

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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IN RE:  EMMETSBURG MUNICIPAL UTILITIES	DOCKET NO. P-854
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE AND PROPOSING TO  
TAKE OFFICIAL NOTICE AND NOTICE OF HEARING**

(Issued May 17, 2005)

On August 7, 2003, Emmetsburg Municipal Utilities (Emmetsburg) filed a petition and exhibits for a pipeline permit for an existing 4-inch diameter natural gas pipeline approximately 3.314 miles long in Palo Alto County, Iowa. The petition is for an existing pipeline built in 1996 and placed into service on July 14, 1997, for which a permit was never requested or granted. The pipeline transports natural gas from a connection with a Northern Natural Gas Company pipeline at the Emmetsburg town border station to one industrial customer. The pipeline is a transmission line with a maximum allowable operating pressure of 367 pounds per square inch gage (psig). 199 IAC 10.16; 49 CFR § 192.3. Emmetsburg filed amendments to its petition and exhibits and provided additional information on May 24, 2004, and March 10, 2005.

On May 9, 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 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.

Emmetsburg must file prepared testimony and exhibits prior to the hearing. At a minimum, Emmetsburg's prepared testimony must address the issues listed above. In addition, in its prepared testimony, Emmetsburg must address why the pipeline was built without first obtaining a permit from the Board. Emmetsburg 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 Emmetsburg 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 Emmetsburg 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, Emmetsburg 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. Emmetsburg should address the factors in § 479.31 when discussing whether a civil penalty is appropriate. In Exhibit G of its petition, Emmetsburg provided notice of a public hearing regarding the pipeline that was presumably held on September 24, 1996, in Emmetsburg. Emmetsburg must state whether this public hearing was held, whether any objections were made to the proposed pipeline, and if any objections were made, must explain the substance of each objection. If any written objections were filed, Emmetsburg must file a copy of each with the Board as exhibits. On May 24, 2004, Emmetsburg filed a paragraph regarding its statement of damage claims. The paragraph appears to contain a typographical error. Emmetsburg must file a corrected version with its prepared testimony.

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 Emmetsburg 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**

Emmetsburg 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. Emmetsburg 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 have 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) and 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](http://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 April 27, 2005, concerning Emmetsburg's petition. A copy of the 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 report and of the facts contained therein, thus making it 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 report 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 report in prepared testimony and at the hearing. Mr. O'Neal will be present at the hearing and available for cross-examination regarding his report.

In his report, Mr. O'Neal refers to an inspection report dated April 24, 2005, by Mr. Gary Burnett. Mr. Burnett's report is an inspection report for compliance with the federal pipeline safety standards, and contains one paragraph regarding the route of the pipeline. Due to the length of the report and limited material regarding the route, the undersigned does not propose to take official notice of the report and it will not be attached to this order. Rather, Mr. Burnett will be asked to read the paragraph

regarding the route as part of his testimony at the hearing, and he will be available for cross-examination regarding the report. The parties will have the opportunity to contest any information contained in the report in prepared testimony and at the hearing. The report is available from the Board's Records and Information Center.

**IT IS THEREFORE ORDERED:**

1. Each person who files a letter of objection to Emmetsburg'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 June 3, 2005, Emmetsburg must file prepared direct testimony relating to its petition for a permit for its natural gas pipeline, as discussed in this order. If Emmetsburg wishes to file a prehearing brief, it must do so on or before June 3, 2005.

b. If the Consumer Advocate or any objector chooses to file prepared responsive testimony, it must do so on or before June 20, 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 June 20, 2005.

c. If Emmetsburg wishes to file prepared rebuttal testimony or a reply brief, it must do so on or before July 1, 2005.

d. 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, July 12, 2005, in Conference Room 3, 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 July 1, 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.

e. 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 April 27, 2005, which is attached to this order, and of the facts contained therein. Any party objecting to the taking of official notice of

the 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 Emmetsburg, and will be delivered to the Consumer Advocate. No persons have filed objections to the petition as of the date of this order.

6. Emmetsburg 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/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 17<sup>th</sup> day of May, 2005.

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

**TO: Docket No. P-854**

**FROM: Jeffrey L. O'Neal**

**DATE: April 27, 2005**

**SUBJ: Staff Review of Emmetsburg Municipal Utilities Petition for Pipeline Permit for approximately 3.314 miles of 4-inch Diameter Natural Gas Pipeline in Palo Alto County, Iowa.**

On August 7, 2003, Emmetsburg Municipal Utilities (Emmetsburg) filed a petition for pipeline permit for an existing 3.314 miles of 4-inch diameter natural gas pipeline in Palo Alto County, Iowa, that has not been previously permitted by the Utilities Board (Board). The pipeline was constructed in October of 1996, and was placed in service on July 14, 1997. This pipeline requires a pipeline permit because it operates at a pressure higher than 150 psig, and 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 large volume customer that is not downstream of a gas distribution center.

An informational meeting was not held for this pipeline. An informational meeting was not required because the pipeline is less than 5 miles long. (See 199 IAC 10.3.)

**Petition**

An inspection of Emmetsburg Municipal Utilities was conducted by Board staff in March 2003 to determine compliance with pipeline safety rules and regulations adopted by the Board. The inspection included approximately 3.4 miles of 4-inch diameter steel natural gas pipeline from the Town Border Station to the Ag Processing plant. A review of our records showed that pipeline did not have a permit. By letter dated May 30, 2003, staff notified Emmetsburg that a pipeline permit was required for this pipeline. 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 July 14, 2003, Emmetsburg replied that it was in the process of making application for a pipeline permit, and it hoped to submit the application prior to August 1, 2003. Emmetsburg filed a petition for pipeline permit on August 7, 2003.

By letters dated August 27, 2003, and January 24, 2005, Board staff advised Emmetsburg of petition deficiencies requiring correction, and requested additional information on certain items. On May 24, 2004, and March 10, 2005, Emmetsburg filed revisions to the petition and exhibits and provided additional information.

### **Route and Safety**

On March 29-31, 2005, Gary Burnett, Utility Regulation Inspector, inspected this pipeline for compliance with federal pipeline safety standards, and conducted a field examination of the proposed route. This inspection found no probable violations of pipeline safety standards, and found no problems with the route of the pipeline.

In his inspection report dated April 24, 2005, Mr. Burnett found this pipeline is not subject to the recently adopted integrity management rules in 49 CFR Part O; there are no high consequence areas within the potential impact radius for this pipeline.

This pipeline carries natural gas from a connection with a Northern Natural Gas Company pipeline at the Emmetsburg town border station to one industrial customer, Ag Processing, Inc. The pipeline lies within public right-of-way throughout its route. The route is in Class 1 and 2 locations as defined by Federal Minimum Safety Standards in 49 CFR Part 192. Class 1 is a low population density classification; Class 2 is a higher population density classification (See § 192.5 for definitions of class locations.)

The record supports a maximum allowable operating pressure (MAOP) of 367 psig for this pipeline.

### **Conclusions**

I have reviewed the petition and exhibits in this docket. It appears from the information presented that the pipeline complies with all design, construction, and testing requirements of the Board. A recent inspection by Board staff found no problems with the route of the pipeline, and found no probable violations of pipeline safety standards. The filing appears in sufficient order that the petition can be set for hearing.