

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  ATMOS ENERGY CORPORATION	DOCKET NO. P-856
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE AND PROPOSING TO  
TAKE OFFICIAL NOTICE AND NOTICE OF HEARING**

(Issued August 11, 2005)

On September 15, 2003, Atmos Energy Corporation (Atmos) filed a petition and exhibits for a pipeline permit for an existing natural gas pipeline in Lee County, Iowa. The pipeline requires a permit because it is a transmission line and because it operates at a pressure greater than 150 pounds per square inch gage (psig). 199 IAC 10.16; 49 CFR § 192.3.

On April 13, 1978, renewal Permit No. R-886 was issued to Keokuk Gas Service Company (Keokuk Gas) (n/k/a Atmos) in Docket No. P-746 for the section of the pipeline called the Keokuk Main Line. On the same date, renewal Permit No. R-885 was issued to Keokuk Gas in Docket No. P-520 for the section of the pipeline called the Montrose Lateral. Both of these permits expired on July 10, 2000. Board staff discovered the permits had expired through a review of permit records and notified Atmos. Both pipelines had a maximum operating pressure of 975 psig. Although the Board originally issued two separate permits for separate sections of the line, the Board is now considering the pipeline as one pipeline with a single permit.

The pipeline transports natural gas from a connection with an ANR Pipeline Company pipeline in Ft. Madison to regulator stations in and near the cities of Montrose and Keokuk, where the gas pressure is reduced for delivery through gas distribution mains to customers. The section of the pipeline originally constructed in 1962 (the Montrose Lateral) consists of .366 miles of 4-inch diameter natural gas pipeline. The section of the pipeline constructed in 1949 and 1957 is two parallel pipelines running between Ft. Madison and Keokuk that consist of 12.1 miles of 4-inch and 6-inch diameter pipeline and 12.2 miles of 6-inch and 8-inch diameter pipeline.

Atmos filed amendments to its petition and exhibits and provided additional information on April 7 and September 28, 2004, and June 6, 2005. On August 2, 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. The permits for this pipeline expired on July 10, 2000, and the issues include whether a civil penalty should be imposed for the failure to timely renew the permit, 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.

Atmos must file prepared testimony and exhibits prior to the hearing. At a minimum, Atmos' prepared testimony must address the issues listed above. In addition, in its prepared testimony, Atmos must address why it did not discover the permits had expired and why it did not file for permit renewal prior to the expiration date. Atmos must also provide testimony regarding actions it has taken to ensure that it will file for permit renewals prior to the expiration of its pipeline permits in the future. In either prepared testimony or a prehearing brief, Atmos must state its position regarding whether the Board should impose a civil penalty for the failure to

timely renew the permits pursuant to Iowa Code § 479.31. Atmos should address the factors in § 479.31 when discussing whether a civil penalty is appropriate.

In addition, as discussed further below, Mr. Jeffrey O'Neal filed a staff report regarding the petition on July 22, 2005. In that report, Mr. O'Neal discussed a federal pipeline safety inspection of the pipeline he conducted on March 15-17, 2005, and a report regarding this inspection he filed on April 20, 2005. In the April 20, 2005, report, Mr. O'Neal found probable violations of several federal safety standards and listed several advisories. In a letter dated May 31, 2005, Board Safety & Engineering Section Manager, Mr. Donald Stursma, asked Atmos to address each of the probable violations and advisories. On June 30, 2005, Atmos filed a response with the Board that addressed the majority of the probable violations and advisories. In his July 22, 2005, staff report, Mr. O'Neal stated that, based on Atmos' response, he considered the probable violations to be corrected. He also stated that all advisories other than the ones related to maximum allowable operating pressure (MAOP) documentation were adequately addressed. However, he stated the advisories regarding MAOP documentation were not addressed in Atmos' response, and he recommended that Atmos be asked to address them in prefiled testimony or at the hearing. Mr. O'Neal will be at the hearing and available for cross-examination regarding his reports. There are three advisories related to MAOP documentation listed in Mr. O'Neal's April 20, 2005, report. Atmos must address these three advisories in its prepared testimony and discuss the actions it has taken regarding them.

It is unclear from the Records and Information Center file whether documents should be served on Atmos by mailing to Ms. Patricia J. Childers, Vice-President of Rates & Regulatory Affairs, or to attorney Mr. Robert F. Holz, Jr. Atmos must file an appearance with the Board clarifying the proper person for service in accordance with the procedural schedule listed below.

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 Atmos 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**

Atmos 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. Atmos does not request the right of eminent domain.

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 that 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 July 22, 2005, concerning Atmos' 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). There appears to be one error in the report. On page two

of the report, Mr. O'Neal refers to "renewal Permit No. R-866." The renewal permit in the Records and Information Center file is numbered Permit No. R-886. Mr. O'Neal should testify to the correction at the hearing. 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.

