

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: HORIZON ETHANOL, LLC	DOCKET NO. P-862
------------------------------------	------------------

**ORDER ESTABLISHING PROCEDURAL SCHEDULE AND PROPOSING TO
TAKE OFFICIAL NOTICE AND NOTICE OF HEARING**

(Issued November 7, 2005)

On September 30, 2005, Horizon Ethanol, LLC (Horizon) filed a petition and exhibits for a permit to construct, operate, and maintain a natural gas pipeline approximately 10 miles long in Hamilton and Story Counties, Iowa. The proposed 6-inch diameter pipeline will transport natural gas from a proposed tap off the Northern Natural Gas Pipeline approximately 2.5 miles west of Story City, Iowa, to the Horizon Ethanol Plant near Jewell, Iowa. Horizon filed amendments to its petition and exhibits on October 17 and 21, 2005.

In the cover letter to its petition, Horizon stated it would own the proposed pipeline and Montana-Dakota Utilities Company (Montana-Dakota) was contracted to construct, operate, and maintain the pipeline, and was an authorized agent to sign on behalf of Horizon with regard to pipeline matters, including securing a pipeline permit from the Utilities Board (Board). In this order, Horizon and Montana-Dakota are considered to be a single party and will be referred to as Horizon unless the context requires a separate reference to Montana-Dakota.

On November 1, 2005, the Board assigned this proceeding to the undersigned administrative law judge.

THE BOARD'S AUTHORITY AND JURISDICTION

The Board has 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 issues, land restoration plan issues, and issues raised by objectors or any other party. The conduct of this case is governed by Iowa Code Chapters 17A and 479, and by Board rules at 199 IAC Chapters 9 and 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.

Horizon must file prepared testimony and exhibits in accordance with the procedural schedule set forth in this order. At a minimum, Horizon's prepared testimony must address the issues listed above. In addition, Horizon must either file prepared testimony to support the memo dated October 11, 2005, and unaudited

balance sheet in petition Exhibit D, or it must file an affidavit of a corporate officer to support these documents. Also, in its prepared testimony, Horizon must:

1. Explain in greater detail the qualifications and experience of Montana-Dakota in constructing, operating, and maintaining pipelines in compliance with Iowa Code Chapter 479, 199 IAC 10.12, and 49 CFR Parts 192 and 199;
2. Provide testimony addressing whether it will develop new written plans and procedures for the proposed pipeline or use existing Montana-Dakota procedures as the procedures required by 49 CFR Parts 192 and 199, such as the Operations, Maintenance and Emergency Response Plan, Operator Qualification Program, Integrity Management Program (if required for the proposed pipeline), and Anti-Drug and Alcohol Misuse Plan; and
3. Explain what qualified personnel will be available locally to promptly respond to leaks, emergencies, line locate, and marking requests, and other issues that may arise.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate) and any objectors may also file prepared testimony and exhibits according to the procedural schedule established in this order.

Parties other than Horizon 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.

PARTY STATUS

Horizon and the Consumer Advocate are currently the only parties in 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. Horizon 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. 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 Utilities Board Records 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 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 199 IAC Chapters 9 and 10 and 199 IAC 1.8 for other substantive and procedural rules that apply to this case. There are links to the Iowa Code and to the administrative rules on the Board's website at www.state.ia.us/iub.

PROPOSAL TO TAKE OFFICIAL NOTICE

Mr. Jeffrey O'Neal, regulatory engineer for the Board's Safety & Engineering Section, has prepared a report in the form of a memo dated October 25, 2005, concerning Horizon'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 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 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.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. Each person who files a letter of objection to Horizon'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 accompanied by a certificate of service as discussed in this order.
3. The following procedural schedule is established:
 - a. On or before November 22, 2005, Horizon must file prepared direct testimony relating to its petition as discussed in this order.
 - b. If the Consumer Advocate or any objector chooses to file prepared responsive testimony, it must do so on or before December 6, 2005.

c. If Horizon chooses to file any rebuttal testimony, it must do so on or before December 13, 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, December 20, 2005, in Fuller Hall, 625 Bank Street, Webster City, Iowa 50595. Each party must provide a copy of its prepared testimony and exhibits to the court reporter at the hearing, or must make arrangements for such provision if not physically present at the hearing. 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 at least five business days prior to the hearing to request that appropriate arrangements be made.

4. 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".

5. The undersigned administrative law judge proposes to take official notice of the attached report by Mr. O'Neal dated October 25, 2005, and of the facts contained in the report. 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.

