
From: Kenneth L. Gosch[SMTP:KGOSCH@BANTZLAW.COM]
Sent: Friday, February 06, 2015 5:01:39 PM
To: PUC
Subject: Docket No. HP14-002 for Dakota Access Pipeline's proposed pipeline
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PUC,

You have invited public comment on DAPL's proposed pipeline as follows:

PUBLIC INVOLVEMENT

What avenues are available for public involvement in the PUC's Dakota Access Pipeline construction docket?

Parties that wish to actively participate in the case through legal motions, discovery, and the written preparation and presentation of actual evidence may apply for intervenor status by Feb. 13, 2015. Intervenors are legally obligated to respond to discovery from other parties and to submit to cross-examination at a formal hearing. Others wishing to offer comment may submit written comment to the commission via email to puc@state.sd.us or by U.S. mail to PUC, 500 E. Capitol Ave., Pierre, SD 57501. Comments should include the docket number, HP14-002, the commenter's full name and mailing address as well as email address and phone number. Comments may be submitted at any time throughout the proceeding. These [informal comments](#) will be posted in the HP14-002 docket.

I have several clients whose land will be affected by the proposed pipeling.

South Dakota should require any utility to (1) remove their property (pipeline or transmission towers) when they abandon them, (2) pay the full cost of environmental cleanup while they use the easement area and when they abandon it, (3) pay the full cost of restoring the land to its original condition when they abandon their pipeline or transmission line, (4) pay the full cost of damages they do to the land while they own the easement and (5) to have their easement terminate if they are not using it. We need to protect South Dakota citizens and South Dakota property.

You should be aware that DAPL is refusing to take responsibility for environmental cleanup now or upon abandonment of their pipeline in the future beyond what is covered by current State and Federal law which as you know can change. They are also, by the terms of their easement, refusing to cover all future damages to the land. Below is a summary of my negotiations with DAPL.

1. The opening paragraph and paragraph 14 of the easement give DAPL the right to abandon the line in place without any requirement for environmental cleanup or restoration of the land. There is no assurance that after the pipe fails and caves in that DAPL will fill in the void with fill dirt so a low spot is not created. If DAPL abandons the line they should remove it and pay the full cost of environmental cleanup and and restoration by leveling the land. The owner also needs language that DAPL will cover, in full, the cost of any environmental cleanup during the existence of and at the termination of the easement. I see this as a deal breaker.

DAPL's position is that this is covered under state and federal law. That is currently true but those laws can change and the easement rights and responsibilities can't, so that gives the owner no consolation.

2. The opening paragraph of the easement gives DAPL the right to change the size of the pipe so long as it does not exceed 30 inches in diameter. We assume that the size of the pipeline will not change often so we are ok with this as long as the language in paragraph 4 on payment of damages is cleaned up.

Probably OK.

3. Paragraph 1(b) of the easement allows DAPL to build appurtenant facilities within the easement area such as buildings. There may be no plans for that on this land but the owner should look for assurance that the owner will be able to farm this land without there being any buildings on the property.

DAPL's position is that they will not give this assurance. DAPL refers to paragraph 13 and says DAPL will not bind future assignees. DAPL's position is that if a building is constructed, the owner would be compensated. The easement should then be changed to say that. This will make a difference when damages are negotiated.

4. Paragraph 1 of the easement allows DAPL to put markers and cathodic protection facilities on the surface within the easement. DAPL has indicated that the markers are only placed at the edge of the public right of way. We want that specified in the easement because as currently drawn DAPL could put them anywhere and interfere with the owners farming.

DAPL's position is that they probably would not do this but refused to give the owner any assurance.

5. Paragraph 2 of the easement allows DAPL to change the slope of terrain. The needs assurance that the terrain will not be changed so that farming can continue as-is.

DAPL's position is that there will be four foot of earth above the pipe. They will not leave low spots or high spots but DAPL will not agree that the easement can be changed to assure this. DAPL also will not offer assurance that if they abandon the line in place and it collapses that they will pay the cost of filling the collapsed areas.

6. Paragraph 3 of the easement allows DAPL ingress and egress to the easement area from any "other property". The owner needs some assurance that DAPL will not use other property the landowner owns. I assume DAPL will have no problem limiting their access to areas of public right of way. The owner needs some assurance that DAPL will use public right of way.

I would make sense to enter the property from the public right of way. DAPL did not offer to make any change.

7. Paragraph 4 of the easement states that the consideration paid includes crop damage but it does not state for which years. DAPL may claim the initial payment covers during construction and all future years. DAPL says their practice is for the initial payment to cover the damages for the installation of the pipeline and consequential damages for the next three years. There is expert testimony that says it takes ten years for the ground to recover. At a minimum the needs to say that all future damages will be paid. If damages are done after the first year the easement needs to require DAPL to pay for those damages also.

The agent could not believe that I was right because I was the only lawyer who ever raised it.

8. No other easements are allowed under paragraph 8 of the easement without DAPL's consent. The owner does not know what other easements are already there. I trust DAPL will make a search and not interfere with existing easements.

DAPL's position is that they checked and there are no other easements.

9. Paragraph 13 of the easement gives the owner the duty to defend the easement from all others forever. I am ok with owner warranting that he owns the property and has the right to grant the easement but the owner should not have to defend the easement. What if easements are prohibited by law in the future?

DAPL's position is that they will not change the easement.

10. There must be a termination clause if DAPL does not use the easement for a continuous period of time such as 5 or 10 years.

DAPL's position is that they will never agree to this.

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