**IT IS THEREFORE ORDERED:**

1. Each person who files a letter of objection to Atmos' 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 August 25, 2005, Atmos must file prepared direct testimony and exhibits relating to its petition as discussed in the body of this

order. If Atmos wishes to file a prehearing brief, it must do so on or before August 25, 2005. As discussed in the body of this order, Atmos must file an appearance clarifying the proper person for service of documents on or before August 25, 2005.

b. If the Consumer Advocate or any objector chooses to file prepared responsive testimony, it must do so on or before September 7, 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 September 7, 2005.

c. If Atmos wishes to file prepared rebuttal testimony or a reply brief, it must do so on or before September 14, 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, September 20, 2005, in Board 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 September 7, 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 July 22, 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 Atmos, and will be delivered to the Consumer Advocate. Since Atmos has not yet filed its appearance clarifying the proper person for service, this order will be served on both Ms. Patricia J. Childers and on Mr. Robert F. Holz, Jr. No persons have filed objections to the petition as of the date of this order.

6. Atmos 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 11<sup>th</sup> day of August, 2005.

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

**TO: Docket No. P-856**

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

**DATE: July 22, 2005**

**SUBJ: Staff Review of Atmos Energy Corporation Petition for Pipeline Permit for Existing Natural Gas Pipeline in Lee County, Iowa – Keokuk & Montrose Lateral**

In early 2003, Board staff discovered, through a review of permit records, that the pipeline permits in Dockets No. P-520 and P-746 had expired, and by letter dated February 3, 2003, notified Atmos Energy Corporation (Atmos) of this. On April 7, 2003, Atmos filed Petitions for Renewal of Pipeline Permit in Dockets No. P-520 (Montrose Lateral) and P-746 (Keokuk Lateral), for existing natural gas pipelines in Lee County, Iowa, for which the previous pipeline permits had expired on July 10, 2000. These pipelines require permits under 199 IAC 10.16 because they operate at a pressure greater than 150 psig, and because they are transmission lines. Staff later determined that because the original permits had expired before the renewal petitions were filed, Atmos would need to withdraw the petitions for renewal and file a petition for a new permit. By letter dated June 3, 2003, staff notified Atmos of this. On September 15, 2003, Atmos filed a Petition for Pipeline Permit for these pipelines. (Both pipelines were consolidated into one Petition for Pipeline Permit.) This Petition was assigned Docket No. P-856.

By letters dated December 4, 2003, July 26, 2004, and April 21, 2005, Board staff advised Atmos of petition deficiencies requiring correction, and requested additional information. On April 7, 2004, September 28, 2004, and June 6, 2005, Atmos filed revisions to the petition and exhibits and provided additional information.

An informational meeting was not held for this petition for permit, because it is for existing pipelines that previously had pipeline permits, and no new construction is proposed.

### **History**

On March 15, 1949, Temporary Permit No. 112 was issued in Docket No. P-153 to Michigan-Wisconsin Pipe Line Company (Michigan-Wisconsin) (n/k/a ANR Pipe Line Company), to allow construction of its main pipeline across southeastern Iowa and several lateral pipelines, including the Keokuk Lateral. On July 10, 1950, after construction of the pipelines, Permanent Permit No. 201 was issued to Michigan-

Wisconsin, replacing and revoking Temporary Permit No. 112. Permit No. 201 included 6-inch and 4-inch pipelines to Keokuk: 26.12 miles of 6-inch pipeline operating at 802 psi, and 17.60 miles of 4-inch pipeline operating at 767 psi. (The petition for permit said the 4-inch portion of the Keokuk Lateral would operate at a maximum pressure of 970 psi, with a normal inlet operating pressure of 767 psi.) On August 5, 1957, Permit No. 201 was amended to allow (among other things) construction of a loop of the Keokuk Lateral consisting of 16.80 miles of 6-inch and 1.04 miles of 8-inch pipeline. It appears this includes the 6-inch and 8-inch pipeline included in the current petition. The amendment did not specify an operating pressure, but the petition said the proposed pipe would operate at a maximum pressure of 975 psi.

On December 21, 1962, Permit No. 602 was issued to Michigan-Wisconsin to construct, operate and maintain the Montrose Lateral, a 4-inch diameter, 0.37 mile, natural gas pipeline to operate at 850 psi, for a period of 25 years.

In 1974, Keokuk Gas Service Company (Keokuk Gas) (n/k/a Atmos) purchased the southern portion of the Keokuk Lateral and the entire Montrose Lateral (which is fed by the Keokuk Lateral) from Michigan-Wisconsin.

