

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: MIDAMERICAN ENERGY COMPANY	DOCKET NO. P-857
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE AND PROPOSING TO
TAKE OFFICIAL NOTICE AND NOTICE OF HEARING**

(Issued March 16, 2005)

On October 1, 2003, MidAmerican Energy Company (MidAmerican) filed a petition and exhibits for a pipeline permit for an existing 2-inch diameter natural gas pipeline approximately 6.05 miles long in Mills County, Iowa. The petition is for an existing pipeline built in the early 1970s for which a permit was never requested or granted. The pipeline transports natural gas from a connection with a Natural Gas Pipeline Company of America pipeline to a regulator station in Henderson, Iowa. The pipeline is a transmission line with a maximum allowable operating pressure of 125 psig. 199 IAC 10.16; 49 CFR 192.3. MidAmerican filed amendments to its petition and exhibits and provided additional information on December 29, 2003, February 12, 2004, and February 10, 2005.

On March 14, 2005, the Utilities Board (Board) assigned this proceeding to the undersigned administrative law judge to establish a procedural schedule and exercise the authority provided in 199 IAC 7.1(4).

THE BOARD'S AUTHORITY AND JURISDICTION

The Board has the authority to grant permits for pipelines in whole or in part upon terms, conditions, and restrictions as to safety requirements, and as to location and route, as it determines to be just and proper. Iowa Code §§ 479.12 and 479.18 (2005).

To obtain a permit, the petitioner must show that the services it proposes to render will promote the public convenience and necessity. Iowa Code § 479.12. The petitioner must also satisfy the financial requirements of Iowa Code § 479.26.

THE ISSUES

Pursuant to Iowa Code §§ 479.7 and 479.8 and 199 IAC 10.6, this matter will be set for a public hearing for the presentation of oral and documentary evidence and the cross-examination of witnesses concerning the public convenience and necessity issue, any safety issues, any pipeline location and route issues, the financial issue, and issues raised by objectors or any other party. This pipeline was constructed without a permit, and the issues include when a permit was required, whether a civil penalty should be imposed, and if so, the amount of the penalty. The conduct of this case is governed by Iowa Code Chapters 17A and 479, and by Board rules at 199 IAC 10.

PREPARED TESTIMONY AND EXHIBITS

All parties will be given the opportunity to present and respond to evidence and argument on all issues, and to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision and order that the administrative law

judge will issue in this case must be based on evidence contained in the record and on matters officially noticed in the record. Iowa Code § 17A.12(8). Unless contrary arrangements are made on the record at the hearing, all evidence will be received at the hearing, and the record will be closed to any further evidence at the conclusion of the hearing.

The submission of prepared evidence prior to hearing will help to identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined by the other parties concerning the statements already made in writing. The use of prepared testimony prevents surprise at the hearing and helps each party to prepare adequately for the hearing, so that a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1), 17A.14(3) and 479.11. This procedure also tends to diminish the length of the hearing, and spares the parties the expense and inconvenience of additional hearings.

MidAmerican must submit prepared testimony and exhibits prior to the hearing. At a minimum, MidAmerican's prepared testimony must address the issues listed above. MidAmerican must also address the status of its actions to correct the two probable violations of 49 C.F.R. §§ 192.469 and 192.717 discussed in the report dated March 2, 2005, by Mr. Jeffrey O'Neal. In addition, in its prepared testimony, MidAmerican must address what it knows about when this pipeline was constructed

and why the pipeline was built without first obtaining a permit from the Board.

MidAmerican must also provide testimony regarding actions it has taken to ensure that it does not construct pipelines without first obtaining a permit from the Board. If MidAmerican takes the position that a permit was not required when the pipeline was constructed, it must discuss when it believes the requirement for a permit became applicable to the pipeline, explain its position, and provide any information it has to explain why MidAmerican did not obtain a permit once one was required. This information may be provided in either prepared testimony or a prehearing brief, as appropriate. In either prepared testimony or a prehearing brief, MidAmerican must state its position regarding whether the Board should impose a civil penalty for the failure to obtain a permit pursuant to Iowa Code § 479.31. MidAmerican should address the factors in § 479.31 when discussing whether a civil penalty is appropriate.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate), and any objectors may also file prepared testimony and exhibits before the hearing in accordance with the procedural schedule.

