

MINUTES
May 5, 2022
12:00 P.M.
Special Board Meeting-Zoom Video Conference
NDPISB

1. Chairman Mike Wetsch called the Zoom special meeting to order at 12:00 p.m. Board members present: Mike Wetsch, Randy Ziegler, Ernie Thurman, Justin Blinsky and Jason Nelson. Board members absent: Steve Lundin. Others present: Executive Director John J. Shorey III, Assistant Attorney General Allyson Hicks, Assistant Attorney General Courtney Titus, Attorney Thomas Kelly, Attorney Lynn Boughey, Attorney Jennifer Racine, Eric Barstad, and "A-B".

2. Energy Transfer Partners LP and Dakota Access LLC v. North Dakota Private Investigative and Security Board and Tigerswan, LLC and First Look Institute, Inc., Supreme Court No. 2022 N.D. 84, District Court Case No. 2020-CV-02788 (Public Records Case). Courtney provided an update on the case. There were no questions from the Board.

3. Energy Transfer Partners LP and Dakota Access LLC v. North Dakota Private Investigative and Security Board and Tigerswan, LLC, Supreme Court No. 2022 ND 85, District Court Case No. 2020-CV-03049 (Administrative Appeal Case). Courtney provided an update on the case. Jennifer commented ETP would like to talk with the Board's Attorneys and would like an ALJ process. Allyson discussed that processes going forward and that it could go before an ALJ or the Board itself. Allyson stated that she and Courteny have discussed, and they have a proposed process. Allyson stated the Board has the petition for the protective order before it. Allyson stated that the Board could review the documents for any redactions pursuant to open records laws, that document view would have to be a priority for the Board, then the Board hands the redactions over to ETP, ETP can then review the redactions, and then propose any alternative or additional redactions that the Board did not include, and then ETP could brief those issues. Allyson stated both the Board and ETP could brief on those issues and have a hearing on them. Mike stated he would go toward the process Allyson laid out. Lynn Boughey commented that he believed TigerSwan has the opportunity as well to be part of the process. Lynn stated there may be documents that relate exclusively to TigerSwan that he is obligated to review and object to any redactions. Jennifer commented that she wasn't able to share the proposed process with her client, so she doesn't have their reaction to it. Jennifer asked before a final decision is made for her to get her client's opinion and relay that to Allyson. Jennifer stated at first blush she didn't have many issues with the proposal. Jennifer stated it was maybe worth talking offline about ETP paying some or all the ALJ's costs instead of the Board. Jennifer stated that the briefing should go through an ALJ. Lynn commented that he didn't think it was appropriate to use the prior ALJ because of the prior ALJ's decisions. Jennifer stated she didn't think ETP had any problems with the ALJ. Allyson stated that the Supreme Court opinion specifically says TigerSwan is no longer involved in the protective order process. Eric Barstad commented that Jennifer stated that ETP and the Board would talk offline about the ALJ and wanted to say as a member of the public, that he would hope there was not ex parte conversations, outside of public scrutiny. Jennifer stated that is not what she meant, what she meant was the attorney would speak as parties and that is appropriate. Allyson stated that she wanted the Board to discuss the ALJ versus the Board doing this themselves and due to the open records request time was a factor. Randy stated he would like to explore the ALJ route, with sending only the disputed

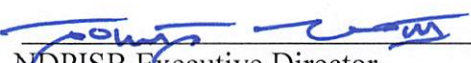
documents to the ALJ, along with what ETP could help with costs and come back to the Board with that information. Justin stated that he would like to begin the process of redactions and have Jennifer come back to them with costs for the ALJ. Mike stated that time is of the essence. Jennifer stated she agreed there was no reason for the ALJ to look at all the documents. Jennifer commented that having an ALJ from the onset due to the format of the documents. Allyson stated she would talk with their IT about the format of the documents and exchange of the documents. Allyson commented she was hearing that the Board didn't want to make a decision until there was more information about ETP possibly covering costs for the ALJ and they would also talk about the format of the documents. Allyson stated they would bring that information back to the Board in an open format for the Board to consider at a different meeting. Mike agreed and asked if a motion was needed. Allyson stated no and they would gather the information and come back to the Board with it to make a final decision on the process at the next meeting.

4. Justin made a motion to adjourn the meeting. Randy seconded. A roll call vote was taken, and it was unanimous to approve the motion. The meeting was adjourned at 12:31 P.M.



Chairman

2/26/20
Date



NDPISB Executive Director

2/26/20
Date