

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

DAKOTA ACCESS, LLC)	
)	
Application Pursuant to Section 15-401 of the)	
Common Carrier by Pipeline Law and Sections 8-503)	
And 8-509 of the Public Utilities Act and for a)	Docket No. 14-0754
Certificate of Good Standing and Related Authority to)	
Construct and Operate a Petroleum Pipeline as a)	
Common Carrier Pipeline and When Necessary to)	
Take Private Property as Provided by the Law of)	
Eminent Domain)	

**INITIAL BRIEF OF
UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES
OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE
UNITED STATES AND CANADA, AFL-CIO**

October 1, 2015

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I. INTRODUCTION & PROCEDURAL HISTORY

A. Introduction

The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (the “United Association”) respectfully submits this Initial Brief in order to provide the Administrative Law Judge (“ALJ”) and the Illinois Commerce Commission (“Commission” or “ICC”) with a summary of the evidence on the record in this proceeding regarding the public need for the Project and how the public convenience and necessity requires the approval of the Dakota Access Pipeline Project (the “Project” or “DAPL”), as proposed by the applicant, Dakota Access, LLC (“Dakota Access”). The public need for the Project as a means to transport domestic crude oil to the Midwest and the Gulf Coast is apparent from its shipper commitments. Illinois law further requires that the Commission consider whether the “public convenience and necessity” requires issuance of a certificate authorizing the Project. 220 ILCS 5/15-401(b). To this point, the Commission should consider the significant economic benefits of the Project, described herein, and give them appropriate weight.

B. The United Association

The United Association is an international labor organization representing approximately 370,000 plumbers, pipefitters, sprinkler fitters, service technicians, and welders. United Association Ex. 1.0 (“UA Ex. 1.0”) at 1:10. Within Illinois, the United Association has seventeen (17) local union affiliates with 23,000 members, including retired members, and a state-wide Illinois Pipe Trades Association, headquartered in Springfield. *Id.* at 1:14-23. One of the United Association’s local union affiliates in Illinois, Chicago Pipe Fitters Local 597 (“Local

597”) specializes in all aspects of pipe fitting and welding and includes 6,800 active members. *Id.* at 1:15-20.

The un rebutted testimony of the United Association’s witness, Tom D. Gross, the United Association’s Director of Pipeline and Gas Distribution, estimates that United Association members, including Illinois members of Local 597, stand to receive at least 220 of the construction jobs expected to be created by the Project as well as additional post-construction jobs on maintenance and upgrades related to the Project. UA Ex. 1.0 at 10:220-223, 11:235-236. Tom Gross also explained that Local 597 members are highly trained and experienced in all aspects of piping, including pipe fitting and welding and are committed to updating America’s infrastructure with an emphasis on safety and protection against environmental harm during construction as well as the reliability and efficiency of the end result. UA Ex. 1.0 at 4:72-79, 5:113-6:120, 6:141-145. Thus, these skilled workers, whose socioeconomic well-being depends so much on projects like DAPL, would ensure that the Project is built using the best and most up-to-date techniques and according to the highest construction standards.

C. Procedural History

On December 22, 2014, Dakota Access filed an Application for Certificate in Good Standing and Other Relief, including Exhibits A through N. On January 21, 2015, Dakota Access filed Direct Testimony of Joey Mahmoud (Dakota Access Ex. 1.0-1.3), Adam Broad (Dakota Access Ex. 2.0-2.6), Damon Rahbar-Daniels (Dakota Access Ex. 3.0-3.3), Todd Stamm (Dakota Access Ex. 4.0-4.1), and Bryan McGregor (Dakota Access E. 5.0-5.5). On February 11, 2015 and March 6, 2015, Dakota Access filed additional supplemental direct testimony of Adam Broad. (Dakota Access Ex. 2.7-2.16)

On March 3, 2015, ALJ Von Qualen held a status hearing, at which the Petitions to Intervene of Donald A. and Mary C. Fry, Glen Koch and Alan Koch and Robert E. Koch, Ann Burns, Cellular Properties, Inc. and Tower Realty Corp., a group known as the Hancock County Property Owners (“HAPO”), the Illinois Agricultural Association aka Illinois Farm Bureau, and a group known as the Scott County Property Owners were granted.

