

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: DAKOTA ACCESS, LLC	DOCKET NO. HLP-2014-0001
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**ORDER TAKING ADMINISTRATIVE NOTICE, SCHEDULING
AND SPECIFYING HEARING PROCEDURES, AND
SERVING AFFECTED LANDOWNERS AND PARTIES IN POSSESSION**

(Issued September 16, 2015)

On January 20, 2015, Dakota Access, LLC (Dakota Access), filed with the Board a petition for a hazardous liquid pipeline permit, pursuant to Iowa Code ch. 479B. The matter has been docketed as Docket No. HLP-2014-0001.

A. Taking Administrative Notice of the Staff Report

On June 8, 2015, the Board issued an “Order Setting Procedural Schedule” (Scheduling Order) which, among other things, directed that on or before September 14, 2015, Board staff would prepare and issue a report regarding the Exhibit H documents filed by Dakota Access in this matter. (Exhibit H consists of a set of maps showing the location of each property for which the right of eminent domain is sought, along with legal descriptions of the property and the desired easement, a description of the easement rights being sought, and the names and addresses of the owners of record and parties in possession of the property.) On September 14, 2015, Board staff filed that report, identified as “Staff Report on Exhibit H Eminent Domain Request Filings” (Staff Report).

Pursuant to Iowa Code § 17A.14(4), the Board will take administrative notice of the Staff Report, making it part of the evidentiary record in this matter. Dakota Access will be directed to address the questions and issues raised in the Staff Report as a part of its prepared direct testimony due on or before September 23, 2015; all other parties may address some or all of the questions and issues raised in the Staff Report as part of their prepared direct testimony to be filed pursuant to the Scheduling Order.

B. Order Setting Hearing Date and Hearing Procedures

The Scheduling Order did not set a formal hearing date. The Board's rules provide that the Exhibit H must be in final form before a hearing will be scheduled. (199 IAC 13.2(1)(h).) However, the Board identified the weekdays of November 12 through December 2, 2015, as possible hearing dates so that the parties and other interested persons could plan accordingly.

The Exhibit H is now in final form (in the sense that it is complete and in substantial compliance with the applicable filing requirements; the Board expects the exhibit will continue to be amended as Dakota Access continues to negotiate voluntary easements, for example), so the hearing can be scheduled. The hearing will commence at 9 a.m. on Thursday, November 12, 2015. That day is scheduled for public comments and preliminary matters. The Board will set up two microphones in the audience, one for those opposed to the grant of a permit and one for those supporting issuance of a permit. Those members of the public wishing to make

comments should line up appropriately and the Board will hear from alternating commenters (so long as there are people waiting at both microphones). Reasonable time limits on each comment may be imposed at the discretion of the Board. The public comments will be part of the agency record but will not automatically become part of the evidentiary record in this matter.

The evidentiary hearing will commence at 9 a.m. on Monday, November 16, 2015. The parties should arrive at the hearing room at least 30 minutes prior to the scheduled starting time. Tables and chairs will be reserved for the parties, including the front row of the audience chairs.

The following procedures shall be followed unless the Board orders otherwise. The Board understands that some parties have already filed testimony and exhibits in formats that do not exactly match some of the following procedures; however, it appears they are in substantial compliance with these requirements so there is no need to re-file those exhibits in a different format unless the Board orders otherwise in specific circumstances.

- a. The Board does not intend to receive any live direct testimony at the hearing. Instead, parties shall file all prefiled direct testimony, supporting exhibits, and other exhibits through the Board's Electronic Filing System (EFS). All documents that are filed shall be searchable. If any single exhibit or attachment exceeds 50 pages, the party shall also provide the Board with 4 printed copies of the exhibit or other document, one of which is to be delivered

to the Office of Consumer Advocate, a division of the Iowa Department of Justice. (Note: those parties who have already filed documents that are in excess of 50 pages should provide the printed copies within 7 days of the date of this order.)

b. All exhibits (including prefiled testimony) shall be marked with a permanent, alpha-numeric, party-specific designation. Each party shall assign all of its exhibit numbers in a consecutive sequence. Witness names or initials may be used; thus, an exhibit might be named "Exhibit IUB – Smith – 1." The pages of each exhibit, including prefiled testimony, shall be numbered sequentially. The prefiled testimony of each witness shall be marked as an exhibit. Each line of the testimony shall be numbered sequentially.

c. If minor corrections to prefiled testimony must be made, parties are encouraged to file those corrections prior to the hearing. If a corrected exhibit must be filed, it shall be filed as a new exhibit with a new number.

d. Each party shall provide the court reporter with one printed copy of its prefiled exhibits, including the prefiled testimony, at the time the party moves the admission of the exhibits.

e. Parties shall provide exhibits presented for the first time at hearing (i.e., new exhibits used during cross-examination and redirect) to all other parties along with 8 copies for the Board and its staff, unless otherwise directed by the Board. If the Board admits the exhibit into the evidentiary record, the moving

party shall submit an electronic copy of the exhibit into EFS within 3 working days of the end of the hearing.