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

7. Horizon 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 7th day of November, 2005.

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

TO: Docket No. P-862

FROM: Jeffrey L. O'Neal

DATE: October 25, 2005

SUBJ: Staff Review of Horizon Ethanol, LLC, Petition for Pipeline Permit for Approximately 10 Miles of 6-inch Diameter Natural Gas Pipeline in Hamilton and Story Counties, Iowa.

On September 30, 2005, Horizon Ethanol, LLC (Horizon) filed a Petition for Pipeline Permit with the Utilities Board (Board) for a proposed natural gas transmission pipeline in Hamilton and Story Counties, Iowa. On October 6, 2005, I conducted a field examination of the proposed route. By letters dated October 11, 2005, and October 19, 2005, I advised Horizon of petition deficiencies requiring correction, and requested additional information on certain items. On October 17, 2005, and October 21, 2005, Horizon filed revisions to the exhibits and provided additional information.

The petition is for construction of approximately 10 miles of 6-inch diameter steel pipeline. The proposed pipeline would extend from a proposed tap off the Northern Natural Gas Pipeline approximately 2.5 miles west of Story City, Iowa, to the Horizon ethanol plant, approximately 1 mile northwest of Jewell, Iowa. Horizon plans to design and test the pipeline for a maximum allowable operating pressure (MAOP) of 720 psig.

Informational meetings for this proposed pipeline were held on August 18, 2005, in Story and Hamilton Counties, as required by 199 IAC 10.3.

Route Inspection

I examined the route of the proposed pipeline on October 6, 2005. The weather was overcast, windy, and cool. The route map filed as Exhibit B was used as a guide. Subsequent to my inspection, a portion of the proposed route has been moved from the east side of the road to the west side of the road, but during my inspection, I observed conditions on both sides of the road, including the currently proposed route.

The route begins at a proposed tie-in with existing Northern Natural Gas Pipeline facilities approximately 2.5 miles west of Story City, Iowa, in Story County. The route runs generally northerly along the west side of Carver

Avenue, jogging slightly to the west near the NE corner of Section 8, T-85N, R-24W, and the SE corner of Section 5, T-85N, R-24W, to avoid a stream, then crosses the stream, returns to the west side of the road, and continues north into Hamilton County, where the name of Carver Avenue changes to Queens Avenue. The route continues north along the west side of Queens Avenue until it reaches Section 5, T-86N, R-24W, where it runs northwest to the east side of a drainage ditch approximately $\frac{1}{4}$ mile west of the road, then runs north along the east side of the drainage ditch. The proposed pipeline route continues north when the drainage ditch turns west in Section 32, T-87N, R-24W. The route ends at the Horizon ethanol plant on the north side of 320th Street, in the southeast quarter of Section 20, T-87N, R-24W, in Hamilton County.

The route runs through flat to gently rolling terrain. The route is in agricultural land, except where it crosses in front of houses near the road, and where it crosses roads, drainage ditches, and a small stream. Most of the route was planted in row crops. A small portion is in pasture. Except for the road crossings, the entire route is on private property. The route crosses one paved state highway, three paved county roads, and six gravel roads. It crosses a stream and two drainage ditches. The route passes in front of 8 houses, running between the house and the road, near the west edge of road right-of-way, and passes near a house on the south side of 320th Street. There are also four houses on the opposite side of the road from the proposed route.

The only area or building I observed near the route that appeared it might create a Class 3 location is at the Horizon ethanol plant to be served by this pipeline. In a letter filed October 17, 2005, Horizon stated the closest distance from the pipeline to any building or small, well-defined outside area at the ethanol plant that would be occupied by more than 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period will be more than 100 yards. Therefore, the ethanol plant will not create a Class 3 location, and the entire route appears to be in a Class 1 location as defined by Federal Minimum Safety Standards in 49 CFR Part 192. Class 1 is the lowest population density classification.

