

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: INTERSTATE POWER AND LIGHT COMPANY	DOCKET NOS. P-850 WRU-03-45-150
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PROPOSED DECISION AND ORDER GRANTING PERMIT AND WAIVER

(Issued September 11, 2003)

APPEARANCES:

MR. VERLE W. NORRIS, Attorney at Law, 300 West Marion, P.O. Box 256, Corydon, Iowa 50060, appearing on behalf of Interstate Power and Light Company.

MR. CRAIG GRAZIANO, Attorney at Law, 310 Maple Street, Des Moines, Iowa 50319, appearing on behalf of the Iowa Department of Justice, Office of Consumer Advocate.

STATEMENT OF THE CASE

On October 8, 2002, Interstate Power and Light Company (IPL) filed a petition for a pipeline permit for a natural gas pipeline approximately 3.2 miles long in Muscatine County, Iowa. (petition for permit; testimony of Mr. Janvrin; Burnett and O'Neal reports). IPL amended its petition on January 13, March 26, and June 20, 2003. (petition for permit). The petition is for an existing pipeline built in 1980 and 1982 for which a permit was never requested or granted. (petition for permit; Burnett and O'Neal reports; testimony of Mr. Janvrin). The pipeline is a distribution main entirely within the city limits of Muscatine, and transports natural gas from a Natural Gas Pipeline Company of America (NGP) custody transfer (delivery) point to an IPL

regulator station near the intersection of Cedar and Houser Streets in Muscatine, Iowa. (petition for permit; Burnett and O'Neal reports; testimony of Mr. Janvrin).

There is one location at which the pipeline crosses a spur of the Milwaukee Railroad, n/k/a Iowa Chicago & Eastern Railroad, at other than an approximate right angle. (petition for permit; testimony of Mr. Janvrin). On June 20, 2003, IPL filed a letter in which it requested a waiver of the 199 IAC 10.14(2) requirement to show consent by the railroad for the crossing. (June 20, 2003, letter; testimony of Mr. Janvrin).

On July 23, 2003, the Utilities Board (Board) assigned this case to the undersigned administrative law judge, who issued an order establishing a procedural schedule, proposing to take official notice, and providing notice of the hearing on July 28, 2003. In that order, the undersigned set September 4, 2003, as the date for the hearing on the petition, and proposed to take official notice of two reports concerning the pipeline prepared by Mr. Gary Burnett, regulatory inspector, and Mr. Jeffrey O'Neal, regulatory engineer, for the Board's Safety and Engineering Section, dated February 5 and July 18, 2003, respectively.

Mr. Verle W. Norris filed an appearance on July 30, 2003.

IPL filed prepared direct testimony of Mr. Eric Janvrin on August 11, 2003.

The hearing was held on September 4, 2003, in the Board Conference Room 3, 350 Maple Street, Des Moines, Iowa. IPL was represented by attorney Mr. Verle Norris. Mr. Eric Janvrin, engineer for Alliant Energy Corporate Services, Inc., and Ms. Michelle Olson, right-of-way coordinator for IPL, testified on behalf of

IPL. (testimony of Mr. Janvrin, Ms. Olson). Mr. Gary Burnett and Mr. Jeffrey O'Neal testified on behalf of the Board. The Consumer Advocate Division of the Department of Justice (Consumer Advocate), was represented by its attorney, Mr. Craig Graziano.

DISCUSSION REGARDING ASSESSMENT OF CIVIL PENALTY

Iowa Code § 479.31 (2003) provides that a person who violates Chapter 479 or a Board rule issued pursuant to the chapter is subject to a civil penalty not to exceed \$10,000 for each violation. The statute further provides that each day the violation continues constitutes a separate offense, but the maximum civil penalty is \$500,000 for any related series of violations. Iowa Code § 479.31. The statute provides that in determining the amount of the penalty, the appropriateness of the penalty to the size of the company, the gravity of the violation, and the good faith of the company in attempting to achieve compliance after notification of a violation, shall be considered. Iowa Code § 479.31.