- f. Persons attending the hearing are free to come and go as they wish, providing the hearing is not disturbed.
- g. Mobile phones and other electronic devices must be turned off or set to silent notification. Persons answering phone calls must do so outside of the hearing room.
- h. Food and drinks (other than water, coffee, and soft drinks in covered containers) are not permitted in the hearing room.
- i. The following statement is from the Boone County Fair Visitor Information web page: "Weapons are prohibited on the Boone County Fairgrounds; with or without a valid Iowa permit to carry unless authorized by the Fair Board as per Iowa Code. Failure to comply with this rule shall be cause for expulsion from the fairgrounds and/or being charged under the Iowa Code."
- j. In order to avoid interfering with the sight lines of everyone in the audience, no signs or placards will be permitted in the hearing room.
- k. Arguments or objections may only be made by counsel prior to a ruling. Once a ruling is made, no further discussion of the matter will be permitted.
- l. Any document which counsel wishes to show to a witness shall first be shown to all opposing counsel.

- m. Except in extraordinary circumstances, examination of witnesses shall be limited to cross and redirect, without further questioning. Succeeding cross-examiners shall not engage in repetitive cross-examination; see Iowa Code § 17A.14(1). (“Irrelevant, immaterial, or unduly repetitious evidence should be excluded.”) So as to avoid problems in this area, all counsel who intend to cross-examine a witness shall be present in the hearing room during the entire cross-examination of that witness.
- n. Friendly cross-examination, such as cross-examination of witnesses taking the same side as the cross-examiner, shall not be allowed.
- o. Counsel will be permitted to further examine a witness within the scope of any questions asked of the witness by the Board.
- p. Requests for clarification of a question may only come from the witness or the Board.
- q. The hearing will be conducted in conformance with these procedures; however, if inflexible adherence to these procedures will result in injustice, counsel may petition the Board for relief. Further, the Board reserves the right to change this schedule or these procedures at any time, based upon the then-prevailing circumstances.
- r. Any requests for special accommodations, if necessary, should be made in advance of the hearing whenever possible.

s. It is counsel's responsibility to make the Board aware of any violations of these procedures by making a timely objection. Failure to make a timely objection may be considered waiver of the violation.

t. Based upon the record to date, the Board intends to conduct the evidentiary hearing as follows: First, Dakota Access will move the admission of its prefiled evidence (unless admission has been stipulated by all the parties) and the Dakota Access witnesses will be made available for cross-examination. Next, parties supporting issuance of the permit will do the same, in an order to be established. Board staff will then be made available for cross-examination. After that, parties opposed to issuance of the permit will do the same, after which the Office of Consumer Advocate, a division of the Iowa Department of Justice, will do the same. At that time, the Board will proceed county-by-county to examine any parcel-specific issues regarding the properties across which Dakota Access seeks to condemn an easement. The counties will be scheduled based upon the number of condemnation parcels in each; that schedule will be established at a later date, when the final number of condemnation parcels in each county is more firmly established. That will permit parties who are only interested in the condemnation of a specific parcel of property to attend only the relevant day (or days) of the hearing.

C. Service on Owners of Record and Parties in Possession

The Board will serve this order on all owners of record and parties in possession of property that is subject to a request for the right of eminent domain. Any such person who wishes to be a party to this proceeding should file a petition to intervene clearly identifying the property in question and the person's interest in that property. Late-filed petitions to intervene that are submitted by owners of record or parties in possession of property that is subject to a request for the right of eminent domain will be granted if they are filed on or before October 2, 2015, but any such new parties will have to take the schedule as it stands. That means they will have to file their direct testimony and exhibits on or before October 12, 2015.

IT IS THEREFORE ORDERED:

1. Pursuant to Iowa Code § 17A.14(4), the Board takes administrative notice of the "Staff Report on Exhibit H Eminent Domain Request Filings" filed in this docket on September 14, 2015. Dakota Access, LLC, is directed to address the questions and issues identified in the staff report in its direct testimony to be filed September 23, 2015. All other parties may address the questions and issues identified in the staff report in their prefiled testimony if they choose.
2. A hearing shall be held commencing at 9 a.m. on Thursday, November 12, 2015, at the Boone County Fairgrounds Community Building, 1601 Industrial Park Road, Boone, Iowa, with a public comment session as described in the body of this order. The evidentiary hearing in this matter shall commence at

9 a.m. on November 16, 2015, at the same location for the purpose of receiving testimony and cross-examination of all testimony. The parties are directed to be at the hearing location at least 30 minutes prior to the scheduled start of the hearing. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at 515-725-7334 at least 14 days in advance of the scheduled date to request that appropriate arrangements be made.

3. In the absence of objection, all underlying workpapers shall become a part of the evidentiary record of these proceedings at the time the related testimony and exhibits are entered in the record.

4. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination that have not been previously filed of record shall become part of the evidentiary record of these proceedings. The party making reference to the data request shall file the request and the response as an exhibit via EFS at the earliest reasonable time.

5. In the absence of objection, if the Board calls for further evidence on any issue and the evidence is filed after the close of the hearing, the evidentiary record will be reopened and the evidence will become part of the record 2 days after the evidence is filed. All evidence filed pursuant to this paragraph shall be filed no later than 2 days after the close of the hearing unless otherwise ordered by the Board.

6. The hearing shall be conducted pursuant to the procedures listed in the body of this order unless otherwise ordered by the Board.

7. Late-filed petitions to intervene that are submitted by owners of record or parties in possession of property that is subject to a request for the right of eminent domain in this proceeding will be granted if they are filed on or before October 2, 2015, but any such new parties will have to take the schedule as it stands. Any such petitions should clearly identify the property in question and the person's interest in that property.

UTILITIES BOARD

/s/ Geri D. Huser

/s/ Elizabeth S. Jacobs

ATTEST:

/s/ Trisha M. Quijano
Executive Secretary, Designee

/s/ Nick Wagner

Dated at Des Moines, Iowa, this 16th day of September 2015.