

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE: DAKOTA ACCESS, LLC	DOCKET NO. HLP-2014-0001
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**ORDER REGARDING INSURANCE POLICIES**

(Issued October 16, 2018)

**PROCEDURAL BACKGROUND**

On March 10, 2016, the Utilities Board (Board) issued its “Final Decision and Order” in this docket, granting a hazardous liquid pipeline permit to Dakota Access, LLC (Dakota Access), pursuant to Iowa Code chapter 479B. Among other conditions, the order required Dakota Access to maintain at least \$25,000,000 in general liability insurance at all times while the pipeline is operational. Dakota Access filed its initial insurance policies on March 16, 2016. It filed extensions on March 29 and May 15, 2017, and new policies on June 13, 2017. Dakota Access then filed extensions on May 23, June 19, and July 19, 2018.

On August 16, 2018, Dakota Access filed a letter and certificate of insurance regarding its policies effective August 15, 2018, through August 15, 2019. Dakota Access states these new policies are consistent with the Board’s March 10, 2016, “Final Decision and Order” in this docket and provide an aggregate coverage of \$50,100,000 in liability insurance. Dakota Access further states that it has requested copies of the new policies and will file them with the Board upon receipt.

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On September 11, 2018, the Board issued an order seeking additional information and clarification regarding Dakota Access' required insurance policies. On September 21, 2018, Dakota Access filed its response to that order. In the response, Dakota Access states that the Board found the initial policies filed on March 16, 2016, met the Board's requirements, and that the current policies continue to satisfy the Board's requirements. Dakota Access states that it typically takes 30 to 60 days to receive the fully-executed insurance policies from the insurance broker, and it will provide those to the Board upon receipt, which it anticipates will be within the next 30 days.

Dakota Access also argues that the Board's requirement goes beyond what is allowed by Iowa Code § 479B.13, which requires a surety bond or proof of property in the state in an amount of \$250,000. Dakota Access argues that the Board lacks the authority to require additional insurance, but it has done so anyway.

Dakota Access further argues that the Board's "Final Decision and Order" did not limit the policy to incidents in Iowa, and that the current policies are similar to the original policies that the Board previously found compliant in its "Order Accepting Compliance Filings and Issuing Permit" dated April 8, 2016. Dakota Access acknowledges that the policies cover the entire pipeline, and an incident in North Dakota, South Dakota, or Illinois would be covered just as one in Iowa would be covered. Finally, Dakota Access argues the insurance policies are consistent with the Board's intent in its "Final Decision and Order" to provide additional assurance that Dakota Access would have the financial resources to address an incident.

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Dakota Access asserts this is especially true given that it has also provided the unconditional and irrevocable financial guarantees of its parent entities on top of the insurance policies. Dakota Access acknowledges that none of the other states that the pipeline crosses required insurance policies.

Additionally, Dakota Access also provided information regarding the claims process in the event of an incident. Dakota Access provided a toll-free phone number to call, and it provided a copy of the brochure it previously sent to landowners. Dakota Access states it is in process of re-mailing the brochure to landowners again this fall.

On October 2, 2018, the Northwest Iowa Landowners Association (NILA) filed a reply to Dakota Access' response. NILA argues that Dakota Access waived any arguments about the insurance requirement by not challenging the Board's "Final Decision and Order." NILA also argues that the insurance requirement must be limited to claims within Iowa, because the Board's order only applied to Iowa and the Board "cannot take care of landowners in North Dakota, South Dakota nor Illinois." NILA asked the Board to ensure the insurance provides at least \$25,000,000 for the benefit of affected parties in Iowa.

On October 3, 2018, Sierra Club also filed a reply. Sierra Club argues the Board's insurance requirement in its "Final Decision and Order" must have been meant to apply only to incidents in Iowa because the Board does not have jurisdiction or authority to mandate coverage for other states. Further, Sierra Club notes no other states have required such general insurance, so Dakota Access should have

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understood the coverage was to apply to claims in Iowa. Sierra Club also argues that Iowa Code § 479B.1 gives the Board authority to “protect landowners and tenants from environmental or economic damages,” which would give the Board authority to impose the insurance requirement.

### **ANALYSIS**

As a preliminary matter, the Board notes that Iowa Code §§ 17A.19(3), 476.12, and 476.13 set forth the requirements for reconsideration requests and judicial review. Specifically, parties to a contested case have 30 days from the date of the Board’s final decision on rehearing requests to seek judicial review of a Board action. The Board issued its order denying applications for reconsideration in this docket on April 28, 2016. Dakota Access did not challenge the Board’s order requiring the insurance policies at that time, even though its argument was specifically addressed in the Board’s “Final Decision and Order.” Thus to the extent Dakota Access now asserts that the requirement is beyond the Board’s statutory authority, such an argument is untimely.