On May 12, 2015, the United Association filed a Petition to Intervene as a party. On May 20, 2015, the United Association filed the Direct Testimony of Tom D. Gross, the United Association’s Director of Pipeline and Gas Distribution. Numerous other Intervenors filed direct testimony on and around May 20, 2015. On June 3, 2015, ALJ Von Qualen granted the United Association’s Petition to Intervene, as well as the Petitions to Intervene of Oelze Equipment Company, LLC, LiUNA Local Unions, Hancock/Adams County Property Owners, International Brotherhood of Electrical Workers, Local 702, AFL-CIO, Midwest Alliance for Infrastructure Now (MAIN), National Association of Manufacturers (NAM), 60 Plus Association, Inc., Illinois State Grange, International Brotherhood of Teamsters, Justus S. Templeton III, and Lt. Co. (Ret) Eric Phillipson.

On June 12, 2015, the Staff of the Illinois Commerce Commission filed Supplemental Direct Testimony of Rochelle M. Phipps, in which Ms. Phipps presented her findings that Dakota Access is capable of financing the Project. ICC Staff Ex. 3.0.

On June 15, 2015, Tabitha F. Tripp filed a Petition to Intervene. On July 22, 2015, Tabitha Tripp filed rebuttal testimony in opposition to the Project and Tripp Exhibits 1-3. On July 28, 2015, the ICC Staff filed a Response in Opposition to Ms. Tripp’s intervention and a Motion to Strike. On July 29, 2015, Dakota Access filed a Joinder in the ICC Staff’s Response in Opposition to Ms. Tripp’s Intervention and Motion to Strike. On August 4, 2015, Ms. Tripp

filed Rebuttal Testimony in support of her intervention and testimony. On August 6, 2015, Dakota Access filed a Reply in Support of its Joinder in ICC Staff's Response in Opposition to the Petition to Intervene of Tabitha Tripp and Motion to Strike Testimony, reaffirming its opposition to Ms. Tripp's intervention and testimony. On August 7, 2015, ALJ Von Qualen issued a Ruling granting the Petition to Intervene of Tabitha Tripp and denying the Motion to Strike Testimony filed by Dakota Access on July 29, 2015.

On June 24, 2015, Dakota Access filed rebuttal testimony concerning negotiations with landowners, Dakota Access's proposal for eminent domain authority, and providing a copy of its Agricultural Impact Mitigation Agreement for the Project. Dakota Access Ex. 5.6-5.8, 2.17-2.19. On July 22, 2015, the Staff of the ICC filed rebuttal testimony of Mark M. Maple recommending that Dakota Access and Oelze Equipment Company ("OEC") negotiate concerning OEC's proposed alternate route for the Project, designed to avoid disruption of OEC's property. On July 22, 2015, Intervenor William Klingele filed rebuttal testimony arguing that eminent domain should not be granted to Dakota Access until after the Project has been approved. Klingele Ex. 2.0.

On July 30, 2015, OEC filed rebuttal testimony concerning its proposed alternate route for the Project and objecting to Dakota Access's proposed alternate route. On August 12, 2015, Dakota Access filed surrebuttal testimony of Adam Broad (Dakota Access Ex. 2.20), providing additional information about Dakota Access's route negotiations with OEC and responding to Intervenor William Klingele's testimony about Dakota Access's need for eminent domain authority. On August 12 and 13, 2015, Dakota Access also filed surrebuttal testimony of Bryan MacGregor, providing an update on Dakota Access's negotiations with landowners (Dakota

Access Ex. 5.9-5.10), and Damon Rahbar-Daniels and Todd Stamm, responding to the testimony of Intervenor Tabitha Tripp (Dakota Access Ex. 3.8, 4.2).

On September 1, 2015, ALJ Von Qualen presided over an evidentiary hearing in Springfield, Illinois, at which all parties' exhibits were admitted into evidence.

II. DESCRIPTION OF PROJECT & RELIEF REQUESTED

As proposed by Dakota Access, in the State of Illinois, the Project would consist of 180 miles of new 30-inch diameter pipeline that would run from a point near Hamilton, Illinois, in Hancock County to a point near Patoka, Marion County, Illinois. Dakota Access Application for Certificate in Good Standing and Other Relief ("Dakota Access App.") at 1 ¶ 1. The entire scope of the pipeline would be 1,134 miles from Stanley, North Dakota through the states of South Dakota, Iowa, and Illinois, and a total of eight pump stations along the pipeline, although no pump station would be built in Illinois. *Id.* at 1 ¶ 2. The total capacity of the pipeline would be approximately 450,000 barrels per day ("bpd") initially, 90 percent of which is subscribed by multiple committed shippers under long-term contracts and 10 percent reserved for walk-up shippers, in accordance with the common carrier rules and regulations of the Federal Energy Regulatory Commission ("FERC"). *Id.* at 1-2, ¶ 2; Dakota Access Ex. 3.0 at 4:79-88, 5:109-112.

