

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  INTERSTATE POWER AND LIGHT COMPANY	DOCKET NO. P-860
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE AND PROPOSING TO  
TAKE OFFICIAL NOTICE AND NOTICE OF HEARING**

(Issued January 9, 2006)

On May 18, 2005, Interstate Power and Light Company (IPL) filed a petition and exhibits for a pipeline permit for an existing 4-inch diameter natural gas pipeline approximately 1.34 miles long in Marshall County, Iowa. In 1969, IPL's predecessor company constructed a 2-inch diameter steel pipeline along this route with an operating pressure of 120 pounds per square inch gauge (psig). IPL and its predecessor company modified the pipeline several times. In 1998, IPL replaced the original 2-inch diameter pipeline with the current 4-inch diameter pipeline, installed a regulator station at one end of the pipeline, and began operating the pipeline at 175 psig. The petition in this docket is for the existing 4-inch diameter pipeline for which a permit was never requested or granted. The pipeline transports natural gas from a connection with a Northern Natural Gas Company pipeline to the Koch Fertilizer plant and to a regulator station that feeds a distribution system that supplies gas to customers in and around Green Mountain, Iowa. The pipeline is a transmission line with a maximum allowable operating pressure of 175 psig. 199 IAC 10.16;

49 CFR 192.3. IPL filed amendments to its petition and exhibits and provided additional information on June 20, August 22, and November 7, 2005.

On December 20, 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 7.3.

### **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.

IPL must submit prepared testimony and exhibits prior to the hearing. At a minimum, IPL's prepared testimony must address the issues listed above. In addition, in its prepared testimony, IPL must address why the pipeline was modified in 1998 without first obtaining a permit from the Board. IPL 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. In prepared testimony or an affidavit of a corporate officer, IPL must verify that at least \$250,000 worth of the property shown in petition Exhibit D, other than pipelines, is located in Iowa and subject to execution. Iowa Code § 479.26. In either prepared testimony or a prehearing brief, IPL must state its position regarding whether the Board should impose a civil penalty pursuant to Iowa Code § 479.31 for the failure to obtain a permit. IPL 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 IPL 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**

IPL 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. IPL 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. 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 ten 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(4), 7.4(6). 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, 7.1(3), 7.22, 7.26, and 7.27 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 December 7, 2005, concerning IPL'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.

**IT IS THEREFORE ORDERED:**

1. Each person who files a letter of objection to IPL'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 ten 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 January 30, 2006, IPL must file prepared direct testimony relating to its petition for a permit for its natural gas pipeline, as discussed in this order. If IPL wishes to file a prehearing brief, it must do so on or before January 30, 2006.
  - b. If the Consumer Advocate or any objector chooses to file prepared responsive testimony, it must do so on or before February 13, 2006.

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 February 13, 2006.

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 Thursday, February 23, 2006, 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 Wednesday, February 8, 2006, 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 ten copies of all documents filed with the Board. 199 IAC 1.8(4), 7.4(4)"a."

4. The undersigned administrative law judge proposes to take official notice of Mr. O'Neal's report dated December 7, 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 IPL, and will be delivered to the Consumer Advocate. No persons have filed objections to the petition as of the date of this order.

6. IPL 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 9<sup>th</sup> day of January, 2006.

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

**TO: Docket No. P-860**

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

**DATE: December 7, 2005**

**SUBJ: Staff Review of Interstate Power and Light Company Petition for Pipeline Permit for approximately 1.34 miles of 4-inch Diameter Natural Gas Pipeline in Marshall County, Iowa.**

On May 18, 2005, Interstate Power and Light Company (IPL) filed a petition for pipeline permit for an existing 1.34 miles of 4-inch diameter natural gas pipeline in Marshall County, Iowa, that has not been previously permitted by the Utilities Board (Board). 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 distribution center and 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.)

### **History**

IPL's Petition Exhibit I states that in 1969, Iowa Electric Light and Power Company [n/k/a IPL] constructed a 2-inch diameter steel pipeline along this route, operating at 120 psig, to serve the Koch Fertilizer plant. In 1991, the operating pressure of the pipeline was reduced to 100 psig and additional plastic pipeline was installed to serve customers in Green Mountain. In 1996, additional plastic pipeline was installed to serve customers south of Green Mountain. In 1998, the original 2-inch diameter steel pipeline was replaced with a 4-inch diameter steel pipeline operating at 175 psig, and a regulator station was installed at Koch Plant site at the end of the new 4-inch steel pipeline, where the pressure is reduced to 100 psig for delivery to customers in and around Green Mountain through the plastic pipeline system.

