further, the Public Comments section available on the Commission's eDocket  
480 system has over 340 posted public comments as of the date of this testimony and  
481 is demonstrative of the landowner sentiment in this docket. The majority of the  
482 comments on eDocket are overwhelmingly negative and detail landowner  
483 concerns. There are also several public comments available on PHMSA's website,  
484 which further demonstrates the concerns with the safety of the pipeline. PHMSA,  
485 *Meetings: Carbon Dioxide Public Safety*, [https://www.regulations.gov/document/  
486 PHMSA-2023-0013-0001/comment](https://www.regulations.gov/document/PHMSA-2023-0013-0001/comment).

487 I also note that NHG has not yet provided full information responsive to a data  
488 request on this issue despite the data request's due date of April 3, 2023. NHG  
489 has stated that it will not be able to provide full information until mid-July, well after  
490 the date of my pre-filed direct testimony. Therefore, due to the delay of DR  
491 responses from the Company, I reserve the right to supplement my testimony  
492 regarding the use of eminent domain and landowner negotiation in rebuttal  
493 testimony.

494 **Q. Did you conduct a route review of NHG's proposed route in this proceeding?**

495 A. Yes.

496 **Q. What did you conclude from your route review?**

497 A. Based on my review, I found no reason to object to NHG's general methodology  
498 of selecting the proposed route. The proposed route appears to be mostly located  
499 away from population centers, avoidable waterways, and major roadways. A  
500 considerable portion of the route allows the Project to be collocated with other  
501 existing underground pipelines. Where necessary, it appears that NHG has  
502 deviated from its original route in order to avoid sensitive environmental areas,  
503 rural homesteads, and other obstacles or areas of concern. I am not aware of any  
504 route that is preferable to NHG's proposed route. However, I reserve the right to  
505 revise my opinion if new or additional information suggests a more reasonable  
506 route exists.

507 **Q. Do you consider public safety to be a relevant topic pertaining to public**  
508 **interest?**

509 A. Yes. It is always in the public's interest for any construction project to be carried  
510 out in a manner that minimizes harm to people and property. The Commission  
511 has an obligation to weigh the risks to the citizens of Illinois when approving a  
512 project of this magnitude. Specifically, the CO<sub>2</sub> Act states that the "Commission  
513 shall consider the following: (A) any evidence of the effect of the pipeline upon the  
514 economy, infrastructure and public safety... ." 220 ILCS 75/20(b)(8)(A) (emphasis  
515 added).

516 **Q. Does PHMSA have safety oversight of CO<sub>2</sub> pipelines?**

517 A. While I am not an attorney, it is my understanding that the Commission can, and  
518 should, consider public safety (see 220 ILCS 75/20(b)(8)(A)); however, the safety  
519 oversight of the CO<sub>2</sub> pipeline belongs to PHMSA:

520 Safety. Inasmuch as the regulation of the construction,  
521 maintenance, and operation of pipelines transporting carbon  
522 dioxide, whether interstate or intrastate, falls within the  
523 statutory and regulatory jurisdiction of the Pipeline and  
524 Hazardous Material Safety Administration of the federal  
525 Department of Transportation, each carbon dioxide pipeline  
526 owner shall construct, maintain, and operate all of its  
527 pipelines, related facilities, and equipment in this State in a  
528 manner that complies fully with all federal laws and  
529 regulations governing the construction, maintenance, and  
530 operation of pipelines transporting carbon dioxide, as from  
531 time to time amended, and which otherwise poses no undue  
532 risk to its employees or the public. This Section shall not be  
533 interpreted to act in derogation of any such federal laws or  
534 regulations.

535 220 ILCS 75/30.

536 **Q. Has NHG acknowledged that the Project is subject to PHMSA jurisdiction?**

537 A. Yes. NHG witness Stephen Lee discusses PHMSA's regulations that govern the  
538 design, construction, and operation of the pipeline. (NHG Ex. 6.0, 2-6.)

