STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD

IN RE: DAKOTA ACCESS, LLC	Docket No. HLP-2014-0001 **DAKOTA ACCESS'S REPLY REGARDING RESPONSE TO THE BOARD'S SEPTEMBER 11, 2018 ORDER REQUIRING ADDITIONAL INFORMATION**

Dakota Access, LLC ("Dakota Access") hereby submits its reply regarding its response to the Iowa Utilities Board's ("Board") September 11, 2018 "Order Requiring Additional Information."

I. Introduction

On September 11, 2018, the Board issued its "Order Requiring Additional Information" (the "September 11 Order") requiring Dakota Access to provide certain information regarding insurance policies filed by Dakota Access pursuant to Ordering Clause (3)(b) of the Board's March 10, 2016 Final Decision and Order ("*Final Order*") in the above-captioned docket. On September 21, 2018, Dakota Access filed its Response ("Response") to the Board's September 11 Order. While the Board's September 11 Order did not allow or invite filings from any other party, on October 2 and October 3, 2018, respectively, the Northwest Iowa Landowners Association ("NILA") and Sierra Club each filed a response to Dakota Access's Response. The Responses of each of those parties make inaccurate representations, mischaracterize Dakota Access's position, and submit meritless arguments to which Dakota Access replies herein.

II. Argument.

Both NILA and the Sierra Club devote much of their Responses to arguing an issue that is merely tangential here – whether the Board has authority to impose financial responsibility conditions on pipeline operations different than those enacted by the Legislature. While Dakota Access's Response noted that it does not believe the Board can legally override the financial responsibility requirements enacted by the legislature, that issue has no present import because Dakota Access nonetheless has and continues to comply with the Board's insurance requirement regardless of its position on that legal issue. The fact that Dakota Access has done so and continues to do so has been made clear by Dakota Access's continuous filings of its insurance policies with the Board and was made clear in Dakota Access's Response to the Board's September 11 Order. *See* Dakota Access Response at 4. To the extent NILA and Sierra Club present argument on this issue, it is therefore of no moment.

NILA also claims that Dakota Access is "attempting to evade" the Board's insurance requirement and that Dakota Access "is seemingly unable to secure insurance coverage for oil spill risk here in Iowa." (*See* NILA Response at ¶¶ 4, 7). Both of those claims are wholly inaccurate. Contrary to NILA's claims, and as the Board is aware, Dakota Access has continuously maintained and continues to maintain "insurance coverage for oil spill risk here in Iowa." In fact, contrary to NILA's suggestion that Dakota Access is attempting to "evade" the Board's requirement, and again as the Board is aware, Dakota Access has insurance coverage in place of $50,100,000 – more than double the $25 million required by the Board in the *Final Order*.

Finally, NILA and Sierra Club make the meritless argument that the Board's *Final Order* required insurance coverage that would apply *only* if the incident occurred in Iowa. Contrary to their arguments, nothing in the *Final Order* imposed such a requirement, nor would such a

requirement be wise. Rather, the express language of the Board's *Final Order* required Dakota Access to file, "A general liability insurance policy in the amount of at least $25,000,000, to be filed and reviewed each time it is renewed, but at a minimum annually…" (*Final Order* at Ordering Clause 3(b)). Dakota Access did just that by filing insurance policies that covered an incident occurring in Iowa as well as in neighboring states, the Board expressly found those policies to be compliant with the *Final Order*, and Dakota Access has maintained policies of the same type in the same or greater amounts since then.

Simply put, the Board's intention was that, in addition to the much more abundant financial resources available to Dakota Access, Dakota Access had insurance in place of at least $25 million in case an incident on the pipeline caused harms in Iowa. Dakota Access's policies do just that – if an incident occurs that results in damages in Iowa, it is covered by the policies that the Board required Dakota Access to obtain. The fact that the policies could also cover an incident on the pipeline occurring in a neighboring state does not mean that the policies do not cover an incident occurring in Iowa.

Further, NILA and Sierra Club's argument is contrary to the manner in which insurance is underwritten and obtained. Insurance is obtained on the asset – the pipeline. It is not underwritten and obtained based upon artificial state borders. Moreover, having in place insurance coverage that would cover damage only if the incident arises within Iowa makes little practical sense – an incident occurring on the border, or just over the border in a neighboring state could impact property or persons in Iowa, and surely the Board did not intend that such a loss not be covered.[1] In sum, NILA and Sierra Club's argument is contrary to the express

[1] Surely NILA is not arguing for a policy that would <u>not</u> cover damage to a farm in Northwest Iowa simply because the incident arose just over the border in South Dakota, and surely Sierra Club is not only concerned with protecting the natural environment in Iowa, or wildlife when it happens to be in Iowa.

language of the Board's *Final Order*, the Board's Order Approving Compliance Filings issued thereafter, the reality of the insurance industry, and common sense.

The Board has approved policies precisely like those in place in the past, and has held specifically that they comply with the Board's *Final Order*. There is no lawful basis for the Board to change its requirements at this time. Any concerns raised by the objectors are more than addressed by the fact that Dakota Access has provided proof of more than double the amount of insurance the Board requires. Moreover, the objectors' arguments erroneously overlook that insurance was never intended to be the entirety of the proof of financial responsibility by Dakota Access: as the Final Order discusses, Dakota Access provided a bond, it now has assets and revenues, it holds insurance, it provided guarantees from its corporate parents worth far more than the insurance policies, and it pays into a federal fund that provides an ultimate backstop.

Accordingly, the Board should disregard the responses filed by Sierra Club and NILA in response to Dakota Access's Response to the Board's September 11 Order.

Respectfully submitted this 15th day of October, 2018.

By: */s/ Bret Dublinske*

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ATTORNEYS FOR DAKOTA ACCESS, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 15th day of October, 2018, 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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