

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: DAKOTA ACCESS, LLC	DOCKET NO. HLP-2014-0001
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ORDER REMOVING BOND REQUIREMENT

PROCEDURAL HISTORY

On January 20, 2015, Dakota Access, LLC (Dakota Access), filed with the Utilities Board (Board) a Petition for Hazardous Liquid Pipeline Permit in this docket. On the same date, Dakota Access filed Exhibit D to the Petition in compliance with 199 Iowa Administrative Code (IAC) 13.2(1) and Iowa Code § 479B.13. Exhibit D includes a surety bond, issued by Westchester Fire Insurance Company in the amount of \$250,000, offered to establish compliance with the statutory requirement to provide guaranty for the payment of damages arising from the construction, maintenance, or operation of the proposed pipeline.

In the Board's Final Decision and Order issued in this docket on March 10, 2016, the Board required that Dakota Access maintain a general liability policy in the amount of at least \$25,000,000, to be filed and reviewed each time it is renewed, but at a minimum annually for the life of the pipeline. The March 10, 2016 order further required the filing of parental guarantees of funding for remediation. The required proof of insurance and proof of parental guarantees was filed on March 16, 2016, and accepted

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as satisfactory by the Board's Order Accepting Compliance Filings and Issuing Permit on April 8, 2016.

As authorized by Permit No. N0042 issued by the Board on April 8, 2016, and amended on May 8, 2020, Dakota Access has constructed the hazardous liquid pipeline and placed it into operation.

Dakota Access has maintained insurance as required by the Board since the issuance of Permit No. N0042 and filed proof thereof annually, with the most recent filing of proof occurring on November 17, 2020.

On January 19, 2021, the Board received notice from Westchester Fire Insurance Company of cancellation of the bond originally submitted by Dakota Access as Exhibit D, as described above.

On February 1, 2021, Dakota Access filed a Notice Regarding Surety Bond in which Dakota Access asserts that the maintenance of a surety bond is no longer required of Dakota Access because the required annual insurance filings, parental guarantees, and property acquired in Iowa constitute satisfactory proofs of its solvency and ability to pay damages.

No objections to the Notice Regarding Surety Bond have been filed by any parties in this docket.

BOARD ANALYSIS

Iowa Code § 479B.13 requires an applicant for a hazardous liquid pipeline permit to provide, prior to the granting of the permit, a surety bond in the amount of \$250,000 to ensure the applicant will pay any and all damages arising from the construction,

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maintenance, and operation of the pipeline. Iowa Code § 479B.13 further provides that “(w)hen the pipeline company deposits with the board security satisfactory to the board as a guaranty for the payment of the damages, or furnishes to the board satisfactory proofs of its solvency and financial ability to pay the damages, the pipeline company is relieved of the provisions requiring bond.”

Even though litigation regarding the Board’s granting Dakota Access the permit for the pipeline has concluded, Dakota Access is required to maintain the bond or other satisfactory proof of solvency and financial ability to ensure payment of damages caused by maintenance and operation of the pipeline. The statute requires Dakota Access to obtain Board approval to release the bond.

Because alternative proof of solvency and financial ability to pay damages must be deemed satisfactory to the Board, the Board will treat the Dakota Access Notice Regarding Surety Bond as a request for such determination.

Dakota Access asserts that the combination of the annually filed insurance policies; the parental guarantee filed on March 16, 2016; and subsequently obtained real property together constitute satisfactory security for the payment of damage claims arising from the construction, operation, and maintenance of the pipeline. As no proof of the title, location, or value of any such real property has been filed in this docket, the Board will consider only the filed insurance and parental guarantee.

The Board’s Final Decision and Order issued on March 10, 2016, and Order Accepting Compliance Filings and Issuing Permit on April 8, 2016, determined the amount of insurance, in conjunction with the parental guarantee, necessary to provide adequate proof of solvency and the financial ability to pay damages resulting from the

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construction, operation and maintenance of the pipeline. In light of these previous determinations, the Board finds that the continued maintenance of insurance and the permanent parental guarantees constitute satisfactory proofs of solvency and financial ability to pay damages such that Dakota Access should be relieved of the provisions of Iowa Code §479B.13 requiring the posting of a surety bond.

ORDERING CLAUSE

IT IS THEREFORE ORDERED:

Dakota Access, LLC, is hereby released from the requirement to file and maintain with the Board a surety bond in the amount of \$250,000 pursuant to Iowa Code § 479B.13.

UTILITIES BOARD

Geri Huser Date: 2021.03.09
14:10:06 -06'00'

Richard Lozier Date: 2021.03.09
16:42:14 -06'00'

ATTEST:

Anna Hyatt Date: 2021.03.10
11:34:55 -06'00'

Joshua J Byrnes Date: 2021.03.09
14:56:25 -06'00'

Dated at Des Moines, Iowa, this 10th day of March, 2021.