

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

**FILED WITH
Executive Secretary
March 16, 2016
IOWA UTILITIES BOARD**

IN RE:)
) Docket No. HLP-2014-0001
DAKOTA ACCESS, LLC)

**PRE-PERMIT COMPLIANCE FILINGS REQUIRED IN MARCH 10, 2016, ORDER
AND REQUEST FOR EXPEDITED TREATMENT**

In its Final Decision and Order (“Order”) approving the Application of Dakota Access, LLC under Iowa Code chapter 479B, the Board required Dakota Access to file six items prior to the issuance of a permit:

- (a) a revised Agricultural Impact Mitigation Plan (“AIMP”) consistent with the Order;
- (b) a general liability insurance policy in the amount of at least \$25,000,000;
- (c) the unconditional and irrevocable guarantees of the parent companies of Dakota Access for remediation of damages from a leak or spill;
- (d) a timeline showing when construction notices will be given, and the information to be included with such notification, as well as the time when consultation would take place;
- (e) modified condemnation easement forms consistent with the Order; and
- (f) a statement accepting the terms and conditions set forth in the Order.

Order at 153-154.

Dakota Access, contemporaneous with this cover pleading, files each of the items required for issuance of a permit. Because the Board has already found that the project promotes the public convenience and necessity, and will bring substantial economic benefits and a safer mode of transportation of oil to the public, it is in everyone’s interest to obtain those benefits as quickly and efficiently as possible. It is also in the interest of landowners for construction to

impact only a single growing season. Finally, the Board should avoid economic waste: now that weather conditions would permit construction, and the adjoining states have already issued all necessary authorizations, every day the project is delayed in Iowa has a very real cost that will quickly reach the millions of dollars. Accordingly, the Board should find this filing, with accompanying documents, to satisfy the preconditions set in the Order and should promptly issue Dakota Access the permit consistent with the approval of the Application.

By way of further explanation and to assist the Board's review, Dakota Access believes the AIMP and Easement documents are straightforward: they adopt the provisions specifically set forth in the Order (primarily pp. 74-83 for the AIMP; pp. 83-91 for the easements). Similarly, the timeline sought information that was largely ordered by the Board; the timeline filed reflects those requirements from the Order.

The Parent Guaranty documents have been filed with a request for confidential treatment. Dakota Access states that it drafted those based on the issues raised by the Office of Consumer Advocate as suggested in the Order at pp. 101-102. Dakota Access has provided those to the OCA, has met with the OCA and made some minor modifications, and believes that it has addressed the concerns the Board expressed and those it referenced in OCA's testimony and briefs.

The full insurance policies are also being filed confidentially. This is consistent with the Board's prior ruling that it was not appropriate to produce full insurance policies in discovery.¹ To provide an overview, however, and a roadmap for the Board's review, the insurance is provided in three policies: a general liability policy (the "underlying policy") and two excess/umbrella liability policies that are triggered by losses covered by the underlying policy

¹ See October 30, 2015 "Order Granting in Part and Denying in Part NILA Motion to Compel" at p. 6, declining to require the production of the full insurance policies ("The Board understands that release of the insurance policies in their entirety could lead to unforeseen consequences.")

but exceed the coverage limit of that policy. The aggregate of the three policies is \$26,000,000, slightly more than ordered. The pollution coverage that the Board discussed is provided in an endorsement that appears at page 51 of 56 in the PDF version of the general liability policy, where it is expressly added into the coverage under the policy. Dakota Access has also provided copies of these policies to OCA and has met with them to address any initial questions they had on the policies.

Finally, Dakota Access is providing a statement accepting the conditions with two clarifications. One states what Dakota Access understands to be inherent in a condition from the Board: that the Board may later clarify, modify or provide relief from any such condition in its judgment at that time. The other ensures that, should the litigation that has been threatened by other parties occur, Dakota Access is not constrained in how it defends that litigation.

Ultimately, as Dakota Access makes clear in the statement, Dakota Access understands that even under those circumstances the conditions may remain the same; Dakota Access accepts the permit under those conditions with the intent to construct and operate the pipeline. As a result, this statement meets the requirements of the Order.

Motion for Expedited Treatment/Motion to Shorten Comment Period

As the Board is aware, timing is of the essence for this project. These issues have been discussed and debated for nearly 18 months. The Board should find these filings fulfill the pre-permit conditions and promptly issue the permit.² If, however, the Board allows comment, the

² The Board in other lateral infrastructure permits frequently requires compliance filings before a permit is issued or active and verifies compliance on its own (or staff) review with no further comments. For example, in In re: Waterloo Gas Transport, LLC, Docket No. P-867, “Order Accepting Compliance Filing and Allowing Operation of Pipeline” (Ia. Utils Bd., March 9, 2007) the Board held that Waterloo Gas had substantially complied with conditions based on staff review; the order was granted **four days** after the final compliance filing was made. See also In re Envirogas, Docket No. P-861, a compliance filing was reviewed by staff in just six days after filing – over a holiday – with no comment period (even with one deficiency noted on the sixth day and then cured, final permit approval was provided in 12 days, again, including a holiday)

period should be shortened to five days; they should be due on Monday, March 21. Dakota Access would respectfully request that the permit issue promptly thereafter.

Respectfully submitted this 16th day of March

By: */s/ Bret A. Dublinske*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 16th day of March, 2016, he had the foregoing document electronically filed with the Iowa Utilities Board using the EFS system which will send notification of such filing (electronically) to the appropriate persons.

/s/ Bret A. Dublinske
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