

**STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD**

**FILED WITH
Executive Secretary**

April 22, 2016

IOWA UTILITIES BOARD

IN RE: Dakota Access, LLC.

DOCKET NO. HLP-2014-0001

RESPONSE TO DAKOTA ACCESS' RESISTANCE TO ERIN RILEY'S REQUEST FOR REHEARING OR RECONSIDERATION

I, Erin Riley, respectfully submit this 22nd day of April, 2016, a Response to Dakota Access' Resistance to Erin Riley's Request for Rehearing or Reconsideration. I'd like to formally respond since there has been some confusion related to my previous filings, their discussion during the Iowa Utilities Board (IUB) meeting on April 14, 2016, and their factual validity and merit as questioned by Bret Dublinske in his filing of April 15, 2016, entitled "Dakota Access' Resistance to Erin Riley's Request for Rehearing or Reconsideration" (Resistance). I will refute the following main points presented in Dublinske's Resistance: 1.) I am a nonparty lacking any standing, and because I failed to meaningfully participate at the past hearing I am precluded from having any agency or opportunity to address current and future legal grievances related to this case and involving the IUB; 2.) I have no good reason for failing to participate at the past hearing, furthermore that I have no new or additional evidence relevant to this docket; and 3.) I am nonsensical and unreasonable, unfairly demanding that a voluntary Easement Agreement should include a written acknowledgement as a binding affidavit that Dakota Access will be limited to specifically transporting one type/class of crude oil, and additionally a written acknowledgement that Dakota Access will uphold terms and conditions agreed upon with the IUB and detailed in the Final Order (Order), the Agricultural Impact Mitigation Plan Revised (AIMP), the Final Stormwater Pollution Prevention Plan, and the Unanticipated Discovery Plan.

1.) Dublinske asserts that as a nonparty I have no standing, thus any of my Motions or Requests should be denied. He states, "...a person cannot seek to have an issue addressed for the first time through a Motion for Reconsideration or Rehearing where the person failed to meaningfully participate at the hearing." Named party in the hearing or not, I am a landowner of an eminent domain parcel in this currently contested case. Whether voluntarily or through condemnation proceedings, by lawful contract I will be a named party as Grantor in an Easement Agreement with Dakota Access--therefore, I argue I do have standing.

Dublinske advises that any agency or standing I may have related to this case should be unconditionally and unilaterally denied, because I did not intercede before the hearing to become a named intervenor or objector, and because of my "failure to present the evidence at the regular hearing." Clearly, I could not meaningfully participate *or* present evidence at the hearing after failing to intervene prior to the hearing, in July of 2015, regardless of whether or not relevant evidence even existed at that time. Thus, arguments from any party or person should not be summarily invalidated simply because they were not yet extant at the time of the IUB's hearing and due to the fact that the arguments arise from, or following, the IUB's hearing and Order.

In his Resistance, Dublinske cites cases in support of his recommendation to dismiss any Motion, Request, or Statement, submitted by a nonparty or nonparticipant. It was noted in the Order (page 121) that the IUB is granted jurisdiction and authority over hazardous liquid pipeline permits pursuant to Iowa Code 6A.21(2) regardless if Dakota Access is considered a "utility" or not, which is an argument currently contested among parties in this case. It is unclear how a determination on "utility" might contribute to eminent domain lawsuits with Dakota Access; hence, I appeal any utility cases that Dublinske applies toward his support not be considered justification for the denial of my agency or standing--I argue that precedence likewise remains the jurisdiction of the IUB, whose authority should also ultimately determine from any party or person what new evidence shall be heard or denied.

2.) Dublinske claims that I have no good reason for not participating until my first filing dated March 30, 2016, and that I have no new or additional evidence relevant to this docket. Technically, I would have had to formally become an intervenor prior to July 27, 2015; or, if I could prove some "good cause" (which was then judged as sufficient reason), I would have had to petition by October 12, 2015, in order to be able to file direct testimony related to Exhibit H regarding eminent domain parcels. From April of 2015 through April of 2016, I have been in easement negotiations with no less than three Right-of-Way Agents and with Fredrikson & Byron, P.A. (to further clarify, I have received only one Easement Agreement to sign, a boilerplate template from November 2014). It was within my rights to submit the documents legally filed on March 30, 2016, and April 11, 2016; my testimony in those legal filings should be able to be considered new evidence and "good cause" for intervention, due to the fact arguments arose from or following the IUB's hearing and Order.