Parties other than MidAmerican who choose not to file prepared testimony and exhibits before the hearing will not be precluded from participating in the proceedings. If an objector, for example, does not intend to present evidence going substantially beyond the information contained in the letter of objection, it is unnecessary for the objector to file prepared testimony. However, when a party has a substantial amount of information to present to the Board about the petition, if the information has not been previously disclosed to the Board, it should be presented in

the form of prepared testimony and exhibits according to the procedural schedule established below. Similarly, if the Consumer Advocate takes the position that a civil penalty should or should not be imposed in this case, it must file prepared testimony or a brief in support of its position according to the procedural schedule.

PARTY STATUS

MidAmerican and the Consumer Advocate are currently the only parties to this proceeding. Iowa Code §§ 17A.2(8) and 475A.2(2). No one has filed an objection to the petition as of the date of this order. MidAmerican does not request the right of eminent domain for this pipeline.

Anyone who has filed or will file an objection pursuant to Iowa Code §§ 479.9 and 479.10 and 199 IAC 10.5 will also be presumed to be a party to this case. However, no objector is entitled to party status merely because that person has written a letter of objection. In order to qualify as a party, the objector must be able to demonstrate some right or interest that may be affected by the granting of the permit. Iowa Code § 479.9. An objector's status as a party may be challenged at the hearing, and an objector who cannot demonstrate a right or interest that may be affected by the granting of the permit will no longer be considered a party. Therefore, at a minimum, objectors should be prepared to give evidence that will explain the nature of their specific rights or interests they believe should be protected, and will show how these rights or interests will be affected by the pipeline or the grant of a permit. As has already been noted, to the extent that the evidence goes substantially beyond information already communicated to the Board in an objection letter, it

should be reduced to writing and filed as prepared testimony according to the procedural schedule established below.

Because objectors will be presumed to be parties up to the time of the hearing, an objector will receive copies of all documents that are filed in this docket after the letter of objection has been filed with the Board. This means that if a person files an objection after some or all of the prepared testimony and exhibits has been filed with the Board by other parties, the objector should make direct contact with the parties who have already filed prepared testimony and exhibits in order to obtain a copy of those materials. The official file of this case will be available for inspection at the Board's Records and Information Center, 350 Maple Street, Des Moines, Iowa. 199 IAC 1.9(1).

Objections must be filed no less than five days prior to the date of hearing. Late-filed objections may be permitted if good cause is shown. 199 IAC 10.5. Objections must be made in writing and filed with the Executive Secretary of the Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

After an objector has filed a letter of objection, all further communications from the objector to the Board having to do with this case (including motions or prepared testimony and exhibits) should be sent to the Executive Secretary of the Board. A party (including objectors) must file an original and two copies of each communication with the Executive Secretary and the party must send one copy to each of the other parties to this case, except that three copies must be sent to the Consumer Advocate. 199 IAC 1.8. Along with the communication being sent, the party must file with the Board a certificate of service that conforms to

199 IAC 2.2(16), which verifies that a copy of the document was served upon the other parties.

These procedures are necessary to comply with Iowa Code § 17A.17, which prohibits ex parte communication. Ex parte communication is when one party in a contested case communicates with the judge without the other parties being given the opportunity to be present. In order to be prohibited, the communication must be about the facts or law in the case. Calls to the Board to ask about procedure or the status of the case are not ex parte communication. Ex parte communication may be oral or written. This means the parties in this case may not communicate about the facts or law in this case with the undersigned administrative law judge unless the other parties are given the opportunity to be present, or unless the other parties are provided with a copy of the written documents filed with the Board.

The parties should examine Iowa Code Chapter 479 and Board rules at 199 IAC 10 and 199 IAC 1.8 for other substantive and procedural statutes and rules that apply to this case. There is a link to the Iowa Code and the administrative rules on the Board's website at www.state.ia.us/iub.