539 **Q. Is it your opinion that the proposed pipeline route is located at a distance**  
540 **from houses and other places that will guarantee the safety of those people**  
541 **in the event that there is an accidental release of CO<sub>2</sub> from the pipeline?**

542 A. I cannot make that determination. It does appear that Navigator’s proposed route  
543 meets or exceeds the minimum safety standards, as currently determined by  
544 PHMSA. (NHG Ex. 6.0, 4 (emphasis added).) If NHG does not meet the minimum  
545 safety standards, PHMSA has jurisdiction to investigate those violations and  
546 ensure that NHG complies with all of the applicable safety regulations. However,  
547 it is my opinion that PHMSA’s current regulations, as they pertain to carbon dioxide  
548 pipelines, are not sufficient to guarantee the public’s safety in all possible  
549 scenarios.

550 **Q. Has PHMSA acknowledged the need for stronger safety measures for carbon**  
551 **dioxide pipelines?**

552 A. Yes. On May 26, 2022, PHMSA announced its plans to conduct a rulemaking  
553 related to CO2 pipelines. In its press release, PHMSA stated that it was “taking  
554 steps to implement new measures to strengthen its safety oversight of carbon  
555 dioxide pipelines around the country and protect communities from dangerous  
556 pipeline failures.” The press release goes on to say that PHMSA is “initiating a  
557 new rulemaking to update standards for CO2 pipelines, including requirements  
558 related to emergency preparedness, and response.” The press release explains  
559 that the new measures, as well as an enforcement action, are a result of PHMSA’s  
560 investigation into the CO2 pipeline failure in Satartia, Mississippi in 2020, which  
561 resulted in local evacuations and caused many people to seek medical attention.  
562 PHMSA, *PHMSA Announces New Safety Measures to Protect Americans From*

563 *Carbon Dioxide Pipeline Failures After Satartia, MS Leak,*  
564 [https://www.phmsa.dot.gov/news/phmsa-announces-new-safety-measures-](https://www.phmsa.dot.gov/news/phmsa-announces-new-safety-measures-protect-americans-carbon-dioxide-pipeline-failures)  
565 [protect-americans-carbon-dioxide-pipeline-failures.](https://www.phmsa.dot.gov/news/phmsa-announces-new-safety-measures-protect-americans-carbon-dioxide-pipeline-failures)

566 Additionally, on May 31-June 1, 2023, PHMSA hosted a public meeting regarding  
567 the upcoming rulemaking and CO<sub>2</sub> public safety in Des Moines, Iowa. PHMSA,  
568 *Carbon Dioxide Public Safety*, [https://www.regulations.gov/document/PHMSA-](https://www.regulations.gov/document/PHMSA-2023-0013-0001)  
569 [2023-0013-0001](https://www.regulations.gov/document/PHMSA-2023-0013-0001) (“PHMSA Meeting.”) I intend to review the presentations and  
570 transcripts of the PHMSA Meeting when it is available, and I reserve the right to  
571 address concerns raised in the PHMSA Meeting in my rebuttal testimony.

572 **Q. Is it your opinion that the Commission should issue a certificate for a CO<sub>2</sub>**  
573 **pipeline to be built while PHMSA is undertaking a rulemaking to change the**  
574 **safety standards that would apply to any new CO<sub>2</sub> pipeline construction?**

575 A. No. Once the pipeline is built, many of its characteristics cannot be easily changed,  
576 such as location, thickness of the pipe wall, burial depth, etc. It is very possible  
577 that PHMSA will issue new rules for characteristics such as a minimum setback  
578 distance from homes and structures, that could cause NHG’s proposed pipeline to  
579 not conform with the regulations. NHG has been quoted by news media stating  
580 that “[there is] a misconception that somehow if the pipeline is built that somehow  
581 we are grandfathered-in or exempt from any new safety regulations that may come  
582 down the road . . . and that’s just not the case.” Patrick Keck, [What to Know about](#)

583 Navigator's New, Expanded CO2 Pipeline Application, State-Journal Register  
584 (Mar. 1, 2023) (quoting Elizabeth Burns-Thompson, NHG's vice president of  
585 government and public affairs.) However, it is unknown if the issuance of a new  
586 PHMSA rule for CO<sub>2</sub> pipelines would lead to costly modifications, a shutdown of  
587 the pipeline, or grandfathering in the existing, now non-complying pipeline.  
588 Additionally, if this project moves forward prior to the rulemaking by PHMSA, NHG  
589 could construct and operate a pipeline that is later found to be non-compliant with  
590 PHMSA's new rules, and therefore, could be deemed unsafe to operate. To avoid  
591 this potentially dangerous situation, I recommend that the Commission deny  
592 NHG's Application on the basis of safety concerns until such time that PHMSA  
593 completes its new rulemaking process.

