

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

**FILED WITH
Executive Secretary**

October 09, 2015

IOWA UTILITIES BOARD

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

**MOTION FOR CLARIFICATION
CONCERNING “PUBLIC UTILITY” DETERMINATION**

COMES NOW this 9th day of October, 2015, the Northwest Iowa Landowners Association (NILA) and in support of this Motion For Clarification Concerning “Public Utility” Determination, and states as follows:

1. The Petition (as amended) filed by Dakota Access, LLC, has been filed seeking a permit under Chapter 479B of the Code of Iowa.
2. There is no reference in Chapter 479B with respect to the determination of a applicant being qualified as a “utility” or “public utility”. However, the term “public utility” is defined under Chapter 476.
3. The Petition, as amended, also seeks to take land by eminent domain.
4. The taking of agricultural land by eminent domain has limitations. Iowa Code Section 6A.21. This Section goes on to state that the limitation does not apply in certain circumstances involving the Iowa Utilities Board (IUB), and those circumstances refer to utility status of the applicant before the IUB.
5. Iowa Code Section 6A.24 allows an acquiring agency to petition the court to seek clarification as to eminent domain authority.

6. Neither Dakota Access, LLC, nor the IUB have filed any such petition in any district court.

7. Dakota Access, LLC is not a public utility. Dakota Access, LLC has never pled that it was a public utility. The record is devoid of any evidence suggesting that Dakota Access, LLC is a public utility or a utility of any sort. Dakota Access, LLC has always represented that it is a private limited liability company.

8. NILA requests clarification from the IUB as to whether the IUB will consider the issue about whether Dakota Access, LLC is a “public utility” or a “utility” of any sort.

9. Furthermore, if that issue is to be considered by the IUB, the IUB needs to clarify the criteria by which it intends to measure how Dakota Access, LLC is a “public utility” or a “utility”.

10. The IUB should find either (a) that this issue will not be heard at the hearing scheduled in November, or (b) that if this issue is to be heard before the IUB, that *due process* requires that additional time needs to be allowed to require Dakota Access, LLC to amend its petition, amend its evidence and allow all other parties to properly respond.

11. It is anticipated that Dakota Access, LLC will respond by claiming that NILA is seeking a delay of these proceedings. Nothing further could be from the truth. Dakota Access, LLC brought the issue of claiming that it should be considered a “utility” by the IUB for the first time during legal argument at a hearing in Cherokee County on October 8, 2015.

WHEREFORE, the Northwest Iowa Landowners Association requests clarification concerning the possible determination of Dakota Access, LLC as a “public utility” or a “utility” as follows:

