FILED WITH
Executive Secretary
May 09, 2016
IOWA UTILITIES BOARD

STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD

IN RE:	)	
	)	Docket No. FCU-2016-0008
DAKOTA ACCESS, LLC	)	

DAKOTA ACCESS' RESPONSE TO THE COMPLAINT OF GARY VERPLOEGH

Dakota Access, LLC ("Dakota Access") hereby submits its Response to the Complaint of Gary Verploegh in the above-captioned matter.

INTRODUCTION

On May 2, 2016, the Board docketed an e-mail sent be Gary Verploegh ("Verploegh") as a complaint under the above-referenced docket number. Verploegh's Complaint states in its entirety,

> I have still not signed with the Dakota Access due to the wording in paragraph #5 See attached Easement this copy was giving to me last spring and included loss of future income due and issue with the pipeline including installation and future issues. The contract they are currently giving me to sign 0517 does not include future CRP contracts. My attorney strongly wants this back in to protect my interest. I am currently dealing with my 5 rep. from Dakota Access Rick Phillips cell 660/973/6652. This issue is keeping me from signing with them. MY attorney has had other clients with CPR have this in there contracts. I would like to know why Dakota Access is refusing to put it back in mine.

Verploegh Complaint E-mail, at 1.

Verploegh also attached a page from a voluntary easement form allegedly offered to him "last spring." For the reasons that follow, Verploegh's Complaint should be dismissed.

ARGUMENT

Mr. Verploegh's Complaint appears to be related to particular language he would like included in a voluntary easement between himself and Dakota Access regarding Conservation Reserve Program ("CRP") contracts.

As a threshold matter, it is not the role of the Board to force parties to negotiate specific contract language in a *voluntary* easement agreement, and particularly not at this juncture. With respect to the language of easement rights obtained by Dakota Access, the Board's role is to determine what easement rights that will be obtained by the Applicant *if obtained by eminent domain.* Pursuant to Iowa Code § 479B.16,

> ***A pipeline company granted a pipeline permit shall be vested with the right of eminent domain, to the extent necessary and as prescribed and approved by the board***, not exceeding seventy-five feet in width for right-of-way and not exceeding one acre in any one location in addition to right-of-way for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline. ***The board may grant additional eminent domain rights where the pipeline company has presented sufficient evidence to adequately demonstrate that a greater area is required for the proper construction, operation, and maintenance of the pipeline or for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline***.

Iowa Code § 479B.16.

The Board does not, as Verploegh's Complaint appears to suggest, direct the parties what language must be included in a *voluntary* easement.

Further, at this juncture, the Board has already issued its Final Order and determined precisely what easement rights will be obtained if obtained by eminent domain. If Verploegh wished for the Board to require language regarding CRP contracts in the Board-approved eminent domain easement rights, he was free to participate in the proceedings before the Board in Docket No. HLP-2014-0001 and present evidence that the Board should include such a provision. The post-order complaint procedure established by the Board in its' April 28, 2016 Order Denying Applications for Rehearing or Reconsideration, Opening Complaint Docket and Establishing General Complaint Procedures in Docket No. HLP-2014-0001 should not be allowed to be utilized as an opportunity to improperly request that the Board reconsider issues that could have been presented prior to the Board's Final Order (or for that matter, in a timely

motion for reconsideration following that order). *See* 199 Iowa Admin. Code § 7.27(1) (requiring that an "application for rehearing or reconsideration shall be filed within 20 days after the final decision in the contested case is issued."). The Board should dismiss Verploegh's Complaint on this basis alone.

Although the Board does not dictate the terms of voluntary easements, in the interest of providing information to Mr. Verploegh, Dakota Access will attempt to respond to his concerns. First, to the extent Verploegh is simply requesting that Dakota Access enter into a voluntary easement that includes a provision like that contained in Paragraph 5 of the partial easement agreement he attached to his Complaint, Dakota Access is willing to do so. That provision provides that, if a landowner is *currently* a party to a CRP contract, Dakota Access will reimburse the landowner for any amounts the landowner might lose by reason of a partial or full revocation of or penalty under *that* CRP contract due to Dakota Access's activities on the landowner's land. If that is Verploegh's intent, Dakota Access is willing to enter into a voluntary easement agreement containing such a provision, provided the parties can agree to the remaining terms of any such voluntary easement agreement.

To the contrary, if Verploegh is requesting that Dakota Access agree to pay him for a new, subsequent, or additional CRP contract he hoped to enter into in the future, Dakota Access cannot be required to do so. CRP contracts, by law, are for a limited duration. *See* 7 C.F.R. § 1410 (limiting duration of CRP contracts to 10 years, or 15 years, depending upon the nature of the contract). If a landowner is currently a party to a CRP contract, Dakota Access is willing to negotiate a voluntary easement that requires Dakota Access to reimburse the landowner for any amounts the landowner might lose by reason of a partial or full revocation of a CRP contract due to Dakota Access's activities on the landowner's land.

However, CRP contracts are administered by the Farm Service Agency ("FSA"). The FSA considers a number of factors in determining whether, and on what terms, to enter into a CRP contract with a landowner (and that is assuming no changes in the program before the hypothetical future contract might arise). *See generally*, 7 C.F.R. § 1410.1 *et seq*. Thus, whether the FSA will enter into a new CRP contract in the future with a given landowner, and on what terms, is wholly outside of Dakota Access's control. Simply stated, Dakota Access cannot agree to be liable for the future decisions of the FSA, over which it has no control and into which it has no input. A future CRP contract beyond one currently in effect is too speculative and too attenuated to be considered for damages; there is no certainty that such a contract would be entered at a future time with or without the pipeline.

WHEREFORE, Dakota Access, LLC respectfully requests that the Board enter an Order dismissing Verploegh's Complaint.

Respectfully submitted this 9th day of May, 2016.

By: */s/ Bret A. Dublinske*

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ATTORNEYS FOR DAKOTA ACCESS, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 9th day of May, 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
Bret A. Dublinske