594 **Q. Can you explain your reasoning behind your recommendation to the**  
595 **Commission?**

596 A. It is my opinion that denial of NHG's Application for safety reasons until PHMSA  
597 completes its new rulemaking process is both sensible and necessary, given the  
598 circumstances. PHMSA has acknowledged that its rules are outdated and  
599 inadequate. The lives and safety of Illinois citizens must come before business  
600 concerns. In fact, there is pending Illinois legislation calling for a moratorium on  
601 CO<sub>2</sub> pipeline construction pending the new rulemaking, indicating that the General  
602 Assembly may share the same safety concerns. See Safety Moratorium on

603 Carbon Dioxide Pipelines Act, H.B. 3803 (2023). Therefore, it is my opinion that  
604 the Commission should proceed cautiously.

605 **Q. Do you have any other concerns regarding safety?**

606 A. Yes. NHG is currently developing its Emergency Response Plan (“ERP”), which  
607 is “a plan that includes safety response procedures if an emergency condition  
608 occurs as a result of the operation of a pipeline.” (NHG Ex. 7.0, 4.) The ERP  
609 “provides guidance on how personnel should respond under various  
610 circumstances including step by step directions for internal and external  
611 responses, notifications, documentation, reporting, and other actions.” Id.  
612 Collaboration with local emergency response units is critical because those units  
613 must have adequate training, equipment, and personnel necessary to respond to  
614 an incident. NHG has stated that it is currently working with these units, gathering  
615 input for the ERP, and will provide training and other resources to these units. Id.  
616 at 9-14. However, the Commission will not get to see the results of these efforts,  
617 nor have the opportunity to evaluate or comment on the ERP prior to the record  
618 being closed in this docket. NHG stated that it would not be providing drafts of its  
619 ERP to local authorities and first responders until the fourth quarter of 2023. Id. at  
620 12. In sum, NHG is asking the Commission to approve its pipeline project without  
621 getting any feedback from local governmental units on the adequacy of the ERP,  
622 the amount of training offered by NHG, the amount of money that NHG will actually  
623 spend purchasing critical emergency response equipment, and other aspects of



624 its safety planning. This is despite Section 20(b)(8)(A) of the CO<sub>2</sub> Act requiring the  
625 Commission to consider the following:

626 (A) Any evidence of the effect of the pipeline upon the economy,  
627 infrastructure, and public safety presented by local governmental  
628 units that the proposed pipeline affects;

629  
630 220 ILCS 75/20(b)(8)(A) (emphasis added). Thus, while the CO<sub>2</sub> Act does not  
631 explicitly require an applicant to submit an emergency response plan at the time  
632 of its application, NHG's lack of an emergency response plan is a critical  
633 consideration, and ultimately severely curtails local governments' ability to provide  
634 evidence, and for the Commission to weigh that evidence, on the public safety of  
635 the Project.

636 **Q. Besides safety, why else do you consider the proposed route to be a**  
637 **relevant factor in this docket?**

638 A. The pipeline route is at the very center of this case. It determines which  
639 landowners are affected, and thus notified, of this certification process. The route  
640 determines what construction methods are used to install the pipe and what safety  
641 mechanisms and precautions must be engineered into the system. The route was  
642 addressed by NHG at length in both the Application (Application, 11-16) and in  
643 direct testimony (NHG Ex. 1.0, 8-10; NHG Ex. 4.0, 2-13). Additionally, route  
644 selection was discussed in Staff's testimony in NHG's prior CO<sub>2</sub> pipeline case and  
645 was the primary reason that the Company withdrew its application. Navigator

646 Heartland Greenway LLC, ICC Docket No. 22-0497, Motion to Withdraw (Jan. 20,  
647 2023). I would consider route selection to be one of the most relevant factors in  
648 this docket.