The Consumer Advocate argued that, although IPL was to be commended for discovering that its pipeline was not permitted, promptly reporting it to the Board, and filing a petition for a permit, its actions were mitigatory and not exculpatory. The Consumer Advocate therefore argued that imposition of a civil penalty was appropriate, although it could be a small one, and cited to the Board's recent decisions in In re: Corn Belt Power Cooperative, Docket No. E-21519, Order Canceling Hearing, Accepting Compromise, and Assessing Civil Penalty (August 28, 2003) (Corn Belt I) and In re: Corn Belt Power Cooperative, Docket No. E-21570,

Order Canceling Hearing, Accepting Compromise, and Assessing Civil Penalty (February 1, 2002) (Corn Belt II) as support for its position.

IPL argued that imposition of a civil penalty is inappropriate in this case because the violation occurred over 20 years ago, IPL staff discovered it and promptly reported it to Board staff, and IPL began preparing a permit petition as soon as it discovered the violation and filed it promptly. It argued that the Corn Belt cases were different from this case and no purpose would be served by imposition of a civil penalty.

The Corn Belt cases contain several significant differences from this case. In Corn Belt I, Corn Belt filed a petition for a franchise to construct an electric line in December 2001, but began construction of the line prior to receiving the franchise. It is significant that the violation occurred in late 2001 or early 2002, and Board staff discovered it. The Board imposed a civil penalty of \$600. Corn Belt I Decision. In Corn Belt II, Corn Belt converted a segment of single circuit transmission line to double circuit without first filing a petition for amendment to its electric franchise or obtaining a franchise. It is significant that the violation occurred in February 2003. Corn Belt became aware it violated the requirement in May 2003 and immediately notified Board staff. Although Corn Belt promptly reported the violation and began corrective action, and the violation was inadvertent, the Board imposed a civil penalty of \$300 because it was the second violation by Corn Belt in less than two years. In the Corn Belt II Decision, the Board stated the following: "By bringing this action and assessing this fine, the Board puts all companies on notice that franchise

requirements must be followed. However, the Board recognizes that there are some violations that may have occurred many years ago that have only recently been detected. The Board encourages companies to report any such violations immediately and to cooperate with the Board's staff in remedying such violations. Any penalties that may be imposed would likely be mitigated if the violations are self-reported and not discovered by the Board's staff. The companies should also examine their processes, like Corn Belt has, to see if additional personnel or training are needed to ensure future compliance with the Iowa statutes and Board rules.”
Corn Belt II Decision, p. 5.¹

In this case, although a pipeline permit was required, IPL constructed the pipeline in 1980 and 1982 without seeking a permit from the Board. (petition for permit; testimony of Mr. Janvrin; Burnett and O'Neal reports). IPL believes that staff at the time held the opinion that a permit was not required because the pipeline was to be constructed within the city of Muscatine and was a part of the local distribution system rather than a transmission line. (testimony of Mr. Janvrin) However, none of the IPL staff involved with the pipeline in 1980 or 1982 currently work for IPL. (testimony of Mr. Janvrin). Mr. Janvrin searched the company's records for an explanation of why a permit was not sought prior to construction, but could find nothing definitive. (testimony of Mr. Janvrin). At the hearing, Mr. Janvrin testified

¹ The Corn Belt cases involved failure to seek an electric franchise prior to construction rather than failure to seek a pipeline permit prior to construction. Although there are differences in the amounts and types of penalties that may be imposed for violations of the electric franchise and pipeline permit statutes, the factors to be considered in compromising or determining the amount of the penalty are the same. Iowa Code §§ 478.24, 478.29, and 479.31. Therefore, the Corn Belt cases are sufficiently analogous so it is valid to consider them as guidance regarding the appropriate penalty in this case.

