

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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IN RE:  DAKOTA ACCESS, LLC	DOCKET NO. HLP-2014-0001
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**ORDER ADDRESSING PETITION FOR AMENDMENT AND REQUIRING  
RESPONSE**

(Issued January 13, 2020)

**PROCEDURAL BACKGROUND**

On November 27, 2019, Dakota Access LLC (Dakota Access) filed a petition for an amendment of Hazardous Liquid Pipeline Permit No. N0042 allowing Dakota Access to increase the amount of oil to be transported through the pipeline to 1.1 million barrels per day. Dakota Access filed updated petition Exhibits C and F as part of the petition and filed a request for waiver of the requirements in 199 Iowa Administrative Code (IAC) 13.9 for a hearing and notice.

As of January 10, 2020, objections and comments regarding the petition for amendment of Permit No. N0042 have been filed by the following persons: Judith Hainaut, Kathleen Murtey, Del Holland, Angela Forret, Susan Franzen, Patrick Bosold, Barbara Norblom, The Sierra Club of Iowa Chapter (Sierra Club), A. Joseph Wyse, Richard J. Stuckey, Bill Deitrich filing as Friends End Flower, David Lowman, Bold Iowa, Kristin Frish, Angela Tedesco, Marith Reheis, Nicholas David, Ed Fallon, Matthew Peirce, Lori O'Dell McCollum, Environment Matters, Frack Free Illinois,

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Judith Cooper, Richard and Judith Lamb, Barbara Anderson, Lori O'Dell McCollum, John Freeberg, Mark Edwards and Jason Snell. The Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, filed an objection to the waiver request.

On December 24, 2019, the Northwest Iowa Landowners Association (NILA) filed an objection to the request for waivers.

On January 10, 2020, the Story County Board of Supervisors filed a resolution and request for hearing in regard to Dakota Access' proposed operating capacity of the pipeline.

### **PETITION FOR AMENDMENT**

In the petition, Dakota Access states that the improvements at the Cambridge pumping station do not affect the legal description of the route in Exhibit A attached to the permit. Dakota Access states that the improvements do not change the maps in Exhibit B or have any effect on the route approved by the Board. Dakota Access states that it has filed an updated Exhibit C to explain the purpose of the proposed improvements to the Cambridge pumping station. Dakota Access points out that it is in compliance with the requirements for Exhibits D, E, and G. Dakota Access states that it will advise the Board before commencing construction at the Cambridge pumping station. In addition, Dakota Access states that the improvements proposed at the Cambridge pumping station will not affect any landowner's real property rights. The improvements are to take place on property owned by Dakota Access,

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construction of the improvements will not affect the statement as to how damage claims will be determined, and the improvements do not alter or have any effect on the Agricultural Impact Mitigation Plan approved by the Board.

### **REQUEST FOR WAIVER OF 199 IAC 13.9(2)**

Dakota Access requests that the Board waive requirements for a hearing and any applicable notice requirements that are required in 199 IAC 13.9(2). Dakota Access states that the activities that are the subject of the amendment are narrow and limited and do not involve any change in the product being transported, do not require any new interests in land, and do not involve any work on the existing mainline pipeline. Accordingly, requiring a hearing would pose an undue hardship since none of the information in the original petition approved by the Board will be changed. Dakota Access states that the waiver of the hearing requirement will not prejudice the substantial legal rights of any person since the improvements do not affect the route or location of the pipeline. Dakota Access states that the hearing is not specifically mandated by statute, and the health and welfare requirements approved by the Board for the permit will remain in place. Finally, Dakota Access states that safety of the Dakota Access hazardous liquid pipeline is regulated by the federal government through the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the improvements will be subject to PHMSA safety regulations.

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## **OBJECTIONS TO WAIVER REQUEST**

### **A. OCA**

OCA states that the Board has the authority to grant a waiver if, among other things the Board finds by clear and convincing evidence that the waiver would not prejudice the substantial legal rights of any person. OCA states that, at a minimum, some type of notice needs to be provided to interested persons so the Board will have the information necessary to meet the clear and convincing standard in 199 IAC 1.3 before it makes a determination regarding the waiver request.

### **B. Sierra Club**

Sierra Club addresses the four factors in 199 IAC 1.3 that are required to be satisfied by clear and convincing evidence. The first factor requires that denial of the waiver would pose an undue hardship for Dakota Access. Sierra Club states that for a hardship to meet the undue hardship requirement the hardship needs to be unreasonable or unjustified. Sierra Club does not agree with Dakota Access that no information from the original permit has changed citing to the doubling of the volume of oil to flow through the pipeline. Sierra Club states that Dakota Access' claim of a delay in fulfilling the shipper contracts is not an undue hardship. Sierra Club argues that the shippers may be affiliates of Dakota Access and so any hardship is self-generated and that the oil will very likely be exported so there is no hardship to United States citizens. Sierra Club argues a hearing would allow these issues to be addressed.

