

STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD

IN RE: DAKOTA ACCESS, LLC	Docket No. HLP-2014-0001 REQUEST FOR WAIVER OF HEARING AND PROCEDURES
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COMES NOW, Dakota Access, LLC (“Dakota Access”) and for its Request for Waiver of Hearing and Procedures, states as follows:

1. Dakota Access has filed with the Board, under a reservation of rights set forth therein, a Petition for Amendment to Hazardous Liquids Pipeline Permit (“Petition for Amendment”) along with relevant exhibits.
2. The Petition for Amendment relates to Hazardous Liquid Pipeline Permit No. N0042, issued by the Board to Dakota Access on April 8, 2016 following the issuance of the Board’s Final Decision and Order (“Final Order”) in the above-captioned docket on March 10, 2016.
3. Board Rule 13.9 governs amendment of existing permits and provides, in relevant part, “The applicable procedures for petition for permit, including hearing, shall be followed.” 199 Iowa Admin. Code R. 13.9.
4. With this Motion, Dakota Access requests that the Board waive the requirements of Rule 13.9, including specifically: (1) the requirement that a hearing be held; and (2) the requirement that notices of such hearing be provided.
5. The Board may grant a waiver from a rule adopted by the Board where:
 - a. The application of the rule would pose an undue hardship on the person for whom the waiver is requested;

- b. The waiver would not prejudice the substantial legal rights of any person;
- c. The provisions of the rule subject to a petition for waiver are not specifically mandated by statute or another provision of law; and
- d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the rule for which the waiver is requested.

199 Iowa Admin. Code R. 1.3; *see also In re Waterloo Gas Transport LLC*, Docket Nos. P-0867, WRU-2013-0017-3862, “Order Granting Waiver, Petition for Amended Pipeline Permit, and Requiring Filing of Letter of Credit” (I.U.B. Aug. 9, 2013) (“*Waterloo Gas*”).

6. As further described in Dakota Access’s Petition for Amendment and additional filings in this matter¹ the anticipated activities giving rise to the Petition for Amendment are narrow and limited. Specifically, Dakota Access intends to make certain improvements to the existing pump station located in Cambridge, Iowa (“Cambridge Pump Station Improvements”), which will allow for an increase in the daily throughput of the pipeline to 1.1 million barrels per day necessary to meet increased market demand for transportation of crude oil from the Bakken/Three Forks region. The Cambridge Pump Station Improvements do not involve any change in the product being carried, do not require the acquisition of any interests in land, do not involve any relocation or extension of the pipeline, and do not involve any work at all on the existing mainline pipeline. Rather, the Cambridge Pump Station Improvements are limited to the replacement and potential addition of pump equipment at the pump station itself, exclusively on land already owned by Dakota Access in fee.

¹ The anticipated improvements to the Cambridge Pump station are further described in Dakota Access’s June 12, 2019 Informational Notice; Dakota Access’s July 12, 2019 Response to Board’s Request for Additional Information; and Dakota Access’s September 26, 2019 Motion for Reconsideration.

7. Application of Rule 13.9, including the requirement for a hearing, would pose an undue hardship on Dakota Access. First, as the Board recognized in *Waterloo Gas*, requiring a pipeline company to repeat the entire permitting process a short time after the permit was originally issued, in a situation in which none of the information provided in the original petition and exhibits for the permit has changed, creates an undue hardship. Similarly, requiring Dakota Access to repeat the entire permitting process based upon a desire to install upgraded equipment to an existing pump station – a narrow and specific improvement that does not involve any modification of the mainline pipeline or acquisition of any interests in land – results in undue costs and use of resources. Further, the delay associated with repeating the entire permitting process causes undue hardship. As described in the Petition for Amendment, the Cambridge Pump Station Improvements are being made in response to demand for transportation of domestically-produced crude oil, and it is necessary for Dakota Access to begin the Cambridge Pump Station Improvements in time to complete them by the fourth quarter of 2020 or first quarter of 2021, in order to satisfy that demand and deliver the benefits to all Americans associated therewith.

8. Waiver of the hearing requirement in Rule 13.9 will not prejudice the substantial legal rights of any person. As further described in the Petition for Amendment, the Cambridge Pump Station Improvements do not involve relocation or modification of the pipeline, do not require the acquisition of any interests in land, and will take place exclusively on land already owned by Dakota Access. They will not materially change the operation of the pipeline, and operational safety requirements are in the exclusive jurisdiction of PHMSA (and even those are driven by maximum operating pressure, which will not change.) *See also Waterloo Gas* at 9 (granting waiver and opining that repeating entire permitting process would create undue

hardship where change did not alter the location, construction, operation, or safety requirements for the pipeline).

9. The procedural requirements required in Rule 13.9, including hearing, are not specifically mandated by any provision of Code chapter 479B nor by any other statute or provision of law.

10. Substantially equal protection of public health, safety and welfare will be afforded by a means other than the hearing requirement of Rule 13.2. First, the health and welfare-related requirements of the Board's Final Order regarding the pipeline remain intact and will remain intact during and after the Cambridge Pump Station Improvements. Second, as Dakota Access has explained in its filings to date, the safety of interstate pipelines, including the DAPL, is regulated by the federal government through PHMSA. In connection with and following the Cambridge Pump Station, Dakota Access will continue to be regulated by PHMSA and comply with all PHMSA requirements, which the Board could not alter in any event due to the preemptive effect of federal pipeline safety regulations.

11. Accordingly, for the reasons set forth herein and identified by the Board in Waterloo Gas, Dakota Access respectfully requests that the Board waive Rule 13.2's requirement for a hearing and associated requirement to provide notice(s) of such hearing.

WHEREFORE, Dakota Access respectfully requests that the Board waive Rule 13.2's requirement for a hearing and associated requirement to provide notice(s) of such hearing, and grant Dakota Access's Petition for Amendment to Pipeline Permit.

Respectfully submitted this 27th day of November, 2019.

By: /s/ Bret A. Dublinske
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**ATTORNEYS FOR DAKOTA ACCESS,
LLC**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 27th day of November, 2019, 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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