that the portion of the pipeline constructed in 1980 was a distribution line that may have been operated at a pressure of less than 150 psi, and therefore, a permit would not have been required according to the rules in effect at the time. (testimony of Mr. Janvrin; 250 IAC 10.15 (effective 7/27/77)). However, IPL did not include this information in its prefiled testimony, and Mr. Janvrin's testimony at the hearing was not definitive or particularly persuasive on this point. (testimony of Mr. Janvrin; petition for permit). Records do not exist that would show conclusively the operating pressure of the line in 1980. (testimony of Mr. Janvrin). There is no question that a permit was required prior to the construction in 1982. (testimony of Mr. Janvrin, Ms. Olson; petition for permit; Burnett and O'Neal reports).

In August of 2002, current IPL gas engineering staff discovered the pipeline was not permitted during a review of its pipeline records in the Muscatine area. (testimony of Mr. Janvrin, Ms. Olson; O'Neal report). On August 21, 2002, Ms. Olson notified Mr. Stursma of the situation. (testimony of Ms. Olson; Exhibit 3). IPL immediately began preparing a petition for a permit, and filed it on October 8, 2002. (testimony of Mr. Janvrin, Ms. Olson; O'Neal report; petition for permit).

IPL has taken steps to ensure future pipelines will not be constructed without first seeking a permit from the Board. (testimony of Mr. Janvrin). IPL has centralized review of proposed gas pipeline projects to ensure applicable requirements are followed. (testimony of Mr. Janvrin). Company gas engineers are in closer contact with company regulatory and real estate staff and those groups are involved in the planning process so the proposed project receives appropriate state regulatory and

agency permits. (testimony of Mr. Janvrin). It was through this centralized process that company staff discovered the pipeline at issue in this case was not permitted. (testimony of Mr. Janvrin; O'Neal report).

IPL agrees that the pipeline should have been permitted prior to construction, although there is a slight question as to whether a permit was required prior to the 1980 construction. (testimony of Mr. Janvrin, Ms. Olson). IPL did not minimize the fact the pipeline was constructed without a required permit and expressed regret that no permit was sought prior to construction. (testimony of Mr. Janvrin). IPL demonstrated good faith in promptly reporting the violation to Board staff once it was discovered and in promptly filing a petition for a permit. (testimony of Mr. Janvrin; petition for permit; O'Neal report).

IPL and Board staff are unaware of any other situation in which IPL constructed a pipeline without first obtaining a required permit. (testimony of Mr. Janvrin, Mr. O'Neal).

IPL constructed and has operated and maintained the pipeline in conformance with all applicable requirements as though it had been permitted, other than not seeking a permit in the first place. (testimony of Mr. Janvrin; Burnett and O'Neal reports; petition for permit). There is no safety issue with respect to the pipeline. (testimony of Mr. Janvrin; Burnett and O'Neal reports; petition for permit).

This is IPL's first violation and the company has taken demonstrably effective steps to ensure its pipelines are and will be appropriately permitted in the future. (petition for permit; testimony of Mr. Janvrin, Ms. Olson; Burnett and O'Neal reports).

IPL is to be commended for its handling of the situation. The company behaved exactly as it should have once the violation was discovered. Although there is no question that the failure to seek a pipeline permit when one was required was a serious violation of the law, the violation occurred over 20 years ago and IPL staff who failed to seek a permit when it was required no longer work for the company. (testimony of Mr. Janvrin). IPL's current staff exhibited exemplary behavior that mitigates any penalty that ordinarily would be imposed.

Although the Consumer Advocate is correct that IPL's actions are mitigatory rather than exculpatory, mitigation in the appropriate case may reduce a civil penalty to zero. Imposition of a civil penalty in this case would not serve a valid punitive or deterrent purpose, since the violation occurred over 20 years ago by staff no longer with the company, and current staff acted properly. Considering the entire circumstances of this case, it would not be appropriate to impose a civil penalty. (testimony of Mr. Janvrin, Ms. Olson; petition for permit; Burnett and O'Neal reports). Iowa Code § 479.31; In re: Corn Belt Power Cooperative, Docket No. E-21519, Order Canceling Hearing, Accepting Compromise, and Assessing Civil Penalty (August 28, 2003); In re: Corn Belt Power Cooperative, Docket No. E-21570, Order Canceling Hearing, Accepting Compromise, and Assessing Civil Penalty (February 1, 2002).