649 **Q. Where will NHG’s proposed route terminate?**

650 A. NHG witness Ms. Howard states:

651 The end point of the Trunkline of the HGPS will be a delivery point in  
652 Buckhart Township in Christian County, Illinois and the end point of  
653 the Montgomery Lateral will be a delivery point in Audubon Township  
654 in Montgomery County, Illinois. At each delivery point there will be a  
655 metering station and change of custody where the Pipeline will  
656 deliver carbon dioxide to the sequestration operator for injection into  
657 underground storage.

658  
659  
660 (NHG Ex. 4.0, 4.)

661 **Q. Who is developing the sequestration facilities at the two delivery points**  
662 **mentioned above?**

663 A. The sequestration facilities will be developed by HG Carbon Storage LLC  
664 (“HGCS”). (Application, 1.)

665 **Q. Has HGCS obtained all the necessary land rights to construct the**  
666 **sequestration facilities?**

667 A. In its May 1, 2023 supplemental response to Staff DR MEM 1.07, the Company  
668 responded that **\*\*BEGIN CONF\*\*** [REDACTED]

669 [REDACTED] \*\*END

670 CONF\*\* The response also states that \*\*BEGIN CONF\*\* [REDACTED]

671 [REDACTED]

672 [REDACTED]

673 [REDACTED]

674 [REDACTED]

675 \*\*END CONF\*\* (Attach. 4.) Therefore, it is my understanding that HGCS has  
676 obtained the necessary land rights to construct the sequestration facilities,  
677 although as I further explain below, the sequestration facility has not yet been  
678 permitted or constructed.

679 **Q. Has HGCS received every permit and approval necessary to construct the**  
680 **sequestration facilities?**

681 A. No. In its response to Staff DR MEM 1.06, the Company provided a table showing  
682 all the federal, state, and local permits and approvals necessary for the  
683 sequestration sites. There appears to be fourteen (14) such items, issued by a  
684 total of eleven (11) government agencies or organizations. At this time, it appears  
685 that HGCS has acquired, at most, two (2) of the fourteen (14) necessary approvals.  
686 In fact, some of the permits are currently not scheduled or have a schedule that  
687 stretches into 2025, which is past the statutory deadline for this docket. (Attach.  
688 5.)

689 **Q. Will HGCS eventually obtain all the necessary permits and approvals to**  
690 **construct the sequestration facilities?**

691 A. I cannot be certain that HGCS will eventually obtain all such permits and approvals.

692 **Q. Is the pipeline project viable if the sequestration sites are not permitted and**  
693 **constructed?**

694 A. No. In fact, the Company responded to Staff DR MEM 1.06 indicating as much.  
695 Specifically, the Company stated, “Responding further, the Heartland Greenway  
696 Pipeline System requires both a pipeline and a sequestration site or sites to deliver  
697 carbon dioxide to. NHG will not move forward with pipeline construction until both  
698 the pipeline and sequestration site(s) are permitted, and necessary land rights  
699 have been secured.” (Attach. 5.)

700 **Q. In your opinion, what will happen to the pipeline project if the sequestration**  
701 **site is not completed due to difficulties with acquiring permits?**

702 A. There are two likely outcomes. The first would be that NHG finds no sequestration  
703 alternatives, making the HGPS non-viable, as previously mentioned. In that  
704 scenario, the pipeline would not be constructed. Alternatively, NHG could identify  
705 an alternative sequestration site, either nearby in the Mt. Simon formation or in a  
706 different location entirely. In that scenario, the pipeline would likely need to be  
707 rerouted, perhaps only a few miles or perhaps entirely out of Illinois. If the pipeline

708 were to still pass through Illinois, the route would change and thus, the list of  
709 affected landowners would change as well. There would almost certainly be  
710 landowners affected by the re-route who were not given notice of, and who did not  
711 have the opportunity to participate in the original certification process.