PROPOSAL TO TAKE OFFICIAL NOTICE

Mr. Jeffrey L. O'Neal, utility regulatory engineer for the Board, has prepared a report in the form of a memo dated March 2, 2005, concerning MidAmerican's petition. Mr. Reed Helm, utility regulatory inspector for the Board, also prepared a report in the form of a memo dated October 20, 2003, concerning the petition. A copy of each report is attached to this order. Pursuant to Iowa Code § 17A.14(4), the

undersigned administrative law judge proposes to take official notice of the reports and of the facts contained therein, thus making them a part of the record of this case. Iowa Code § 17A.12(6)(c). Any party objecting to the taking of official notice of the reports must file such objection as soon as possible, and no later than five days prior to the hearing. The parties will have the opportunity to contest any information contained in the memo in prepared testimony and at the hearing. Mr. O'Neal and Mr. Helm will be present at the hearing and available for cross-examination regarding their reports.

IT IS THEREFORE ORDERED:

1. Each person who files a letter of objection to MidAmerican's petition in this docket will be presumed to be a party in the proceeding unless it is established at hearing that the objector has no right or interest that may be affected by the pipeline.
2. Objections must be made in writing and filed with the Executive Secretary of the Board, 350 Maple Street, Des Moines, Iowa 50319-0069, no later than five days before the hearing. Objectors must file an original and two copies of all subsequent communications to the Board with the Executive Secretary. The communications must be served on the other parties and accompanied by a certificate of service as discussed in this order.
3. The following procedural schedule is established:
 - a. On or before April 1, 2005, MidAmerican must file prepared direct testimony relating to its petition for a permit for its natural gas pipeline, as discussed in this order. If MidAmerican wishes to file a prehearing brief, it must do so on or before April 1, 2005.

b. If the Consumer Advocate or any objector chooses to file prepared responsive testimony, it must do so on or before April 19, 2005. If the Consumer Advocate takes the position that a civil penalty should or should not be imposed in this case, it must file prepared testimony or a brief in support of its position on or before April 19, 2005.

c. A public hearing for the presentation of evidence and the cross-examination of witnesses concerning the issues identified in this notice of hearing will be held beginning at 10 a.m. on Tuesday, May 3, 2005, in Board Hearing Room, 350 Maple Street, Des Moines, Iowa. Each party must provide a copy of its prepared testimony and exhibits to the court reporter at the hearing. If any party wishes to be connected to the hearing by telephone conference call or have a witness connected by telephone conference call, the party must notify the Board as soon as possible, and no later than Tuesday, April 26, 2005, so that appropriate arrangements may be made. Persons with disabilities who will require assistive services or devices to observe this hearing or participate in it should contact the Board at (515) 281-5256 no later than five days prior to the hearing to request that appropriate arrangements be made.

d. Required number of copies. All parties must file an original and two copies of all documents filed with the Board. 199 IAC 1.8(4)"d."

4. The undersigned administrative law judge proposes to take official notice of Mr. O'Neal's report dated March 2, 2005, and of Mr. Helm's report dated October 20, 2003, both of which are attached to this order, and of the facts contained

therein. Any party objecting to the taking of official notice of either report should file such objection as soon as possible, and must file such objection no later than five days prior to the hearing.

5. Pursuant to Iowa Code §§ 17A.12(1) and 199 IAC 10.4, a copy of this order will be served by ordinary mail upon MidAmerican, and will be delivered to the Consumer Advocate. No persons have filed objections to the petition as of the date of this order.

6. MidAmerican must work with Board staff regarding publication of notice pursuant to Iowa Code § 479.7 and 199 IAC 10.4, and must file proof of publication prior to or at the hearing.

UTILITIES BOARD

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

ATTEST

/s/ Margaret Munson
Executive Secretary, Deputy

Dated at Des Moines, Iowa, this 16th day of March, 2005.