Further, the legislature enacted chapter 479B of the Iowa Code to, in part, “grant the utilities board the authority to implement certain controls over hazardous liquid pipelines to protect landowners and tenants from environmental or economic damages.” Iowa Code § 479B.1. Iowa Code § 479B.13 sets forth a minimum financial requirement to be met before the Board may issue a permit, but does not preclude the Board from requiring more. Iowa Code § 479B.9 states that the Board “may grant a permit in whole or in part upon terms, conditions, and restrictions as to

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location and route as it determines to be just and proper. A permit shall not be granted to a pipeline company unless the board determines that the proposed services will promote the public convenience and necessity.”

In its “Final Decision and Order,” the Board’s finding that the pipeline would promote the public convenience and necessity was conditioned in part upon Dakota Access’ commitment that it would have the financial ability to remediate any incidents or spills that may occur, including an insurance policy of no less than \$25,000,000. This finding was within the scope of the Board’s broad powers when issuing a permit and therefore was a proper condition placed upon the permit granted to Dakota Access.

With respect to Dakota Access’ arguments that the Board’s “Final Decision and Order” did not require Iowa-specific coverage, the Board disagrees. The Board only has jurisdiction over the Iowa portion of the pipeline, thus the Board’s order inherently was concerned only with the portion of the pipeline through the state. Just as the Board cannot govern the pipeline’s operation in South Dakota, North Dakota, or Illinois, the Board’s conditions were limited to that portion of the pipeline in Iowa. Thus, the Board’s directions in its “Final Decision and Order” were specific to the portion of the pipeline that is located in Iowa.

Additionally, as Dakota Access itself noted, none of the other states required insurance policies as a condition of permitting the pipeline through their states. Regardless of whether Dakota Access contracts for an insurance policy for the other states, Dakota Access is required as one of the conditions for the permit to have a

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\$25,000,000 insurance policy that covers any damages in Iowa resulting from spills, leaks, or other incidents. Dakota Access could limit the insurance coverage to Iowa without violating the permits of any of the other states. The Board's intent in making the insurance policy a condition of the permit is that Dakota Access maintains at least \$25,000,000 in general liability insurance for the specific benefit of Iowa and affected parties in Iowa.

Dakota Access asserts that the Board previously found its initial policies complied with the Board's "Final Decision and Order" in this docket, and that the current policies must also comply because they are similar with those policies initially held by the company in 2016. The Board's order from April 8, 2016, found Dakota Access' initial insurance policies substantially complied with the Board's "Final Decision and Order" with respect to specific issues raised by other parties, notably Sierra Club and NILA. See "Order Accepting Compliance Filings and Issuing Permit" at 17-24 (April 8, 2016). The policies approved by the Board provided more coverage than the \$25,000,000 required by the Board, and the Board understood that \$25,000,000 would be available for any incident in Iowa.

The Board has now had additional time to review the policies and Dakota Access' answers to the questions raised in the Board's order dated September 11, 2018, including its acknowledgement that the current policies cover the entire pipeline. Based upon the current review of the policies, the Board now understands that the policies do not have specific coverage of \$25,000,000 for Iowa since an

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incident in one of the other states may create claims up to the limits of the policy, effectively leaving no coverage for any affected parties in Iowa.

Since the policies are filed annually and reviewed annually, the Board's approval and acceptance of the previous policies does not prevent the Board from requiring that Dakota Access modify the policies to ensure that there is \$25,000,000 in general liability coverage for any incident in or affecting Iowa. To address this issue, the Board will require Dakota Access to respond to this order within 21 days detailing how it intends to comply with the Board's requirement that it maintain sufficient insurance coverage for the pipeline in Iowa consistent with this order and the Board's "Final Decision and Order" dated March 10, 2016.

The presence of the parental guarantees do not alter the requirement for an insurance policy for incidents in Iowa. The parental guarantees are intended as a final backstop to ensure Dakota Access can remediate all damages in Iowa. The guarantees are not intended to absolve Dakota Access from any of the other commitments, including the maintenance of general liability policies. See "Final Decision and Order" at 101-102.

Finally, the Board notes that Dakota Access has provided a brochure and an updated telephone number for persons to contact in the event of an incident and has generally described the claims process. The Board will require Dakota Access to update the brochures and provide those updates to landowners, and file the updates with the Board, in the event any of the contact information, such as the phone number or website, changes at a later date.

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**IT IS THEREFORE ORDERED:**

1. Within 21 days of the date of this order, Dakota Access, LLC, shall file information describing how it will comply with the Utilities Board's requirement that it maintain \$25,000,000 in general liability insurance coverage for the benefit of affected parties in Iowa.

2. Dakota Access, LLC, shall update its contact information related to its claims process for the life of the pipeline and provide those updates to landowners and the Utilities Board.

**UTILITIES BOARD**

/s/ Geri D. Huser

/s/ Nick Wagner

ATTEST:

/s/ Bradley Nielsen

Dated at Des Moines, Iowa, this 16<sup>th</sup> day of October, 2018.