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Sierra Club points out that Dakota Access has not provided expert explanation regarding the drag-reducing additive Dakota Access intends to use in increasing the flow of oil. Sierra Club states that the Board asked for expert explanations for the effect the additive would have on the longevity of the pipeline and whether the increased flow would increase the amount of oil released if a spill occurs. Sierra Club states that Dakota Access does not provide that information.

Sierra Club states that a waiver would substantially prejudice the legal rights of persons who have standing to litigate the impacts of the increased volume, the second of the criteria to be satisfied in 199 IAC 1.3. Sierra Club states that although a hearing is not specifically mandated by statute, requiring a hearing follows the legislative intent of giving the Board jurisdiction over hazardous liquid pipelines. Finally, Sierra Club argues that increasing the volume of oil that will flow through the pipeline will substantially affect health, safety and welfare.

Sierra Club argues that Dakota Access has not met its burden of showing by clear and convincing evidence that it is entitled to the waiver.

C. NILA

NILA objects to the request of Dakota Access for waiver of the hearing and other procedures. NILA states that it supports OCA's objection and position that the Board should require Dakota Access to give notice to all interested parties, specifically all landowners in existence in January 2014, and all current landowners where the pipeline is located. NILA also suggests that the Board require Dakota

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Access to provide certification of all changes in ownership of affected properties since January 2014. NILA filed a brief in support of its objection.

### **PETITION DEFICIENCIES**

As part of the procedure for considering a petition for an amendment of a hazardous liquid pipeline permit, the petition is reviewed by the engineers in the Board's Safety and Engineering Section. The engineers reviewed the petition and supporting information and have identified deficiencies in the petition and supporting exhibits. The Board will direct that Dakota Access provide responses to the following requests for additional information:

1. In the September 6, 2019 order, Dakota Access was directed to file information as part of Exhibit F to address several issues. Two of those items were as follows:
  - a. Provide expert explanation of the effect adding the additive to the oil will have on the longevity of the pipeline components and whether the additive will increase the risk of a spill or other incident on the pipeline; and
  - b. Provide expert explanation of whether the increased flow will increase the amount of oil that will be released if a spill occurs.
2. In accordance with 199 IAC 13.2(1)(k), the Board may require filing of additional exhibits if further information on particular parts of the project is deemed necessary. Dakota Access shall file a petition Exhibit K that contains its responses to the following questions:
  - a. In its petition Exhibit C, Dakota Access states that the proposed improvements will increase the pipeline's average daily capacity up to 1.1 million barrels/day. Provide a statement on whether this will be the maximum daily capacity this pipeline can transport without any change to its maximum allowable operating pressure (MAOP). If this is not the maximum daily capacity of this pipeline, indicate what the maximum daily capacity of the pipeline will be without any change to the MAOP.

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- b. Indicate the current maximum actual operating pressure of the pipeline and the proposed maximum actual operating pressure of the pipeline after the completion of the improvements.
- c. List any permits or approval requirements from any local, state, federal, government agency (not limited to Iowa) for these improvements to the Dakota Access pipeline system and the status of each permit or approval.
- d. Provide a statement indicating whether all damage claims that resulted from the construction of the pipeline have been resolved pursuant to Iowa Code § 479B.17. If there are outstanding damage claims, provide the status of these claims.
- e. Indicate whether DAPL plans to patrol or inspect the pipeline right-of-way shortly after the increase of the transport capacity of the pipeline begins. If not, explain why no inspection is planned.
- f. Provide a statement indicating the start and end dates of each pipeline inspection conducted by PHMSA after the construction of the pipeline was completed. Provide a description of any probable violations to the federal safety code that were issued to Dakota Access by PHMSA as a result of these inspections.
- g. Describe any reportable incident, spill, or unintentional release of product that occurred after the pipeline become operational.

### **DISCUSSION OF OCA OBJECTION**

As part of OCA's objection to the petition for amendment, OCA states that the Board should require some type of notice so interested persons can provide responses. The Board is unsure what additional notice is required since the Board has received a number of responses to the petition and the filing of the petition was sent to all parties on the Board's service list in Docket No. HLP-2014-0001.

The Board will address the other comments and objections once it has received a response from Dakota Access to the information requested above.

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**ORDERING CLAUSES**

**IT IS THEREFORE ORDERED:**

1. Dakota Access LLC shall file a response to the deficiencies described in this order within 30 days of the date this order is issued.
2. The Office of Consumer Advocate, a division of the Iowa Department of Justice, shall file a response indicating what additional notice of the Dakota Access LLC petition for amendment of permit it believes is required within 15 days of the date of this order.

**UTILITIES BOARD**

*/s/ Geri D. Huser* \_\_\_\_\_

*/s/ Nick Wagner* \_\_\_\_\_

ATTEST:

*/s/ Kelsie Vanderflute* \_\_\_\_\_

Dated at Des Moines, Iowa, this 13<sup>th</sup> day of January, 2020.