**Department of Commerce
UTILITIES DIVISION
SAFETY & ENGINEERING SECTION**

TO: Docket No. P-857

FROM: Jeffrey L. O'Neal

DATE: March 2, 2005

SUBJ: Staff Review of MidAmerican Energy Company Petition for Pipeline Permit for approximately 6.05 miles of 2-inch Diameter Natural Gas Pipeline in Mills County, Iowa.

On October 1, 2003, MidAmerican Energy Company (MidAmerican) filed a petition for pipeline permit for an existing 6.05 miles of 2-inch diameter natural gas pipeline in Mills County, Iowa, that has not been previously permitted with the Utilities Board (Board). The pipeline operates at a maximum pressure of 125 psig. This pipeline requires a pipeline permit because it meets the definition of a transmission line under 49 CFR § 192.3. (See 199 IAC 10.16.) It meets the definition of a transmission line because it transports gas from another transmission line (and ultimately from gathering lines and/or storage facilities) to a gas distribution center.

An informational meeting was not held for this pipeline. An informational meeting is not required because the pipeline is operated at a pressure of less than 150 pounds per square inch. (See 199 IAC 10.3.)

Petition

During a staff review of pipelines shown on Iowa Department of Transportation maps in May 2003, a question was raised concerning the lack of a pipeline permit for MidAmerican's Henderson Lateral. By letter dated May 30, 2003, staff notified MidAmerican that a pipeline permit was required for the Henderson Lateral. By letter dated July 9, 2003, staff requested a response within 20 days regarding the status of filing for a pipeline permit. By letter dated August 1, 2003, MidAmerican replied that it was searching the records of the Henderson Lateral, and expected to complete the search by August 29, 2003. The letter further stated that if it was determined no pipeline permit existed for this pipeline, MidAmerican would submit a permit application by October 1, 2003. MidAmerican filed a petition for permit on October 1, 2003.

By letters dated October 20, 2003, and January 22, 2004, Board staff advised MidAmerican of petition deficiencies requiring correction, and requested additional information on certain items. On December 26, 2003, and February 11, 2004, MidAmerican filed revisions to the petition and exhibits and provided additional information.

Route and Safety

On October 16, 2003, Reed Helm, Utility Regulation Inspector, conducted a field examination of the pipeline route. He filed a report regarding the route inspection on October 20, 2003. The route inspection found no safety code compliance issues, maintenance needs, or other matters that need to be addressed in this docket. On December 9-10, 2004, Mr. Helm inspected the Henderson Lateral for compliance with federal pipeline safety standards. Mr. Helm filed a report regarding this inspection on December 21, 2004. The inspection found two probable violations of the Minimum Federal Safety Standards in 49 CFR Part 192: a probable violation of § 192.469, regarding an inadequate number of cathodic protection test points, and a probable violation of § 192.717, regarding a leak repair made by a method that does not meet the code requirements for a transmission line. By letter dated January 10, 2005, staff notified MidAmerican of these probable violations, and requested a written response providing a description of the action taken or to be taken to correct each probable violation, including a time schedule for proposed action; or additional information to demonstrate that MidAmerican is not in probable violation. On February 10, 2005, MidAmerican filed a response proposing actions to correct these probable violations by May 31, 2005. MidAmerican's proposed actions and time schedule appear reasonable. It is recommended that MidAmerican be asked to address the status of these probable violations in its testimony. If they have not yet been corrected at the time of the hearing, it is recommended that any order granting permit require MidAmerican to provide notice to the Board when they are corrected.

In his inspection report dated December 21, 2004, Mr. Helm stated this pipeline is in Class 1 or 2 locations and there are no high consequence areas within the potential impact radius for this pipeline; therefore, this pipeline is not subject to the recently adopted integrity management rules in Subpart O of 49 CFR Part 192.

This pipeline carries natural gas from a connection with a Natural Gas Pipeline Company of America pipeline to a regulator station in Henderson, Iowa. (Natural Gas Pipeline Company of America is owned by Kinder Morgan.) At the regulator station, the gas pressure is reduced for delivery through gas distribution mains to customers in Henderson.