Dublinske's Resistance presents this caveat: by a person not having reason to participate at one time (or by a timely scheduled manner), it precludes the opportunity to ever meaningfully participate no matter the reason or cause. If I were in ongoing negotiations with Right-of-Way Agents in order to acquire a mutually amenable and voluntary Easement Agreement that started prior to the IUB hearing, why then *before the hearing began* would I have yet had reason to petition to intercede as a named party (thus "meaningfully participate")? I received my first Easement Agreement the last week of April, 2015. In July, 2015, I was contacted by a different Right-of-Way Agent who had taken over the case of my parcel, trying to catch up on my questions or concerns. By the end of September, 2015, a totally new Right-of-Way Agent was responsible for my easement contract. If, in good faith I still believed that I could achieve an iota of negotiation with my new Right-of-Way Agent, why then *by October 12, 2015*, would I have petitioned to intervene at that point and what sufficient evidence would I have had that would be judged "good cause"?

Actually, until reading the language of Dublinske's Resistance, I naïvely believed I was still currently in negotiation with Jennifer Hodge Burkett of Fredrikson & Byron, P.A., instead of being humored and strung along until some clock ran out because I am apparently "nonsensical." I was only ever offered one contract, and only ever one lump sum offer of compensation, before

my parcel was listed as eminent domain on Exhibit H--that is not a negotiation, and that is not voluntary. I argue, however, that it is a case where a voluntary Easement Agreement was unreasonably withheld from a landowner who wanted to settle. To further clarify, I was never even offered a voluntary Easement Agreement which included specific reference, in writing, to the AIMP. Although I try my best to be my own advocate, and an advocate for my family and our property, I am not educated as an attorney thus I didn't submit at this time e-mails with Right-of-Way Agents and with Jennifer Hodge Burkett; but, I encourage Dublinske to release me from any legal repercussions so that I may provide the IUB and the general public additional relevant evidence to this docket. Permit me to provide for review the Easement Agreement drafted by Dakota Access, or at the very least allow me to submit for comparison the counteroffer that I wrote which Dublinske has already selectively quoted in his Resistance.

Dublinske reiterates that my claims have no basis, and that my parcel should not be treated differently than any other parcel in category one of the Board's Order, because "on all tracts for which no party intervened, filed prepared testimony, nor testified at hearing, the Board granted Dakota Access the right of eminent domain without further analysis regarding those tracts." I have clearly shown that the logic of timing and circumstance is flawed. How and in what manner were landowners notified that by failing to intervene as a party or file testimony by a certain date (prior to July 2015, or prior to October 2015), then they would be relegated to a special category of eminent domain properties with limited landowners' rights and even less avenues for legal recourse? Additionally, to respond on a finer point, my "Statement of Position, Comments" was filed as legally prescribed for landowners listed on Dakota Access' Revised Exhibit H--therefore, my filing of April 11, 2016, should be able to be considered as prepared testimony in this case.

I'd like to further personally challenge Dublinske and Dakota Access to prove that all seven interstate Grantors for the easements sought on my parcel, IA-WA-036.000, were notified by Certified Mail at all their home addresses in a timely manner regarding community informational meetings and notices of participation, as legally required, including dates of exclusion that may affect landowners' rights or agency. I'm sure I'm not the only landowner who will argue that to sign the first and only "voluntary" Easement Agreement offered is no choice at all, and most difficult under the threat of eminent domain. Must I let my property go through condemnation proceedings to acquire a more secure Agreement (inclusive of IUB's ruled provisions) in order to protect the land, my family, and my heirs--at the cost of perhaps less compensation, incurred fees, and apparently the public disparagement for not being as efficacious as a real attorney?

3.) Dublinske dismisses valid grievances by unjustly marginalizing me as "nonsensical" and "unreasonable" in his Resistance--moreover, he insinuates that my demands (I would call them modifying clauses) on a voluntary Easement Agreement are absurdly unfair and that I have lied with "factual allegations". He accuses me of being misleading. Yes, to the best of my ability I authored my own Easement Agreement, because I had no other options open or proffered to address my concerns in writing--I sincerely apologize for the inadequacy as not everyone has legal training or extra income for an easement attorney. My communication skills must really lack

clarity, since I was unable to get a location-specific Agreement even with the survey information already on-hand and our property previously staked with a center-line for the pipeline easement. Instead, the contract I was offered granted easement rights to Dakota Access in perpetuity for "a certain tract of land" using the legal description of our entire farm. My counteroffer to Dakota Access' Agreement, which requested the use of my land, was fair and responsible and I would have signed it if not actively prevented by Fredrikson & Byron, P.A.