712 Although I am not an attorney, it is my understanding that the Commission may  
713 only grant a certificate to build a pipeline in the place and manner that the Company  
714 has applied for. If the Company is unable to sequester the CO<sub>2</sub> in the location in  
715 which it applied for, the route would likely need to be re-routed, which in turn,  
716 impacts different land and landowners. Therefore, without securing the  
717 sequestration site, the entire route and the pipeline itself are called into question.  
718 Said another way, if the sequestration site cannot be obtained, then the pipeline is  
719 unlikely to be built, making the issues in this proceeding moot.

720 This is, in fact, exactly what happened in NHG's previous Application, in Docket  
721 No. 22-0497. NHG withdrew its Application for a Certificate of Authority when it  
722 determined it would need to make changes to the pipeline route. (Motion to  
723 Withdraw, 1, ICC Docket No. 22-0497 (Jan. 20, 2023).) It appears to me that this  
724 change was likely necessitated by HGCS's inability to develop a large enough  
725 sequestration site as originally planned, since NHG's new route has added an  
726 additional lateral which terminates at a second sequestration site. This only further  
727 demonstrates that any failure of HGCS to secure all necessary permits and

728 construct adequate sequestration facilities will likely add to additional rerouting or  
729 redesigning of the HGPS.

730 **Q. Regarding the first scenario in which the pipeline would not be constructed,**  
731 **is there potential harm in the Commission issuing a certificate of authority**  
732 **for the pipeline now with assurance from NHG that it will not build the**  
733 **pipeline if the sequestration site is not constructed?**

734 A. Yes, landowners will likely experience significant harm. Pursuing their interests  
735 not only in this docket but in any subsequent legal action will be a substantial  
736 investment in both time and money. Landowner participation in legal proceedings  
737 will impose costs and take up a significant amount of time; specifically, if a  
738 landowner chooses to participate in a proceeding, the landowner may invest a  
739 substantial amount of time attending hearings, writing testimony, conducting  
740 research, and meeting with land agents, in addition to incurring legal fees. For  
741 example, affected landowners have now been subject to two Commission  
742 proceedings regarding the proposed pipeline – the current docket and NHG’s  
743 previous Application that was subsequently withdrawn, Docket No. 22-0497.  
744 Unless it can be shown that the Project is guaranteed to be viable and constructed  
745 as planned, it is not beneficial nor in the public interest of Illinois citizens for the  
746 Commission to issue NHG a Certificate.

747 **Q. Has any other party provided information, to date, on the topics that you**  
748 **addressed as items (A) through (E) of 220 ILCS 75/20(b)(8) above?**

749 A. No. However, if a party provides information related to items (A) through (E)  
750 above, I reserve the right to modify the conclusions that I have reached in this  
751 testimony.

752 **Other Considerations**

753 **Q. Are there any other concerns you are aware of?**

754 A. Yes. There is a concern regarding an application for a Common Carrier Certificate.

755 **Q. Has the Company filed an application for a Common Carrier Certificate**  
756 **pursuant to 220 ILCS 5/15-401(a)?**

757 A. No.

758 **Q. What does the Common Carrier by Pipeline Act state regarding certification**  
759 **for a common carrier?**

760 A. Under the Common Carrier by Pipeline Act, a “common carrier by pipeline” is  
761 defined as “a person or corporation that owns, controls, operates, or manages,  
762 within this State, directly or indirectly, equipment, facilities, or other property, or a  
763 franchise, permit, license, or right, used or to be used in connection with the

764 conveyance of gas or any liquid other than water for the general public in common  
765 carriage by pipeline[.]” 220 ILCS 5/15-201 (emphasis added). A common carrier  
766 by pipeline requires a certificate to operate prior to pipeline construction (220 ILCS  
767 5/15-401(a)), which is only issued if the Commission finds that issuance of the  
768 certificate meets the requirements of public convenience and necessity. 220 ILCS  
769 5/16-401(b).

