



Pipelines: Counties' Role in Construction Process

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BACKGROUND: ABOUT OCA

- ▶ Established by Iowa Code Chapter 475A
- ▶ Consumer Advocate appointed by AG, confirmed by Senate
- ▶ OCA has a staff of attorneys and technical staff including engineers, accountants and economists

475A.2 DUTIES:

“Act as attorney for and represent all consumers generally and the public generally in all proceedings before the utilities board.”

IN A PIPELINE CASE, OCA INTENDS TO:

- ▶ 1. Review all materials submitted, including public comments and objections;
- ▶ 2. Conduct discovery;
- ▶ 3. Submit evidence and testimony;
- ▶ 4. Cross examine witnesses; and
- ▶ 5. Submit legal briefs.

HAZARDOUS LIQUID PIPELINE CASES UNDER IOWA CODE CHAPTER 479B

Overview:

It is the purpose of the general assembly in enacting this law to grant the utilities board the authority to implement certain controls over hazardous liquid pipelines to protect landowners and tenants from environmental or economic damages which may result from the construction, operation, or maintenance of a hazardous liquid pipeline or underground storage facility within the state, to approve the location and route of hazardous liquid pipelines, and to grant rights of eminent domain where necessary. Iowa Code 479B.1

PUBLIC CONVENIENCE AND NECESSITY STANDARD, 479B.9

“The board may grant a permit in whole or in part upon terms, conditions, and restrictions as to location and route as it determines to be just and proper. A permit shall not be granted to a pipeline company unless the board determines that the proposed service will promote the public convenience and necessity.” 479B.9

IOWA UTILITIES BOARD EXPLAINED THAT IT WILL BALANCE THE PUBLIC BENEFITS OF THE PROJECT AGAINST THE PUBLIC AND PRIVATE DETRIMENTS:

“ Pursuant to Iowa Code § 479B.9, the Board is applying the ‘public convenience and necessity’ test as a balancing test, weighing the public benefits of the proposed project against the public and private costs or other detriments as established by the evidence in the record. If that evidence shows that the proposed project has public benefits that outweigh the costs, the Board will find that the project ‘promotes the public convenience and necessity.’ If the evidence does not support such a finding, then the petition for permit will be denied.”

Iowa Utilities Board, Final Decision and Order, Docket No. HLP-2014-0001, Dakota Access, page 16.

TERMS AND CONDITIONS

- ▶ 479B.9 Authorizes the IUB to impose terms and conditions.
- ▶ The Board has the authority to impose terms and conditions it deems to be just and proper.
- ▶ The Board imposed a number of conditions related to construction and other matters in the Dakota Access case.
- ▶ OCA seeks input from counties about terms and conditions that could help counties with their responsibilities in these cases.

Limits on IUB Authority to Impose Terms and Conditions—Federal Authority

- ▶ The federal Pipeline and Hazardous Materials Safety Administration (PHMSA) is responsible for regulating and ensuring the safe and secure movement of hazardous materials to industry and consumers by all modes of transportation, including pipelines.
- ▶ PHMSA, and not the IUB, has final authority over safety concerns.

COUNTY RESPONSIBILITIES IN HAZARDOUS LIQUIDS PIPELINE CASES

- ▶ 1. County Inspector—Construction Process
- ▶ 2. Construction Damages Claims Process

COUNTY INSPECTOR AND CONSTRUCTION PROCESS 479B.20

- 1) County to appoint inspector;
- 2) inspector to be on site for all construction activity;
- 3) inspector can temporarily halt construction;
- 4) Inspector can refer issues to county board of supervisors;
- 5) county board of supervisors can petition IUB for corrective action and/or civil penalties; and
- 6) pipeline company is responsible for the “reasonable costs” of the inspection.

CONSTRUCTION DAMAGES CLAIMS

479B.30

- 1) County is to certify completion of construction;
- 2) landowners can make construction damages claims only after county certification;
- 3) damages claims are directed to the chief judge to appoint a compensation commission; and
- 4) 479B.30(3)(b) states that the county attorney *may* assist in consolidating multiple damages claims for submission to the chief judge.

ONGOING COUNTY INVOLVEMENT

1. Subsequent Tiling -- 479B.31 states that pipeline company is to be responsible for increased cost of subsequent tiling projects caused by presence of the pipeline. The county engineer is to provide “written verification” of the additional costs.
2. Reversion for non-use – if the pipeline is later abandoned, county recorder has a role in title changes.

QUESTIONS FROM OCA:

1. What conditions can be recommended to help or protect counties as they fulfill their role in these cases?
2. Other questions about OCA's role in the process?



QUESTIONS/DISCUSSION