FINDINGS OF FACT

1. IPL is a pipeline company within the meaning of Iowa Code § 479.2. (testimony of Mr. Janvrin).

2. On October 8, 2002, IPL filed a petition for a pipeline permit for a natural gas pipeline approximately 3.2 miles long in Muscatine County, Iowa. (petition for permit; testimony of Mr. Janvrin; Burnett and O'Neal reports). IPL amended its petition on January 13, March 26, and June 20, 2003. (petition for permit). The petition is for an existing pipeline built in 1980 and 1982 for which a permit was never requested or granted. (petition for permit; testimony of Mr. Janvrin; Burnett and O'Neal reports). It is a distribution main entirely within the city limits of Muscatine, and transports natural gas from an NGP custody transfer point to an IPL regulator station near the intersection of Cedar and Houser Streets in Muscatine, Iowa. (petition for permit; Burnett and O'Neal reports; testimony of Mr. Janvrin). The pipeline is 8-inch steel between Cedar Street at the north and Grandview Avenue at the south, a distance of approximately 3.1 miles. (testimony of Mr. Janvrin; petition for permit; Burnett and O'Neal reports). An approximately 0.1 mile segment of 4-inch steel pipe was installed at the Musser Street intersection to tie into the existing distribution system. (testimony of Mr. Janvrin; petition for permit; Burnett and O'Neal reports). The pipeline is designed for a maximum allowable operating pressure of 275 psig and the maximum actual operating pressure is 220 psig. (petition for permit; testimony of Mr. Janvrin; Burnett and O'Neal reports).

3. The pipeline follows a route described in Exhibit A and shown on Exhibit B attached to the petition for a permit (as amended). (petition Exhibits A and B). It begins at the IPL Cedar and Houser Street Regulator Station at the southwest corner of the intersection of Cedar and Houser Streets, then runs in a generally

southerly direction to the IPL Muscatine #1 Regulation Station located south of Grandview Avenue, all within the city limits of Muscatine, Iowa. (petition for permit; Burnett report). The distribution pipeline supplies natural gas to customers in Muscatine. (petition for permit; O'Neal report; testimony of Mr. Janvrin).

4. IPL caused notice of the hearing to be published in Muscatine County in the Muscatine Journal, a newspaper of general circulation in the county, on August 7 and 14, 2003. (proof of publication).

5. The pipeline is necessary to support the distribution system and maintain reliable service pressure to existing customers throughout the Muscatine distribution system. (petition for permit; testimony of Mr. Janvrin; Burnett and O'Neal reports). Therefore, the proposed pipeline promotes the public convenience and necessity as required by Iowa Code § 479.12. (testimony of Mr. Janvrin; petition for permit; Burnett and O'Neal reports).

6. The pipeline complies with the design, construction, and safety requirements of Iowa Code Chapter 479, 199 IAC § 10.12, and 49 C.F.R. Part 192. (petition for permit; testimony of Mr. Janvrin; Burnett and O'Neal reports). IPL has operated and will continue to operate and maintain the pipeline in accordance with all applicable standards. (testimony of Mr. Janvrin). The pipeline is part of a distribution system that Board staff inspects approximately every three years, and Board staff most recently inspected the system from November 28 to December 27, 2001, and from January 5 to February 24, 1999. (testimony of Mr. Janvrin). No further safety-

related terms, conditions, or restrictions need to be imposed pursuant to Iowa Code § 479.12. (petition for permit; testimony of Mr. Janvrin; Burnett and O'Neal reports).