770 **Q: Is a common carrier certificate required for Navigator in this proceeding?**

771 A: I am not an attorney and therefore will not provide a legal opinion or advice;  
772 however, if the Commission determines that the Company is required to obtain a  
773 common carrier certificate, the Company’s failure to seek this certificate at this time  
774 would be a cause for concern. I am advised by counsel that a plain reading of the  
775 CO<sub>2</sub> Act does not absolve applicants from seeking other applicable and required  
776 approvals from the Commission. Staff counsel will address this issue further in  
777 briefs.

778 **Conclusion**

779 **Q. What findings have you made as a result of your review?**

780 A: I have found that NHG has met six out of the eight criteria of the CO<sub>2</sub> Act regarding  
781 the issuance of a certificate of authority. However, I have determined that NHG’s  
782 Application was not properly filed as required by 220 ILCS 75/20(b)(1). The



783 proposed pipeline is also inconsistent with the public interest, public benefit, and  
784 legislative purpose as set forth in the CO<sub>2</sub> Act, as required by Section 20(b)(8).  
785 Therefore, the Commission should deny NHG's application for a certificate of  
786 authority.

787 Specifically, the end point of the pipeline is unknown and thus, the entire route is  
788 uncertain and likewise not proven to be a benefit to the citizens of Illinois without  
789 a confirmed sequestration site. Further, NHG's pipeline is contrary to the  
790 legislative purpose of the CO<sub>2</sub> Act, which sought to promote the use of Illinois coal.  
791 Additionally, NHG's inability to provide an ERP during the pendency of the  
792 proceeding leads to public safety concerns for local municipalities and for the  
793 Commission. Without the ERP, the Commission is unable consider the evidence  
794 of public safety presented by local governmental units as required by Section  
795 20(b)(8)(A). Lastly, as acknowledged by PHMSA, the current PHMSA regulations  
796 pertaining to CO<sub>2</sub> pipelines are not adequate to address the safety and  
797 environmental threat posed by CO<sub>2</sub> pipelines. Due to safety concerns, until  
798 PHMSA implements new regulations for CO<sub>2</sub> pipelines, Navigator's application  
799 should be denied.

800 **Q. What is your recommendation to the Commission?**

801 A. I recommend that the Commission deny NHG's request for a certificate of authority  
802 for multiple reasons:

803 1. NHG's Application has not been properly filed due to errors in the Landowner  
804 List and NHG's failure to meet the required criteria of the CO<sub>2</sub> Act;

805 2. NHG does not satisfy Section 20(b)(8). The proposed Project is not a benefit  
806 to the citizens of Illinois nor in the public interest. With the end point of the route  
807 uncertain, it is impossible to determine what the route's effect on landowners  
808 will be. Specifically, the viability of the entire project is uncertain, given HGCS's  
809 failure to obtain permits to build a sequestration facility. Without a  
810 sequestration facility identified and available, the end point of the pipeline is  
811 unknown, and thus, the entire route is uncertain;

812 3. NHG's Application is inconsistent with the legislative purpose of the CO<sub>2</sub> Act as  
813 set out in Section 5; and

814 4. NHG does not satisfy Section 20(b)(8)(A). Its failure to provide an emergency  
815 response plan leaves the Commission unable to consider evidence of public  
816 safety presented by local governmental units.

817 I further recommend that due to safety concerns for Illinois citizens, the  
818 Commission should deny NHG's CO<sub>2</sub> pipeline application until PHMSA has  
819 completed its rulemaking process.

820 However, if the Commission disagrees with my recommendation and issues a  
821 certificate of authority to NHG, I recommend that the Commission impose a

822 condition in its Final Order on NHG obtaining all required permits or approvals from  
823 the U.S. Army Corps of Engineers, and all other permits and approvals necessary  
824 for the construction and operation of the pipeline prior to the start of any  
825 construction. Additionally, the Order should be conditioned on HGCS obtaining all  
826 necessary land rights and permits to construct the sequestration facilities, as  
827 planned, prior to the start of any pipeline construction.

828 **Q. Does this conclude your prepared direct testimony?**

829 A. Yes, it does.