

STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD

**FILED WITH
Executive Secretary**

May 05, 2016

IOWA UTILITIES BOARD

IN RE:)
) Docket No. FCU-2016-0006
DAKOTA ACCESS, LLC)

DAKOTA ACCESS' RESPONSE TO THE COMPLAINT OF ERIN RILEY

Dakota Access, LLC (“Dakota Access”) hereby submits its Response to the Complaint of Erin Riley in the above-captioned matter.

INTRODUCTION

On March 10, 2016, the Board entered its Final Order (the “Order”) in Docket No. HLP-2014-0001 approving the Application of Dakota Access under Iowa Code Chapter 479B and granting Dakota Access the right of eminent domain as specified in the Order. On March 31, 2016, Riley, self-identified as a remainderman and tenant in common on tract number IA-WA-036.000, filed her “Motion to Apply for Rehearing” (the “Motion for Rehearing”).

On April 11, 2016, Riley also filed a document titled “Statement of Position, Comments” in which she appears to supplement her motion with comments regarding certain terms she would like in a voluntary easement with Dakota Access (the “April 11 Statement”). On April 15, 2016, Dakota Access filed a Resistance to Riley’s Motion for Rehearing, and reserved opportunity to submit additional comments in the event the Board chose to consider Riley’s Motion for Rehearing and/or Riley’s April 11 Statement a “complaint” and create a separate FCU docket. On April 22, 2016, Riley filed a document titled “Response to Dakota Access’s Resistance to Erin Riley’s Request for Rehearing or Reconsideration” in Docket No. HLP-2014-0001.

On April 28, 2016, the Board issued its Order Denying Applications for Rehearing or Reconsideration, Opening Complaint Docket and Establishing General Complaint Procedures. In that Order, the Board chose to treat Riley's Motion for Rehearing and her April 11 Statement as a complaint, explaining,

The Board will treat Riley's motion as a complaint, identified as Docket No. FCU-2016-0006. While Dakota Access has provided a response to the motion, the company reserved the right to submit further comment if the motion is converted to a complaint, so the Board will set a comment schedule allowing the company an opportunity to submit further comment and giving Riley the opportunity to submit reply comments, after which the Board will take such action as it deems appropriate.

April 28, 2016 Order, at 11.

The Board's Order further indicates that Riley's Motion for Rehearing, April 11 Statement, and Dakota Access's April 15, 2016 Resistance to Riley's Motion for Rehearing are now part of the record in Docket No. FCU-2016-0006. (April 28, 2016 Order at 13, ¶ 3).

ARGUMENT

Although the Board's April 28, 2016 Order indicates that Dakota Access's April 15 Resistance to Riley's Motion for Rehearing is part of the record in this docket, Dakota Access believes it necessary to summarize its arguments in response to Riley's comments in her April 11 Filing, as well as address an additional issue raised by Riley in her April 22 Filing.

With respect to Riley's request that the Board require Dakota Access to insert a specific indemnification provision in any easement obtained over IA-WA-036.000, Riley's argument appears to result from a misunderstanding of the Board's role in granting eminent domain authority. In short, Riley's Motion asks the Board to craft an indemnity provision, which would indemnify all landowners, even in the event of their own negligence or failure to maintain their property, to be applied to every easement obtained through condemnation. However, it is not the Board's role with respect to eminent domain rights to draft easement agreements for the parties; rather, the Board's

role is to determine whether the rights *requested by the Applicant* will be granted. 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; *see also* 199 Iowa Admin. Code 13.2(h) (requiring a “specific description of the easement rights being sought.”).

Further, the Board has recently rejected the same suggestion regarding indemnity in a similar scenario. In *In re: ITC Midwest, LLC*, No. E-22156, Proposed Decision and Order Granting Franchise (I.U.B. Mar. 29, 2016), the Board considered a landowner’s request that ITC be required to indemnify the landowner for any damage that might result if the landowner’s cattle got out of their enclosure. The Board rejected that suggestion, noting that ITC’s easement documents, statement of damage claims, and Code Section 478.17 (requiring payment for damages caused by the applicant) already governed ITC’s liability for damages to a landowner, and concluding, “Beyond that, it would not be reasonable to require ITC to indemnify the Hoffmanns if their cattle get out no matter what the reason for their escape as the Hoffmanns would like.” *Id.* at 51.