7. Except with respect to a railroad crossing discussed below, there are no problems with the location and route of the pipeline and no further terms, conditions, or restrictions regarding them need to be imposed pursuant to Iowa Code § 479.12. (petition for permit; Burnett and O'Neal reports; testimony of Mr. Janvrin).

8. IPL owns property subject to execution within this state, other than pipelines, of a value in excess of \$250,000 as required by Iowa Code § 479.26 and 199 IAC 10.2(1)"d". (testimony of Mr. Janvrin; petition exhibit D).

9. No written objections to the petition for a permit were filed and no objectors appeared at the hearing. (testimony of Mr. O'Neal; Docket Nos. P-850 and WRU-03-45-150 file).

10. IPL holds easements for the portions of the pipeline on private property. (testimony of Mr. Janvrin; petition for permit). It has a franchise from the city of Muscatine for the placement of the pipeline in public road right-of-way. (testimony of Mr. Janvrin; petition for permit Exhibit E). IPL received an Iowa Department of Transportation permit for construction of the pipeline across Iowa Highway 61 on July 15, 1982. (testimony of Mr. Janvrin; petition for permit Exhibit E).

11. IPL will not be constructing additional pipeline and will not disturb any agricultural land. (testimony of Mr. Janvrin).

12. The pipeline crosses a spur of the Milwaukee Railroad, n/k/a Iowa Chicago & Eastern Railroad, in the east public road right-of-way of Houser Street

between Hershey Road and Musser Street. (petition for permit; testimony of Mr. Janvin; O'Neal report; Exhibit EJ-2). The railroad spur crosses Houser Street at an angle of 108 degrees to 110 degrees southeast to northwest in relation to Houser Street and the pipeline. (petition for permit; testimony of Mr. Janvrin; O'Neal report; Exhibit EJ-2).

13. The portion of the pipeline that crosses the railroad was constructed in 1980. (petition Exhibits B and E). At the time of construction, IPL submitted a notice of the crossing to the railroad with design specifications. (testimony of Mr. Janvrin; petition Exhibit E). The railroad responded with their design requirements, although it apparently did not send IPL a formal written approval of the crossing. (testimony of Mr. Janvrin; Exhibit EJ-1; waiver application) One of the railroad's requirements stated: "Pipelines shall be located, where practicable, to cross tracks at approximately right angles, but preferably at not less than 45 degrees." (testimony of Mr. Janvrin; Exhibit EJ-1). Although the pipeline does not cross the tracks at an approximately right angle, it does cross the tracks at greater than a 45-degree angle, and therefore met the railroad's design specification. (testimony of Mr. Janvrin; Exhibits EJ-1 and EJ-2; petition Exhibit B).

14. Additional piping and construction of the pipeline with several angles would have been required in order for the pipeline to cross the railroad at a 90-degree angle. (testimony of Mr. Janvrin; Exhibit EJ-2). Since the pipeline was constructed in the Houser Street right-of-way and follows the direction of the Houser Street roadway, it would have been difficult to cross the railroad tracks at a right

angle in this location. (testimony of Mr. Janvrin). No new construction is planned that would alter the existing crossing, and the railroad line that is crossed is a spur with infrequent freight railcar traffic at a low rate of speed. (testimony of Mr. Janvrin.)

15. On June 20, 2003, IPL filed a request for a waiver of the requirement to file consent by the railroad for the crossing since the crossing is at other than an approximate right angle. (waiver request; testimony of Mr. Janvrin). Requiring IPL to obtain and file specific consent from the railroad for a crossing constructed in 1980 in which IPL provided notice to the railroad prior to construction, the railroad responded with its design specifications, and IPL complied with the design specification applicable to the crossing, would serve no useful purpose and would pose an undue hardship on IPL. (testimony of Mr. Janvrin; Exhibit EJ-1; waiver request; petition Exhibits B and E). Granting the waiver request would not prejudice the substantial legal rights of any person, since the railroad was aware of the crossing prior to construction and its design specification was followed by IPL. (testimony of Mr. Janvrin; Exhibit EJ-1; petition exhibits B and E; waiver request). The requirement is not mandated by any applicable statute, and substantial equal protection of the public health, safety, and welfare is afforded by IPL's notice to the railroad prior to construction and compliance with the railroad's design specification in effect at the time the pipeline was constructed. (testimony of Mr. Janvrin; Exhibits EJ-1 and EJ-2; waiver request; petition Exhibits B and E).