At its Illinois terminus near Patoka, the Project would connect with and provide crude oil to several existing tank farms. *Id.* Also at Patoka, the Project would be able to connect with a proposed pipeline of Energy Transfer Crude Oil Company, LLC ("ETCO") that would extend the pipeline system's reach to a point by the Gulf Coast, near Nederland, Texas. Dakota Access App. at 17 ¶ 28. The entire cost of the Project is estimated to be \$3.78 billion, including \$516 million in Illinois. *Id.* at 19-20 ¶ 34; Dakota Access Ex. at 19:402-406. Dakota Access and other witnesses, including the United Association's Tom Gross, put forth unrebutted evidence

that the Project would create thousands of jobs in Illinois – both during and after construction – and generate significant additional ancillary socioeconomic benefits. *See* Dakota Access Ex. 2.0 at 18:387-391, 19:410-415; UA Ex. 1.0 at 10:220-13:278.

Dakota Access requests that the Commission issue it a Certificate of Good Standing and eminent domain authority under the Commission’s statutory mandates in Section 8-503 of the Illinois Public Utilities Act (220 ILCS 5/8-503) and Section 15-401 of the Common Carrier by Pipeline Law (220 ILCS 5/15-401). The United Association supports Dakota Access’s requests for relief.

III. STATUTORY PROVISIONS

Under the Illinois Public Utilities Act, if the Commission finds, after a hearing, that “a new structure or structures is or are necessary and should be erected, to promote the security or convenience of its employees or the public or...in any other way to secure adequate service or facilities,” it “shall make and serve an order authorizing or directing that such...structure or structures be erected....” 220 ILCS 5/8-503.

Under Illinois’ Common Carrier by Pipeline Law “[n]o person shall begin...construction of a pipeline or other facility...for use in operations as a common carrier by pipeline unless the person possesses a certificate in good standing” authorizing it to operate as a common carrier by pipeline. *Id.* § 15/401(a). The Commission, for its part, is required to grant an application for such a certificate, “in whole or in part, to the extent that it finds that the application was properly filed; a public need for the service exists; the applicant is fit, willing, and able to provide the service in compliance with this Act, Commission regulations, and orders; and the public convenience and necessity requires issuance of the certificate.” *Id.* § 15-401(b).

In its determination of whether the Project serves the public convenience and necessity, the Commission must consider several factors, including: “any evidence...regarding the current and future local, State-wide, or regional economic effect, direct or indirect, of the proposed pipeline or facility, including, but not limited to, property values, employment rates, and residential and business development.” 220 ILCS 5/15-401(b)(6). The Commission must also consider evidence as to the “the likelihood that the proposed construction will substantially encourage related investment in the State’s energy infrastructure and the creation of energy related jobs.” 220 ILCS 5/15-401(b)(8).¹

IV. FIT, WILLING AND ABLE²

V. PUBLIC NEED/PUBLIC CONVENIENCE AND NECESSITY

The record shows both that there is a public need for the Project and that the public convenience and necessity requires that Dakota Access receive a Certificate of Good Standing. Dakota Access has demonstrated the public need for the Project to transport domestic crude oil from the Bakken region through evidence of its shippers’ commitments that account for the full capacity of the Project as well as a showing of the general need to improve access of Midwestern and Gulf Coast refineries to domestic crude oil. The public convenience and necessity requires that the Project be approved for a number of reasons, including the significant socioeconomic value of the Project to the State of Illinois, its localities, and the region in the form of jobs, tax revenue, and corresponding positive economic effects. The importance of these economic

¹ In addition, 220 ILCS 5/15-401(b)(7) allows the Commission to consider evidence addressing these factor from “any...party...that participates in the proceeding...” as well as “evidence addressing...other relevant factors...”