On April 13, 1978, renewal Permit No. R-866 was issued to Keokuk Gas in Docket No. P-746 to operate and maintain the Keokuk Main Line, a natural gas pipeline with a maximum operating pressure of 975 psig, with a permit expiration date of July 10, 2000. Also on April 13, 1978, Permit No. R-885 was issued to Keokuk Gas in Docket No. P-520 to operate and maintain the Montrose Lateral, a natural gas pipeline with a maximum operating pressure of 975 psig, with a permit expiration date of July 10, 2000.

### **Route and Safety**

This pipeline must meet the requirements of 199 IAC Chapter 10 and 49 CFR Part 192 "Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards". The federal standards have been adopted by the Board in 199 IAC 10.12(1).

On March 15-17, 2005, I inspected the Keokuk and Montrose Lateral for compliance with federal safety standards. I filed a report regarding this inspection on April 20, 2005. The inspection found probable violations of the following sections of the Minimum Federal Safety Standards in 49 CFR Part 192: §§192.13(c), 192.625(f), 192.707(a)(1), 192.707(d)(2), and 192.739(d). The probable violations concerned inadequate or missing pipeline marker signs, inadequate records of odor level tests, and a regulator that was not vented properly. The inspection also listed several advisories. By letter dated May 31, 2005, staff notified Atmos of these

probable violations and advisories, 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 Atmos is not in probable violation. The letter also requested a response to each advisory. By letter dated June 24, 2005, Atmos filed a response describing the actions taken to correct the probable violations. Based on the Atmos response, I consider the probable violations to now be corrected. As described in the April 20, 2005, inspection report, based on the available information it appears and MAOP of 975 psig is appropriate for this pipeline. However, some errors and omissions were noted in the MAOP documentation at the Keokuk office. These were listed as advisories in the inspection report. The June 24, 2005, response letter from Atmos did not address the advisories regarding MAOP documentation. Atmos should be asked to address the advisories regarding MAOP documentation in prefiled testimony or at the hearing. All other advisories from this inspection were adequately addressed in the Atmos response letter.

The maximum allowable operating pressure (MAOP) attachment to Exhibit C did not include all of the information needed to confirm the MAOP has been correctly determined. Some of those records were available at the Keokuk office, and were reviewed during the inspection. Although Atmos was not able to produce all of the applicable documentation from 30 years ago, as explained in my April 20, 2005, inspection report, it appears a maximum allowable operating pressure (MAOP) of 975 psig is appropriate for this pipeline.

This pipeline contains high consequence areas (HCAs) as defined in §192.905. It appears Atmos used larger values than required for the potential impact radius (PIR) when determining the location of the HCAs; this is more conservative than required. I confirmed Atmos has an integrity management plan (IMP) as required for pipelines that contain HCAs, but I did not review the content of the plan in detail. Staff plans to inspect the integrity management plans of affected pipeline operators during separate future inspections.

This pipeline carries natural gas from a connection with an ANR Pipeline Company pipeline to regulator stations in and near the cities of Keokuk and Montrose, where the gas pressure is reduced for delivery through gas distribution mains to customers in and around Keokuk and Montrose. From the take-off from ANR pipeline at the Ft. Madison station, up to and including the Montrose Lateral, the route is in flat agricultural land in the Mississippi River bottom. South of Montrose, the route is in terrain that varies from very hilly to flat, passing through agricultural land and timber north of Keokuk, and residential, recreational and commercial areas in and near Keokuk. The original 4-inch pipeline runs through a baseball diamond complex (owned by a private association) on the north side of Keokuk, while the newer pipeline runs east of the baseball diamonds. The pipelines run under and along a residential street (Pawnee Drive) for a block in Keokuk, and the Plank Road station at the south

end of the pipeline in Keokuk is near several businesses.

During the route inspection, I confirmed the class locations as shown on Exhibit B appear to be correct. Most of the route is in a Class 1 location as defined by Federal Minimum Safety Standards in 49 CFR Part 192, but portions of the route south of the Ft. Madison station are in Class 2 and Class 3 locations, and portions of the route near the southern end of the pipeline in Keokuk are in Class 2 and Class 3 locations. Class 1 is a low population density classification; Class 2 and Class 3 are higher population density classifications. (See 49 CFR §192.5 for definitions of class locations.)

I found no evidence of operational or maintenance problems with this pipeline that would prevent it from continuing in operation as at present.

### **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. The pipeline appears to be in good condition and capable of continuing in operation as it has been operated. No special conditions or restrictions pertaining to safety or operation are suggested for the permit. There are no outstanding pipeline safety violations regarding this pipeline. However, Atmos should be asked to address in prefiled testimony or at the hearing the advisories regarding MAOP documentation listed in the April 20, 2005, inspection report. The filing appears in sufficient order that the petition can be set for hearing.