16. Although a pipeline permit was required, IPL constructed the pipeline in 1980 and 1982 without seeking a permit from the Board. (petition for permit;

testimony of Mr. Janvrin; Burnett and O'Neal reports). IPL believes that staff at the time held the opinion that a permit was not required because the pipeline was to be constructed within the city of Muscatine and was a part of the local distribution system rather than a transmission line. (testimony of Mr. Janvrin). However, none of the IPL staff involved with the pipeline in 1980 or 1982 currently work for IPL. (testimony of Mr. Janvrin). Mr. Janvrin searched the company's records for an explanation of why a permit was not sought prior to construction, but could find nothing definitive. (testimony of Mr. Janvrin). Although the evidence regarding this point was indefinite and not persuasive, it is possible that the portion of the pipeline constructed in 1980 was a distribution line operated at a pressure of less than 150 psi, and therefore, a permit would not have been required according to the rules in effect at the time. (testimony of Mr. Janvrin; 250 IAC 10.15 (effective 7/27/77)). There is no question that a permit was required prior to the construction in 1982. (testimony of Mr. Janvrin).

17. In August of 2002, current IPL gas engineering staff discovered the pipeline was not permitted during a review of its pipeline records in the Muscatine area. (testimony of Mr. Janvrin, Ms. Olson; O'Neal report). On August 21, 2002, Ms. Olson notified Mr. Stursma of the situation. (testimony of Ms. Olson; Exhibit 3). IPL immediately began preparing a petition for a permit, and filed it on October 8, 2002. (testimony of Mr. Janvrin, Ms. Olson; O'Neal report; petition for permit).

18. IPL has taken steps to ensure future pipelines will not be constructed without first seeking a permit from the Board. (testimony of Mr. Janvrin). IPL has

centralized review of proposed gas pipeline projects to ensure applicable requirements are followed. (testimony of Mr. Janvrin). Company gas engineers are in closer contact with company regulatory and real estate staff and those groups are involved in the planning process so the proposed project receives appropriate state regulatory and agency permits. (testimony of Mr. Janvrin). It was through this centralized process that company staff discovered the pipeline at issue in this case was not permitted. (testimony of Mr. Janvrin; O'Neal report).

19. IPL agrees that the pipeline should have been permitted prior to construction, although there is a slight question as to whether a permit was required prior to the 1980 construction. (testimony of Mr. Janvrin). IPL did not minimize the fact the pipeline was constructed without a required permit and expressed regret that no permit was sought prior to construction. (testimony of Mr. Janvrin). IPL demonstrated good faith in promptly reporting the violation to Board staff once it was discovered and in promptly filing a petition for a permit. (testimony of Mr. Janvrin; petition for permit; O'Neal report).

20. IPL and Board staff are unaware of any other situation in which IPL constructed a pipeline without first obtaining a required permit. (testimony of Mr. Janvrin, Mr. O'Neal).

CONCLUSIONS OF LAW

1. The Board has the authority to grant, amend, and renew permits for the construction, operation, and maintenance of pipelines for the intrastate transportation

of natural gas. Iowa Code §§ 479.1, 479.4, 479.12, 479.18, and 479.29; 199 IAC 9 and 10.

2. The Board has jurisdiction over IPL and over the petition for a natural gas pipeline permit it has filed. Iowa Code §§ 479.2, 479.5, 479.6, 479.12, 479.18, and 479.29.

3. Since IPL will not be constructing any additional pipeline and will not disturb any agricultural land, it is not required to file a land restoration plan. Iowa Code § 479.29; 199 IAC 9.