Subpart O of 49 CFR Part 192 requires pipeline operators to develop and implement an Integrity Management Program for gas transmission pipelines in high consequence areas (HCAs) as defined by the rules. An HCA is an area within the potential impact radius (PIR) for the pipeline that contains an identified site as defined in the rules, or that contains 20 or more buildings intended for human occupancy. Based on the pipe diameter and maximum allowable operating pressure specified in the filing, the PIR for this pipeline would be 111 feet. It appears some of the houses along the route would be within the PIR for this pipeline. However, I observed no apparent identified sites within the PIR, and in no location were there anywhere near the 20 or more houses within the PIR that would be required to create an HCA. (There did not appear to be more than two houses within the PIR at any one location.) The only potential identified site that I observed along the route would be the Horizon ethanol plant to be

served by this pipeline. In a letter filed October 17, 2005, Horizon stated the closest distance from the pipeline to any identified site at the ethanol plant will be more than 100 yards. Horizon will still need to conduct a review of the route to look for HCAs after construction as required by the rules, but it appears the pipeline will most likely not require an integrity management program under Subpart O of 49 CFR Part 192, and most of the requirements under Subpart O will not apply to this pipeline.

The Horizon Ethanol Plant was under construction at the time of the inspection.

No problems were noted with the proposed route. No conflicts with safety standards or significant impediments to pipeline construction were found.

Petition

Natural gas pipelines must comply with the federal pipeline safety standards of 49 CFR Part 192, which have been adopted by the Board in 199 IAC 10.12(1)"b". The information filed by Horizon shows the pipeline will be designed, constructed and tested in compliance with these standards. The filing would support specifying a maximum operating pressure of 720 psig in a pipeline permit for this pipeline. Horizon plans to use PSL 2 pipe, which is more resistant to rupture than the alternative PSL 1 pipe. (Both PSL 1 pipe PSL 2 pipe comply with the safety standards.)

The proposed route is on agricultural land. Horizon's Land Restoration Plan appears to comply with the applicable provisions of 199 IAC Chapter 9.

The purpose of the project as stated in the petition is to provide the required natural gas to the Horizon Ethanol Plant, which is currently being constructed near Jewell, Iowa. Exhibit F states the plant will provide a new delivery point for area corn producers and is expected to increase the price of corn in the area. It states approximately 40 jobs will be created at the ethanol plant, and the construction phase of the project will have a significant positive impact on the local economy. Iowa Code § 479.12 requires a finding that "the services proposed to be rendered will promote the public convenience and necessity" before a permit can be granted. I believe that based on the benefits described above this project meets that test.

In a letter with its October 17, 2005, filing, Horizon stated there was a landowner that had not yet signed an easement, but Horizon was still negotiating with the landowner. Horizon stated that in order to avoid condemnation, it had discussed with the county the possibility of installing the pipeline in the county road right-of-way at this location. I do not know whether Horizon has acquired all of the required easements for this project yet, but it has not revised its petition to

show a route change, and it has not requested eminent domain.

The proposed pipeline will be owned by Horizon. A letter included with the September 30, 2005, filing, signed by the General Manager of Horizon, states Horizon and Montana-Dakota Utilities Co. (Montana-Dakota), have entered into various contracts and agreements which provide for the construction, operation and maintenance of this pipeline, and that Montana-Dakota is the authorized agent of Horizon to construct, operate and maintain the pipeline, and to sign on behalf of Horizon with regards to pipeline matters, including securing a pipeline permit from the Iowa Utilities Board.

To my knowledge, neither Horizon nor Montana-Dakota has previously operated a pipeline in the state of Iowa that is subject to the safety rules adopted by the Board. A brochure included as part of Exhibit G with the October 17, 2005, filing briefly describes Montana-Dakota's experience in constructing and operating pipelines in other states in compliance with 49 CFR Part 192, and the cover letter for the October 17, 2005, filing also addresses this briefly. *It is recommended Horizon be asked to explain in greater detail the qualifications and experience of Montana-Dakota in constructing, operating and maintaining pipelines in compliance with 49 CFR Parts 192 and 199. Horizon should be asked whether it will develop new written plans and procedures for this pipeline, or use existing Montana-Dakota procedures as the procedures required by the rules such as Operations, Maintenance and Emergency Response Plan, Operator Qualification Program, Integrity Management Program (if required for this pipeline), and Anti-Drug and Alcohol Misuse Plan. Horizon should also be asked to explain what qualified personnel will be available locally to promptly respond to leaks, emergencies, line locate and marking requests, and other issues that might arise.*

Summary

I have reviewed the petition and exhibits in this docket. The information presented shows the proposed pipeline would comply with all design, construction, and testing requirements set forth by the Iowa Utilities Board. The filing appears in sufficient order to set a date for hearing.

Horizon should be asked to explain in its prefiled testimony the qualifications and experience of Montana-Dakota in constructing, operating and maintaining pipelines in compliance with rules adopted by the Board, and to explain what qualified personnel will be available locally, as described above.