This pipeline was constructed in 1970. The route is on private property, except at road crossings. The route is in a Class 1 location as defined by Federal Minimum Safety Standards in 49 CFR Part 192, except for approximately 1800 feet in Henderson that is in a Class 2 location. Class 1 is a low population density classification; Class 2 is a higher population density classification (See § 192.5 for definitions of class locations.)

Records of the original pressure test would normally be a factor in the determination of the maximum allowable operating pressure (MAOP) of this pipeline, but those records are not available for this pipeline, so historical operating pressure records were used to

support the MAOP instead, as shown on exhibit C-3. The record supports an MAOP of 125 psig for this pipeline.

The Board's pipeline safety inspection program is not tied to the pipeline permit program. Board staff inspects all jurisdictional natural gas pipelines in Iowa. This pipeline, and the town fed by it, have been included in regular period safety inspections, presumably since it was installed.

Conclusions

A recent safety inspection found two probable violations of the Minimum Federal Safety Standards in 49 CFR Part 192: a probable violation of § 192.469, regarding an inadequate number of cathodic protection test points, and a probable violation of § 192.717, regarding a leak repair made by a method that does not meet the code requirements for a transmission line. By letter dated February 2, 2005, MidAmerican has proposed actions to correct these probable violations by May 31, 2005. It is recommended that MidAmerican be asked to address the status of these probable violations in its testimony. If they are not yet corrected at the time of the hearing, it is recommended that any order granting permit require MidAmerican to provide notice to the Board when the probable violations are corrected.

I have reviewed the petition and exhibits in this docket. Except for the two probable violations mentioned above, it appears from the information presented that the pipeline complies with all design, construction, and testing requirements of the Board. Recent inspections by Board staff found no problems with the route of the pipeline.

The filing appears in sufficient order that the petition can be set for hearing.

**IOWA DEPARTMENT OF COMMERCE
UTILITIES DIVISION
SAFETY AND ENGINEERING SECTION**

TO: The File

DATE: October 20, 2003

FROM: Reed Helm

FILE: P-857

SUBJECT: Petition for Pipeline Permit for a Natural Gas Pipeline in Mills County, Iowa, for MidAmerican Energy Company.

The route of the above mentioned natural gas pipeline was inspected on October 16, 2003. Exhibit A, a route map, was used as a guide. The pipeline is approximately 6.05 miles of 2.375 inch outside diameter, 0.154 inch wall thickness Grade A steel millwrap coated pipe with a Maximum Allowable Operating Pressure (MAOP) of 125 psig.

The two inch steel pipeline begins at the Natural Gas Pipeline of America (NGPL) regulator station located in the NW ¼ of the NW ¼ of Section 12, Township 72 and crosses county road H-26 then proceeds Northwesterly approximately 4300 feet in private ROW to the east side of US Highway 59, crosses US Highway 59 to the west side, thence northerly 3500 feet in private ROW parallel to US Highway 59, thence northwesterly approximately 2900 feet to County Road H-20. Continuing northwesterly from County Road H-20 approximately 6800 feet to Devore Avenue, thence northwesterly approximately 4500 feet to the east side of 400th Street, thence northerly along the east side of 400th Street in private ROW approximately 1200 feet, thence northwesterly approximately 3900 feet to the east side of County Highway M21, thence northerly approximately 3900 feet on the east side of County Highway M21 in private ROW to Henderson, thence westerly approximately 1000 feet in public ROW to MidAmerican Energy's TBS located in the SE ¼ of Section 10.

The pipeline is in a Class 1¹ location, except for approximately 1800 feet in Henderson that is in a Class 2 location. The pipeline route crosses four secondary county gravel roads, two paved highways, US Highway 59 and County Highway M-21 and Farm Creek.

The examination of the route found no safety code compliance issues, maintenance needs, or other matters that need to be addressed in this docket.

¹ Class locations are a population density index from 49 CFR Part 192 Section 5. Class 1 indicates little if any development near the route.