

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE:

DAKOTA ACCESS, LLC

DOCKET NO. HLP-2014-0001

**STATEMENT OF BOARD MEMBER RICHARD W. LOZIER REGARDING RECUSAL
IN THIS MATTER**

Richard W. Lozier, Jr. states as follows:

1. I was appointed to the Iowa Utilities Board (Board) for a six-year term that began May 1, 2017.
2. Prior to my service on the Board, I practiced law in Des Moines, Iowa, with the Belin McCormick, P.C., law firm and represented an organization called Midwest Alliance for Infrastructure Now (MAIN Coalition) in connection with the application of Dakota Access, LLC (Dakota Access), for a permit to construct, operate, and maintain a hazardous liquid pipeline in Iowa. The MAIN Coalition advocated in favor of issuance of the permit.
3. In that capacity, I participated in the hearing at the Board and wrote briefs in support of the application for permit for consideration by the Board. The Board approved the application and issued the permit as requested. The Board's decision was then appealed to District Court, and I wrote briefs and participated in the hearing at District Court, which affirmed the Board's decision.

DOCKET NO. HLP-2014-0001
PAGE 2

4. The matter was then appealed to the Iowa Supreme Court, which also affirmed the decisions of the Board and District Court. Because I was then a member of the Board, I recused myself from the appeal to the Supreme Court.
5. Pursuant to Iowa Code § 479B.13, Dakota Access filed a surety bond in the amount of \$250,000 on January 20, 2015, as Exhibit D to the Petition for a Hazardous Liquid Pipeline Permit.
6. On January 19, 2021, the Board received notice from Westchester Fire Insurance Company that the surety bond filed by Dakota Access in Docket No. HLP-2014-0001 in the amount of \$250,000 would expire on February 11, 2021.
7. On February 1, 2021, Dakota Access filed a Notice Regarding Surety Bond indicating an intent to allow the surety bond to expire.
8. The filings from Westchester Fire Insurance Company and Dakota Access raise a new issue in regard to compliance with Iowa Code § 479B.13 which has not previously been pending before the Board or required to be considered in this docket.
9. Pursuant to Iowa Code of Judicial Conduct Rule 51:2.11(A)(6)(a), I state that I participated substantially as a lawyer in the matter then in controversy before the Board and on appeal to District Court. I note, however, that the specific matter that may be in controversy now (i.e., whether Dakota Access can comply with statutory requirements regarding surety if the bond expires) has not been considered previously by the Board or the Courts.

DOCKET NO. HLP-2014-0001
PAGE 3

10. Pursuant to Iowa Code of Judicial Conduct Rule 51:2.11(C), I disclose on the record that because of my prior representation of the MAIN Coalition, I may be subject to disqualification from participating further in this matter; however, I request the parties and their lawyers to consider, outside my presence and the presence of Board staff, whether to waive disqualification.
11. I note also the provisions of Iowa Code Section 17A.17(8) providing that an individual who participates in making a decision in a contested case shall not have personally advocated in connection with that case “the specific controversy underlying that case,” and I state again that the specific issue of maintaining the required surety has never been considered previously by the Board or the Courts, and I have not advocated any position related to this question.
12. I raise these issues now, after the original case has been fully adjudicated, because the expiration of the bond raises a new issue, and I request the parties and their lawyers to consider whether I am disqualified from performing my duties as a member of the Board due to my previous participation in this case.

Richard W. Lozier, Date: 2021.02.12
Jr. 12:36:54 -06'00'

ATTEST:

Anna Hyatt Date: 2021.02.12
16:48:15 -06'00'

Dated at Des Moines, Iowa, this 12th day of February, 2021.