² Per ALJ Von Qualen’s Ruling on September 15, 2015, sections of the Mandatory Briefing Outline that are not addressed herein are left blank.

benefits to the State, the region, and the United Association's members cannot be understated and should be weighed accordingly in the Commission's decision.

A. Dakota Access has Shown on the Record that a Public Need for the Project's Service Exists.

The United Association supports Dakota Access's contention that a public need for the Project is demonstrated by the fact that shippers have committed to long-term contracts for the entirety of the Project's capacity that Dakota Access is allowed to offer to committed shippers, per federal regulations. *See* Dakota Access Ex. 3.0 at 6:126-131. The record further demonstrates that the additional pipeline capacity the Project would provide is needed to transport crude oil from the Bakken production area to refineries in the Midwest and the Gulf Coast. *Id.* at 7:141-16:333. *See also* UA Ex. 1.0 at 13:280-15:312.

Specifically, the Project would provide Midwestern refineries, which currently lack sufficient aggregate refining capacity to meet consumer demand in the region, with increased access to Bakken crude oil and would also provide Gulf Coast refineries with improved and reliable access to domestic crude oil instead of the foreign crude oil on which they currently depend. *See* Dakota Access App. at 22 ¶ 38; Ex. 3.0 at 14:302-18:384. *See also* ICC Staff Ex. 1.0 at 6:141-146 (explaining that the Project would serve the public need by ensuring that U.S. refineries have continued access to domestic crude oil, which benefits individuals as well as the State of Illinois and the country as a whole) (citing Enbridge Pipelines (Illinois) L.L.C., Docket No. 07-0446 at 46-47 (July 8, 2009)).

B. The Record Demonstrates that the Public Convenience and Necessity Requires that the Project be Approved.

The record demonstrates that the Project would promote the public convenience and necessity in a number of ways, including job creation and economic stimulus for the State of

Illinois, its localities, and the region, as well as for the entire country. Overall, development and construction of the Project is expected to amount to a \$516 million investment in Illinois, with \$367 million spent in Illinois on construction and installation. Dakota Access App. at 26-27 ¶ 45; Dakota Access Ex. 2.0 at 18:382-385. This investment in Illinois will produce corresponding benefits for the State, its localities, and its residents including jobs, increased economic activity, and tax revenue. The Project also serves the public convenience and necessity as an alternative to rail transportation of oil that will be built to the highest safety standards by the skilled members of the United Association.

The record clearly establishes that the Project will create a great number of jobs in Illinois during and after construction. Specifically, during construction, Dakota Access estimates that over 2,000 jobs will be created by the Project in Illinois, including jobs for welders, mechanics, electricians, pipe fitters, and heavy equipment operators. Dakota Access App. at 27 ¶ 45; Dakota Access Ex. 2.0 at 18:387-391. Dakota Access has pledged to utilize union labor and a Project Labor Agreement in construction of the Project. *See* Dakota Access Ex. 2.0 at 12:247-252. United Association witness Tom D. Gross testified, without contradiction, that at least 220 of the jobs created by the Project would be new pipeline construction jobs for skilled union members of the United Association, and that such jobs would employ members for about one year, and that, during that time, the average member would work approximately 1,600 hours and earn about \$76,000 in addition to health benefits and pension contributions. UA Ex. 1.0 at 10:220-11:231. Tom Gross's un rebutted testimony further asserts that the Project would likely be a continuing source of jobs, as United Association members could expect to participate in maintenance and upgrades projects on the Project in the future. *Id.* at 11:235-236.

The jobs created by the Project would also produce ancillary benefits for the State of Illinois and its localities. Specifically, Dakota Access anticipates that those employed on the Project would patronize local restaurants, lodging, and other retail businesses. Dakota Access App. at 27, ¶ 45; Dakota Access Ex. 2.0 at 18:398-400. Tom Gross's uncontroverted testimony supports that prediction and, based on his extensive experience and observation on past pipeline projects, estimates that construction workers on the Project would spend about \$1,000 per week in Illinois for the necessities of daily life. UA Ex. 1.0 at 12:260-264.

In addition to construction jobs, other types of jobs directly related to construction of the Project would be created including, for example, local professional services in the areas of engineering, surveying, real estate, and law. Dakota Access App. at 27 ¶ 45; Dakota Access Ex. 2.0 at 18:392-398. Dakota Access also expects that steel pipe, fittings, valves, pumps, and control devices needed for the Project would be manufactured by or purchased from Illinois businesses. Dakota Access App. at 27 ¶ 45; Dakota Access Ex. 2.0 at 18:401-404.