The same is true here. Dakota Access, like ITC, has filed a Statement of Damage Claims pursuant to 199 Iowa Admin. Code 13.2(3), which provides a written statement as to how damages resulting from the construction of the pipeline shall be determined and paid. Similarly, like Code Section 478.17, Code Section 479B.17 expressly requires the pipeline company to pay the owner “for all damages caused by entering, using, or occupying the lands.” Further, Code

Sections 479B.29 and 30 provide a non-exclusive list of additional compensable losses for which Dakota Access may be liable and create a procedure for recovering such losses. In sum, the law already dictates what losses Dakota Access is responsible for, and includes all damages “caused by entering, using, or occupying the lands.” Thus, just as in *ITC Midwest*, it would not be reasonable for the Board to require Dakota Access to indemnify all landowners, regardless of the reason for the loss, including a landowner’s own negligent acts or omissions.

With respect to Riley’s suggestion that Dakota Access is not negotiating in good faith because it will not agree to abide by the terms of Iowa law and the AIMP, that suggestion is simply false. To be clear, Riley drafted her own easement agreement, rather than working from a form easement that hundreds of other parties have used to negotiate from. Nonetheless, Dakota Access attempted to work from Riley’s form, sending her numerous comments to it. When Riley asked questions regarding the AIMP and Iowa law, Dakota Access’s representative specifically expressed to Riley, in writing, that “Because many of the provisions in your easement are addressed by the Agricultural Impact Mitigation Plan (“AIMP”) Dakota Access has filed with the IUB or by Iowa rules/regulations, I’m hopeful we can reference those documents/provisions in the easement.” Thus, contrary to Riley’s suggestion, Dakota Access expressed a willingness to expressly reference the AIMP and provisions of Iowa law in the voluntary easement being negotiated.

Perhaps more to the point, Riley’s complaint regarding specific language relating to provisions of the AIMP or Iowa law lacks merit for the same reasons set forth above. While the Board has authority to determine what easement rights will be obtained if an easement is *condemned*, the Board lacks authority to force Dakota Access and/or Riley to enter into a private

voluntary easement agreement that contains the particular terms Riley would like, in the exact manner Riley would like to write them.

Finally, while Riley's April 22, 2016 filing appears to largely re-state arguments previously made (and to which Dakota Access's April 15, 2016 Resistance has adequately responded), Riley's April 22 Filing appears to suggest an additional issue. Specifically, at unnumbered page 3 of Riley's April 22 Filing, Riley suggests that notice of county informational meetings was not properly provided to "all seven interstate Grantors for the easements sought on [her] parcel..." However, notice to remaindermen is not required. Rather, Iowa Code § 479B.4 provides specific instruction regarding the notice, and states:

The pipeline company seeking the permit for a new pipeline shall give notice of the informational meeting to each landowner affected by the proposed project and each person in possession of or residing on the property. ***For the purposes of the informational meeting, "landowner" means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property...***

Iowa Code § 479B.4 (emphasis added).

Moreover, actual notice is not the applicable standard in any event. *See Anstey v. Iowa St. Commerce Comm'n*, 292 N.W.2d 380, 385-86 (Iowa 1980) (holding, in electric transmission case where several residents testified they had no notice at all of the informational meeting, "[w]here as here there is a good faith effort to comply and no prejudice is shown, substantial compliance is sufficient."); *see also Rutherford v. Iowa Dep't of Commerce*, No. 2-138, 2002 Iowa App. LEXIS 1348 (Iowa Ct. App., Dec. 30, 2002).

Accordingly, Dakota Access's actual compliance with the requirements of Iowa Code § 479B.4 clearly constituted sufficient notice as required by law.

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

Respectfully submitted this 5th day of May, 2016.

By: /s/ Bret A. Dublinske

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 5th 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

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