My technical shortcoming, however, does not negate the fact that before Dakota Access submitted their subject-related filings I had already addressed the following in my own drafted Easement Agreement: Dewatering, Cultural Resource Management regarding archaeological or human remains, Environmental Compliance, and I requested an affidavit of insurance. If my invalid comments totally lack merit, as Dublinske portrays, then I must have just lucked upon early those pertinent issues which precipitated Dakota Access themselves to file their Final Stormwater Pollution Prevention Plan, their Unanticipated Discovery Plan, and to disclose their insurance information. To the point, why can't I get an Easement Agreement to sign that includes an affidavit (in writing) that Dakota Access will be accountable for upholding their responsibilities as per the Order, the AIMP, and those Plans? Due to timing and circumstance, court condemnation is being leveraged against me instead of Dakota Access providing me with an Easement Agreement that includes revisions ruled necessary by the IUB's Order, regardless of Dublinske's displeasure with my appeal for more comprehensive language to be inserted into a hold harmless clause.

As I am a named party on my contract with Dakota Access, Dublinske fails to explain why my requests are inappropriate for more specific wording and language regarding indemnity on my Agreement. Because he cites a case as precedent that the IUB has no jurisdiction or authority to craft an indemnity provision for all landowners, that means I am prohibited from petitioning for an extra paragraph--in a contract requested for my land--which would protect my family, and our property, now into the future? Why is the Easement Agreement offered to me so different than the exposition of Iowa Codes and laws of Dublinske's assurances? To mention it, I'm glad he brought up the matter of cattle: on the one Agreement ever offered to me it clearly states that the Grantor will only be reimbursed for damages to livestock "due to Grantee's construction activities during the periods of the original construction of the pipeline." Why am I not entitled to damages to livestock during the maintenance, repair, or reconstruction of the pipeline? Likewise, on the Easement Agreement Dakota Access offered me, the wording regarding indemnity is equally deceptive and restrictive--clearly stating that the landowner will be held harmless from claims or liabilities "...excepting, however, such claims, liabilities or damages as may be due to or caused by the acts of Grantor, or its servants, agents or invitees." The more comprehensive language that I proposed, in brief, modified the wording to include this phrasing instead: "...except to the extent directly caused by the gross negligence or willful misconduct of Grantor and the Grantor's tenants or agents...." I do not believe that is unreasonable. I do find Dublinske's discredit to my character nonsensical and questionable, a diversion in the hopes of not having to address valid grievances and injustice.

Dublinske does score a good point, accurately highlighting a clumsy attempt in my writing to clarify that the pipeline shall not transport nor store sewage, salt water, or any type/class of crude oil other than specifically "light sweet crude oil." Thank you, sir, for your guidance on crafting a more eloquent legal document--it is very important to be specific in these matters as a simple mistake could happen to anyone, even could have led to the clerical misrepresentation of Bakken oil loading for rail travel in 2014. And thank you for your critique, so that I may further refine my plea for due diligence since the unique composition, flammability, and volatility specific to Bakken "light sweet crude oil" might necessitate new or revised study on how the VOCs of this oil react with other organic compounds if leaked, and on the additional environmental impacts; not to mention, crude oils that are light (with higher degrees of API gravity, or lower density) and sweet (with low sulfur content) may have certain implications for emergency response planning. Your careful analysis, though thorough, I found greatly supplemented by letters from the Environmental Protection Agency, the Department of the Interior, and the Advisory Council on Historic Preservation, sent to the U.S. Army Corps of Engineers as recently as last month related to this project. I, but not me alone, have learned a crucial lesson in diligence and would be remiss not to exhaust all available efforts as land stewards for a fair contract in the earnest defense of protecting irreplaceable resources and individual property.

In closing, I respond to Dublinske's Resistance with genuine confusion at his disparagement and his convoluted reasoning. Especially in cases where eminent domain may be granted, for a fair contract to be unreasonably withheld is unjust. Because I've had no previous participation in this docket, then that precludes any opportunity or merit to future arguments I may have despite the fact that they are legally presented? Is not that in itself denying me lawful participation? How then may new relevant evidence be introduced for due process review if that evidence arose from, or following, the IUB's Order? If legally filed Motions for Reconsideration or Rehearing, Statements of Position and Comments, or a Complaint, are not the appropriate avenues to admit additional and/or new issues and evidence then what exactly is the mechanism to instigate a Reconsideration or Rehearing? Would violating the IUB's Order in any manner, even if dismissed as a warning violation, be enough cause for a Reconsideration or Rehearing? . . . Is it not in the spirit of law to provide adequate and clear forum for a party or person to address grievance or wrong-doing? If the letter of the law can justify the manipulation of dates, contracts and the public, and warrants the suspension or denial of landowners' rights, then I am utterly mistaken in believing that the spirit of the law reflects the good faith intent to be an advocate for citizenry and their voice. By: /s/ *Erin Riley*

Erin Riley, April 22, 2016

Interested parties or nonparties may reach me at: erinkelleyriley@gmail.com