

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

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| IN RE: DAKOTA ACCESS, LLC | DOCKET NO. HLP-2014-0001 |
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ORDER DENYING MOTION TO REVOKE PERMIT

(Issued July 21, 2017)

On June 15, 2017, Sierra Club Iowa Chapter and the Science and Environmental Health Network (Movants) filed a “Motion to Revoke Permit,” asking the Utilities Board (Board) to revoke the permit the Board issued in this docket to Dakota Access, LLC (Dakota Access). Movants say that the March 10, 2016, “Final Decision and Order” issued in this docket indicated that the permit, when issued by the Board, would be conditioned upon receipt by Dakota Access of all other required permits and authorizations. Movants say that on June 14, 2017, the United States District Court for the District of Columbia issued an order holding that the United States Army Corps of Engineers (Corps) did not fully comply with the requirements of the National Environmental Policy Act (NEPA) when it issued its permit to allow Dakota Access to run a pipeline under Lake Oahe in North Dakota. Movants argue that the permit issued by the Corps was rendered void by the Court’s decision and ask the Board to revoke the permit the Board issued on that basis.

On June 26, 2017, Dakota Access filed a “Resistance to Motion to Revoke Permit.” Dakota Access says that contrary to the assertions of the Movants, the

decision issued by the Court in the case of *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, No. 1:16-cv-01534 (JEB), “Memorandum Opinion” (D.D.C., June 14, 2017) (the DC Court Order), did not hold the NEPA permit is void; instead, it expressly left the question of whether the NEPA permit should be vacated to a future date, after additional briefing by the parties.

Dakota Access says that the Court found that the decision by the Corps to issue the NEPA permit was substantially correct and only remanded the matter to the Corps for additional explanation on a few issues. Dakota Access says those issues will be easily remedied on remand.

Dakota Access also says that the DC Court Order involves issues pertaining to Tribal rights that (a) were not raised in the Iowa proceedings and (b) pertain to a specific location in North Dakota that is not within the Board’s jurisdiction. Dakota Access argues the Court’s decision is therefore not a proper basis for action by the Board.

Finally, Dakota Access says that when the Board conditioned the Iowa permit upon receipt of all other required permits and authorizations, it established only a condition precedent that Dakota Access satisfied when it initially received the NEPA permit. Subsequent events should not alter the fact that the company satisfied the condition precedent.

On July 3, 2017, Movants filed a reply to the resistance. Movants say that the DC Court Order held that the permit issued to Dakota Access by the Corps violated

NEPA and “since the action by the Corps of Engineers was unlawful in not complying with NEPA, the issuance of the permit granted by the Corps was set aside. In other words, the permit is not valid.” (Reply at p. 1.) Movants argue that the Board’s final decision and order issued in this docket on March 10, 2016, made it clear that the Board’s finding that the pipeline will promote the public convenience and necessity was based upon the acquisition of all other required permits. They conclude that because “the Corps permit has been set aside, the finding by the Board of public convenience and necessity must be set aside and the Iowa permit revoked.” (Reply at p. 3.)

On July 10, 2017, Dakota Access filed a surreply, saying that the DC Court Order unambiguously states that Dakota Access may continue to operate the pipeline for the time being and did not vacate the permits issued by the Corps at this time. Dakota Access says that the Court set the matter for additional briefing to determine whether the permit should be vacated under the standards of *Allied Signal, Inc. v. U.S. Nuclear Reg. Comm’n*, 988 F.2d 146 (D.C. Cir. 1993). Under that case, the decision about whether to vacate depends on (a) the seriousness of the deficiencies in the Corp’s process and (b) the potential disruptive consequences of vacating or not vacating the permit.

The Board will deny the motion to revoke. The DC Court Order is clear that the permit has not been revoked at this time, so the motion is based on an incorrect

premise. *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*,
“Memorandum Opinion,” No. 1:16-cv-01534 (D.D.C., June 14, 2017) at pp. 66-67.

IT IS THEREFORE ORDERED:

The “Motion to Revoke Permit” filed by the Sierra Club Iowa Chapter and the
Science and Environmental Health Network on June 15, 2017, is denied.

UTILITIES BOARD

/s/ Geri D. Huser

/s/ Nick Wagner

ATTEST:

/s/ Trisha M. Quijano _____
Executive Secretary, Designee

Dated at Des Moines, Iowa, this 21st day of July 2017.