4. The petition of IPL for issuance of a permit for the natural gas pipeline in this docket should be granted. Iowa Code §§ 479.11, 479.12, 479.26, and 479.29; 199 IAC 9 and 10.

5. In pipeline routes that include railroad crossings at other than an approximate right angle, 199 IAC 10.14(2) states that a permit will not be granted unless a showing of consent by the railroad is provided by the petitioner. A substantially equivalent rule was in effect in 1980 when the pipeline was constructed. 250 IAC 10.13 (effective 7/27/77).

6. 199 IAC 1.3 provides that the Board may grant a waiver of a rule if it finds, based on clear and convincing evidence, that the application of the rule would pose an undue hardship on the requesting party, the waiver would not prejudice the substantial legal rights of any person, the provisions of the rule are not required by statute; and substantially equal protection of public health, safety, and welfare will be

afforded by a means other than that prescribed in the rule. IPL has submitted evidence showing the criteria are met.

7. Iowa Code § 479.31 provides that a person who violates Chapter 479 or a Board rule issued pursuant to the chapter is subject to a civil penalty not to exceed \$10,000 for each violation. The statute further provides that each day the violation continues constitutes a separate offense, but the maximum civil penalty is \$500,000 for any related series of violations. Iowa Code § 479.31. The statute provides that in determining the amount of the penalty, the appropriateness of the penalty to the size of the company, the gravity of the violation, and the good faith of the company in attempting to achieve compliance after notification of a violation, shall be considered. Iowa Code § 479.31. In this case, the violation occurred in 1982 and probably in 1980, IPL discovered the violation itself through its own internal records review, and IPL staff promptly reported the violation to Board staff. IPL did not minimize the fact that the pipeline was constructed without a permit, it admitted a permit was required, it expressed regret that a permit was not sought prior to construction, and it promptly filed a petition for a permit. IPL constructed and has operated and maintained the pipeline in conformance with all applicable requirements as though it had been permitted, other than not seeking a permit in the first place. There is no safety issue with respect to the pipeline. This is IPL's first violation, and the company has taken demonstrably effective steps to ensure its pipelines are and will be appropriately permitted in the future. IPL is to be commended for its handling of the situation. The company behaved exactly as it

should have once the violation was discovered. Although there is no question that the failure to seek a pipeline permit when one was required was a serious violation of the law, the violation occurred over twenty years ago by staff no longer with the company, and current staff acted properly. IPL's exemplary behavior mitigates any penalty that ordinarily would be imposed. Considering the entire circumstances, it is not appropriate to impose a civil penalty. Iowa Code § 479.31; In re: Corn Belt Power Cooperative, Docket No. E-21519, Order Canceling Hearing, Accepting Compromise, and Assessing Civil Penalty (August 28, 2003); In re: Corn Belt Power Cooperative, Docket No. E-21570, Order Canceling Hearing, Accepting Compromise, and Assessing Civil Penalty (February 1, 2002).

IT IS THEREFORE ORDERED:

1. Official notice is taken of the report dated February 5, 2003, filed in this docket by Mr. Gary R. Burnett, regulatory inspector, and of the report dated July 18, 2003, filed in this docket by Mr. Jeffrey O'Neal, regulatory engineer for the Board.
2. Pursuant to Iowa Code Chapter 479, the petition for a pipeline permit filed by IPL in this docket is granted. A permit will be issued if this proposed decision and order becomes the final order of the Board.
3. IPL's request for a waiver of 199 IAC 10.14(2) is granted to the extent discussed in this order.
4. No civil penalty is imposed.
5. The Board retains jurisdiction of the subject matter in this docket.

6. This proposed decision will become the final decision of the Board unless appealed to the Board within 15 days of its issuance or the Board votes to review the decision on its own motion. Iowa Code § 17A.15(3); 199 IAC § 7.8(2).

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 11th day of September, 2003.