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Iowa Utilities Board approves Dakota Access pipeline permit with landowner protections

The Board imposes terms and conditions necessary for the proposed pipeline to promote the public convenience and necessity

(Des Moines) – After 18 public informational meetings, hundreds of pages of pre-filed testimony and briefs, thousands of filed public comments, 12 days of a public hearing, over 3500 pages of transcript, 43 intervenors, close to 70 witnesses, and weeks of public deliberations, the Iowa Utilities Board made the decision to grant Dakota Access a permit for a Hazardous Liquid Pipeline in Docket No. HLP-2014-0001. The permit will be issued only after Dakota Access has complied with the additional terms and conditions set forth in the Board’s written order and construction may not commence until the permit is issued.

In consideration of all the evidence and arguments presented in this case the Board found that “subject to the terms and conditions the Board has adopted in this order, the proposed pipeline will promote the public convenience and necessity and, pursuant to Iowa Code 479B.9, a permit is granted and will be issued to Dakota Access after the company has complied with the filing requirements set forth in this order.”

In reaching its decision the Board applied a statutory balancing test, which found the public benefits of the project outweigh the private and public costs with the terms and conditions imposed by the Board. The public benefits were found to include (1) significant safety advantages of pipeline transportation of crude oil compared to the alternatives and (2) the jobs and other economic benefits associated with construction and operation of the pipeline, projected to be at least \$787 million during the construction period alone.

The Board found the issues that weighed against the project included environmental risks associated with the pipeline and the intrusion on private landowners whose property will be affected. The Board therefore determined that the addition of several terms and conditions were required to protect landowners, attend to land restoration issues, and provide assurances addressing safety and remediation of any potential incidents. The additional terms and conditions the Board placed on the permit included changes to the involuntary easements, the land mitigation plan and parent company guarantees. Further, landowners will be compensated for any and all damages they incur.

Under Iowa law, receipt of a permit includes the right of eminent domain across those parcels where Dakota Access has been unable to negotiate voluntary easements. The Board has limited Dakota Access’s power to utilize eminent domain to the minimum rights necessary for the safe construction and operation of the pipeline.

Before issuing a permit, the Board has imposed specific terms and conditions and filing requirements that Dakota Access must successfully complete regarding the financial responsibility of Dakota Access and parent companies, environmental impacts of the project and the burden to private interests, particularly landowners, along the proposed route. For example:

- Dakota Access must obtain and maintain a general liability insurance policy in the amount of at least \$25 million
- Dakota Access must demonstrate and file the unconditional and irrevocable guarantees from its parent companies for remediation of damages from a leak or spill
- Dakota Access must make modifications to easement forms on properties utilizing eminent domain to include the removal of language that would have allowed valves on any condemned parcel and the removal of language that would have allowed company access on any portion of a condemned parcel
- Dakota Access must continue to offer to purchase voluntary easements, with the same terms and conditions already offered to landowners, for the best prices that have already been offered by Dakota Access, at least until the county compensation commission meets to assess the damages for each taking
- Dakota Access must file a revised Agricultural Impact Mitigation Plan to include landowner notifications and the separation of all topsoil from affected areas
- Dakota Access must file a Winter Construction Plan
- Dakota Access must file quarterly status reports
- Dakota Access must file a statement accepting the terms and conditions the Board has determined to be just and proper for the permit

With today's Board decision any party may apply for a rehearing within 20 days and the Board must then act on the application(s) within 30 days. Upon such a request, the Board could:

- Grant a rehearing and schedule further proceedings;
- Deny a rehearing; or
- Grant a rehearing solely to allow for further consideration

Parties can also file for judicial review in district court pursuant to procedures laid out in Iowa Code 17A.

The Board intends to issue orders acknowledging receipt of documents filed as required by the terms and conditions laid out in the order. The Board will only issue the final permit upon acceptance of all required pieces. Construction cannot begin until a permit has been issued by the Board.

Due to the potential for the Board's involvement in rehearing and/or judicial review, the Board Members will not have any additional comments in relation to the order.

Today's Board order is available on the Board's web site at <https://iub.iowa.gov>. All documents in this case are found in the Board's Electronic Filing System at <https://efs.iowa.gov/efs/>.

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The Iowa Utilities Board regulates utilities to ensure that reasonably priced, reliable, environmentally responsible, and safe utility services are available to all Iowans.

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