The Project would also positively impact Illinois and Midwestern refineries' access to crude oil. *See* Dakota Access App. at 22 ¶ 38; Ex. 3.0 at 14:302-18:384. As Tom Gross explained, Illinois refineries employ approximately 500 United Association members on a steady basis and as many as 3,000 United Association members during maintenance work and shutdown upgrades. UA Ex. 1.0 at 11:236-241. Construction workers on the Project, then, would not be the only workers positively impacted by the Project going forward; the crude oil it would deliver reliably to the Midwest would support existing refinery jobs in the Midwest and could conceivably create more jobs at those refineries.

The construction of the Project and the job creation and associated economic activity that would result from it would bring about increased income and sales and use tax revenues for the

State of Illinois and its localities. Dakota Access App. at 27 ¶ 45; Dakota Access Ex. 2.0 at 19:410-415. Specifically, Dakota Access estimates that the Project would result in approximately \$27.1 million in sales/income tax during construction and \$750,000 in property taxes in the first year of operation alone. UA Ex. 1.0 at 13:271-273 (citing “Fact Sheet,” Dakota Access, LLC, available at: http://www.daplpipelinefacts.com/docs-dapl/DAPL_FactSheet31.pdf). This tax revenue would be a boon for the State of Illinois and its localities and could be used to fund and possibly expand essential public services.

As several parties have pointed out, the Project’s supply of crude oil to Midwestern and Gulf Coast refineries via pipeline also serves the public convenience and necessity by providing an alternative to rail transportation of oil. *See* Dakota Access Ex. 3.0 at 8:172-9:176; ICC Staff Ex. 1.0 at 11:270-12:287; UA Ex. 1.0 at 13:280-16:330. Tom Gross also testified that he is confident that the Project can be built by United Association members, who have extensive training in pipeline construction and safety procedures, with the result being a safe, efficient, and reliable modern pipeline. *See* UA Ex. 1.0 at 18:371-21:426.

From this body of evidence, it is clear that the Project would promote the public convenience and necessity by generating many socioeconomic benefits within the State of Illinois as well as jobs for Illinois residents and United Association members during construction and operation of the Project. None of the aforementioned projected economic benefits of the Project will materialize if the Commission fails to approve Dakota Access’s Application. The record is also clear that the Project would serve the public convenience and necessity by providing reliable transportation of crude oil via a pipeline constructed by skilled union members as opposed to by rail. The Commission should weigh these considerations appropriately in reaching its conclusions.

VI. PROPOSED ROUTE OF THE PIPELINE AND REQUESTED EASEMENT WIDTHS

VII. SECTION 8-503 OF THE PUBLIC UTILITIES ACT

Under Section 8-503 of the Public Utilities Act, the Commission is directed to make and serve an order authorizing the erection of a new public utilities structure if, after a hearing, it finds that the structure is “necessary and should be erected, to promote the security or convenience of its employees or the public or...in any other way to secure adequate service or facilities.” 220 ILCS § 5/8-503. In making this determination, the Commission should weigh the aforementioned job creation and socioeconomic benefits that would be created by the Project in finding that the Project promotes the convenience of the public under Public Utilities Act Section 8-503.

VIII. SECTION 8-509 OF THE PUBLIC UTILITIES ACT – EMINENT DOMAIN

IX. CONCLUSION

The record in this proceeding shows that a public need for the Project exists and that the public convenience and necessity requires that Dakota Access’s Application for Certificate in Good Standing and Other Relief be granted. Dakota Access has demonstrated that it has sufficient support from shippers to justify the need for the Project and has also explained on the record how the Project serves the public need for reliable transportation of crude oil from the Bakken to the Midwest and beyond. The record also establishes that the public convenience and necessity requires approval of the Project for a variety of reasons, not the least of which is the tremendous socioeconomic benefit that the Project offers. If approved, the Project would create thousands of jobs and corresponding ancillary benefits like local spending and tax revenue that would flow to the State of Illinois, its localities, and its residents, including members of the

United Association. The United Association requests that the Commission give these considerations appropriate weight and grant Dakota Access the relief it has requested.

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Respectfully submitted,

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