


MINUTES
October 12, 2020
9:00 A.M.
Special Board Meeting-Zoom Video Conference
NDPISB

1. Chairman Mike Wetsch called the Zoom special meeting to order at 9:04 A.M. Board members present: Mike Wetsch, Justin Blinsky, Ernie Thurman, Randy Ziegler, and Jason Nelson. Board member absent: Steven Lundin. Others present: Executive Director John J. Shorey III, Assistant Attorney General Allyson Hicks, Assistant Attorney General Courtney Titus, Alleen Brown, Attorney Chad Nodland, Attorney Shawn Grinolds, Attorney Jennifer Racine, Attorney Tom Kelly, and attorney Tonja De Sloover.
2. A motion was made by Ernie to close the meeting for an executive session for attorney consultation (44-04-19.1(2)) and attorney work product (44-04-19.1(1)) concerning discussion and consideration of ETP and DALP's petition to intervene and proposed final administrative order in Board v. TigerSwan. Seconded by Jason. A roll call vote was taken, and it was unanimous to go into executive session. As Chairman Wetsch was reading the executive session verbiage Jennifer Racine asked since last week's meeting if there has been communication from the ALJ that resulted in this further meeting in executive session. Chairman Wetsch advised not that he was aware of. The executive session began 9:07 a.m. The executive session adjourned at 9:31 a.m. The public was invited back for the open session of the meeting.
3. Justin made a motion to rescind the prior motion on 10-5-2020 to send the petition to intervene to the ALJ. Ernie seconded. Jennifer asked the Chairman if the Board could explain its basis for the reversal of its decision. Chairman Wetsch advised the Board did not believe that the ALJ had the decision-making power to rule in this situation. Jennifer asked what the Board's intention with the intervention motion was. Chairman Wetsch advised he would direct that question to the Board's attorneys. Allyson advised she believed that was going to be addressed by the further motions. A roll call vote was taken, and it was unanimous to approve the motion.
4. Randy made a motion that the ALJ not take action on the petition to intervene. Justin Seconded. A roll call vote was taken, and it was unanimous to approve the motion.
5. Justin made a motion to adopt the proposed final order dismissing the administrative case involving TigerSwan. Ernie seconded. A roll call vote was taken, and it was unanimous to approve the motion. Tonja asked what the Board was going to do with Energy Transfer's privileged and confidential documents. Chairman Westch advised he was going to direct that question to the Board's attorneys. Allyson advised the Board has obligations under the open records law, those open records laws provide certain privileges depending on the information, that the Board is going to have to respond as its legally obligated to do, unless or until further action is taken. Tonja said they took action by intervening in the administrative action that was still open. Tonja stated there are valve maps and other documents that pose a security risk to the state and citizens of the state. Tonja asked if it was the Board's position that they were ready to produce those documents to third parties who asked for them. Allyson said the Board will review any open records request, and whether or not any exemptions or confidentially clauses allowable under law apply, the Board will redact the necessary information and provide the information the Board deems is open. Allyson advised the Board was not taking a position on the records, the Board was taking a position on whether or not it has the authority to essential resolve a contract dispute between two parties. Allyson advised the Board is not addressing the

substance of the petition to intervene, it is the procedural motion on whether or not it has the authority to take the action they were requesting. Chairman Wetsch advised to the attorneys he thought they were done with their discussion, and that any further discussion could be held between litigation attorneys. Jennifer stated they were going to need to take legal action at the district court level. Jennifer asked that the Board not respond to any open records requests until they have an opportunity to obtain a ruling on their motion for a temporary restraining order with the district court. Chairman Westch responded that the Board will do whatever its legally obligated and allowed to do. Tom Kelly stated the Board's previous legal counsel had acknowledged repeatedly that the Board is in possession of Energy Transfer's privileged documents. Tom wanted the Board to state for the record it was aware of that, and it was deciding to maintain those records over Energy Transfer's objection and refusing to return them. Allyson advised the Board did not need to make a statement. Allyson said the Board is stating it didn't have the legal authority to take the action that they requested. Tonja told Allyson, that Allyson as an attorney is under a legal and ethical obligation to return a parties privileged documents that are inadvertently produced. Tonja made an objection that the Board continued to hold their documents and asked the Board to return their documents. Tonja further requested that Allyson as a lawyer fulfilled her ethical obligation to return their privileged documents that the Board's attorney acknowledged the Board was holding. Allyson again said the Board is addressing this as a procedural motion, that she understood there are multiple classification of records involved. Allyson advised the Board was making no statement on the content of the records or the content of Energy Transfer's petition. Chairman Wetsch advised Energy Transfer's comments were noted.

6. Ernie made a motion to adjourn the meeting. Jason seconded. Tonja asked if this was a final administrative order by the Board. Allyson responded to the extent that the Board was issuing a final order, the final order was pursuant to the settlement agreement, and the Board adopted that final order. A roll call vote was taken, and it was unanimous to approve the motion. The meeting was adjourned at 9:45 a.m.



Chairman

11-18-20
Date



NIPISB Executive Director

11-17-2020
Date