The pipeline that fed this area prior to 1998 could arguably have been considered to be a distribution main, and it operated at less than 150 psig. Distribution mains operating at less than 150 psig do not require a permit from the Board. However, IPL should have obtained a pipeline permit from the Board prior to replacing the original 2-inch diameter steel pipeline with a new 4-inch diameter pipeline in 1998, because the new pipeline operated at a pressure higher than 150 psig. This situation was discovered by IPL, and was brought to the attention of Board staff by IPL in January 2005. With the addition of the regulator station near the Koch Fertilizer plant in 1998, the new regulator station should be considered to be the beginning of the distribution center on this system. Therefore, the new 4-inch pipeline meets the definition of a transmission line rather than a distribution main. *In its petition, IPL did not address why this pipeline was built without obtaining a permit. IPL should be asked to address this in its prefiled testimony.*

### **Other IPL Pipelines Without Permits**

I am aware of 3 other cases where IPL has apparently operated pipelines without permits as required by Board rules:

1. P-850 - On October 8, 2002, IPL filed with the Board a petition for a permit for an existing pipeline built in 1980 and 1982 for which a permit was never previously requested or granted. The pipeline is a distribution main entirely within the city limits of Muscatine, Iowa, which transports natural gas from a Natural Gas Pipeline Company of America custody transfer (delivery) point to an IPL regulator station near the intersection of Cedar and Houser Streets in Muscatine, Iowa. On December 5, 2003, the Board issued permit no. 1209 to IPL in Docket No. P-850 for the Muscatine Lateral.
2. P-863 - On September 1, 2005, IPL filed with the Board a petition for a permit for an existing natural gas pipeline built in 1969. The pipeline consists of approximately 1.8 miles of 2-inch diameter pipeline with an MAOP of 125 psig. The pipeline transports natural gas from an ANR Pipeline delivery point to an IPL regulator station in the town of Lockridge, Iowa. This petition has not yet been set for hearing.
3. P-517 - On October 17, 2005, IPL filed with the Board a petition for amendment of permit for an existing natural gas pipeline built in 2004. The petition is for addition of approximately 0.29 miles of 2-inch diameter pipeline with an MAOP of 720 psig to an existing pipeline permit (Permit No. R1061, issued July 21, 1988.) The pipeline transports natural gas from IPL's Conesville-West Branch Lateral to an IPL regulator station on the south side of West Branch, Iowa. This petition has not yet been set for hearing.

### **Petition**

On January 18, 2005, IPL contacted Board staff regarding a pipeline near Green Mountain in Marshall County that operates at 175 psig and may not have a pipeline permit, and asked that we check our permit records. By letter dated March 28, 2005, staff notified IPL that our records confirmed this pipeline does not have a pipeline permit, and that IPL needed to obtain a permit for this pipeline. On May 18, 2005, IPL filed a petition for pipeline permit for this pipeline.

By letters dated May 19, July 15, and November 3, 2005, Board staff advised IPL of petition deficiencies requiring correction, and requested additional information on certain items. On June 20, August 22, and November 7, 2005, IPL filed revisions to the petition and exhibits and provided additional information.

Exhibit F states this pipeline supplies natural gas to the Koch Fertilizer plant, and to 111 other customers in and around Green Mountain, Iowa, providing a reliable and clean burning fuel for heat and processing to residential and commercial customers not otherwise available. 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 pipeline meets that test.

### **Route and Safety**

On June 14, 16 and 21, 2005, I inspected this pipeline for compliance with federal pipeline safety standards, and conducted a field examination of the pipeline's route. This inspection found probable violations of § 192.625(e) and § 192.13(c) regarding lack of periodic odorant usage rate calculations, and of § 192.745(a) regarding no record of periodic maintenance of a valve at the upstream end of the pipeline. The inspection also noted a probable violation of § 192.150, regarding inability of the pipeline to accommodate the passage of internal inspection devices, that had been cited in a previous inspection and had not yet been corrected. My inspection confirmed two other probable violations cited in the previous inspection, related to patrolling (§ 192.705) and leak survey intervals (§ 192.706) for this pipeline, had been corrected. The probable violations of § 192.150, § 192.705 and § 192.706 were a result of the fact that, prior to 2005, IPL had considered this pipeline to be a distribution main, and had followed the design, patrolling and leak survey rules for a distribution main, instead of those for a transmission line. IPL took action to correct each of the probable violations. Based on letters from James House of IPL filed August 19, October 19, and November 18, 2005, I now consider all of the probable violations regarding this

pipeline to be corrected, and satisfactory action has been taken in response to the advisory listed in my inspection report. There are no outstanding probable violations or other outstanding safety issues regarding this pipeline.

My inspection 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 to the Koch Fertilizer plant and to a regulator station that feeds a distribution system that supplies gas to customers in and around Green Mountain. The pipeline lies within public road right-of-way throughout its route, except at the endpoints, which are adjacent to the road. The entire route is in a Class 1 location as defined by Federal Minimum Safety Standards in 49 CFR § 192.5. Class 1 is a low population density classification. No problems were noted with the route of the pipeline.

The record supports a maximum allowable operating pressure (MAOP) of 175 psig for this pipeline.

### **Conclusions & Summary**

I have reviewed the petition and exhibits in this docket. It appears from the information presented that the pipeline currently complies with all design, construction, and testing requirements of the Board. No problems were noted with the route of the pipeline. There are no outstanding probable violations of pipeline safety standards, or other outstanding safety issues regarding this pipeline. The filing appears in sufficient order that the petition can be set for hearing.

IPL should be asked to address why this pipeline was built without obtaining a permit in its prefiled testimony.