

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: INTERSTATE POWER AND LIGHT COMPANY	DOCKET NO. P-860
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**PROPOSED DECISION AND ORDER IMPOSING
CIVIL PENALTY AND GRANTING PERMIT**

(Issued March 2, 2006)

APPEARANCES:

MR. KENT M. RAGSDALE, Attorney at Law, Alliant Energy Corporate Services, Inc., 200 First Street SE, P.O. Box 351, Cedar Rapids, Iowa 52406-0351, appearing on behalf of Interstate Power and Light Company.

MR. JOHN F. DWYER, Attorney at Law, 310 Maple Street, Des Moines, Iowa 50319, appearing on behalf of the Iowa Department of Justice, Office of Consumer Advocate.

STATEMENT OF THE CASE

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. (petition for permit; O'Neal report; testimony of Mr. Shrimplin.) 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). (petition for permit; O'Neal report; testimony of Mr. Shrimplin.) IPL and its predecessor company modified the pipeline several times. (petition for permit; O'Neal report; testimony of Mr. Shrimplin.) 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. (petition for permit; O'Neal report; testimony of Mr. Shrimplin.) 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. (petition for permit; O'Neal report; testimony of Mr. Shrimplin.) The pipeline requires a permit because it is a transmission line and because it operates at a pressure greater than 150 psig. (petition for permit; O'Neal report; testimony of Mr. Shrimplin, Mr. O'Neal.) 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. (petition for permit; O'Neal report.) 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.

On January 9, 2006, the undersigned issued an order establishing a procedural schedule, proposing to take official notice, and providing notice of the hearing. In that order, the undersigned set February 23, 2006, as the date for the hearing on the petition, and proposed to take official notice of a report concerning the pipeline dated December 7, 2005, prepared by Mr. Jeffrey O'Neal, utility regulatory engineer for the Board.

The hearing was held on February 23, 2006, in Board Conference Room 3, 350 Maple Street, Des Moines, Iowa. IPL was represented by its attorney, Mr. Kent Ragsdale. Mr. Micheal E. Shrimplin, gas distribution engineer for Alliant Energy Corporate Services, testified on behalf of IPL. The representatives of IPL were connected to the hearing by telephone conference call. Mr. O'Neal testified as the engineer selected by the Board to examine the proposed route and permit petition pursuant to Iowa Code § 479.11. The Consumer Advocate Division of the Department of Justice (Consumer Advocate) was represented by its attorney, Mr. John F. Dwyer.

DISCUSSION REGARDING ASSESSMENT OF CIVIL PENALTY

Iowa Code § 479.31 provides that a person who violates chapter 479 or a Board rule issued pursuant to the chapter is subject to a civil penalty not to exceed \$10,000 for each violation. Each day the violation continues constitutes a separate offense, but the maximum civil penalty is \$500,000 for any related series of violations. Iowa Code § 479.31. In this case, IPL violated the statute by failing to obtain a permit prior to making the modifications that were made to the pipeline in 1998. The only contested issue in this case is whether a civil penalty should be assessed, and if it should, the amount of the penalty.

The Consumer Advocate's Position

The Consumer Advocate argues that a reasonable civil penalty in this case is appropriate. It argues that failure to apply for and obtain a permit to construct a natural gas pipeline is a serious violation of state law and government oversight of

construction is vital to the public interest because of the possible consequences of improper installation, routing, or other issues. It argues that Board supervision of construction is necessary to ensure the pipeline is installed using the proper and approved procedures. It further argues that inspection subsequent to construction is inadequate because the materials and methods used cannot be observed. The Consumer Advocate argues that the Board cannot treat construction of pipelines in violation of permit requirements lightly.

The Consumer Advocate further argues that IPL offered no satisfactory explanation for the violation. It argues that IPL essentially stated that the persons who made the decision to construct the line simply erred and there was no supervisory system in place to correct the mistake. The Consumer Advocate also pointed out this is not the first instance in which it was discovered that the company constructed a pipeline or electric transmission facilities without obtaining a required permit, and cited to Docket Numbers E-21686 and P-850 in support.

The Consumer Advocate further argues that the following mitigating factors exist. IPL discovered the violation and reported it to the Board. The error occurred under a different and more limited management structure than now exists within the company. According to the testimony of Mr. Shrimplin, IPL now has additional resources to supervise its pipeline construction activities and it has taken steps to improve its internal procedures for evaluating pipeline projects. Finally, IPL's engineering staff reviews construction projects in the planning stage, including reviewing whether a permit is required. The Consumer Advocate noted that

assuming this management oversight system is operating as described, it should reduce the risk of such errors in the future. Furthermore, the Consumer Advocate states that it is implied that all of IPL's existing pipelines will eventually be reviewed to determine their status in relation to permit requirements, and if this is done in a thorough and comprehensive manner, it should improve the odds that all pipelines will be properly permitted. The Consumer Advocate states that since IPL discovered the mistake with regard to this pipeline, this suggests the effort may be effective.

However, the Consumer Advocate argues, the requirement to obtain a permit was clear and unambiguous and this violation is not like those in which there were legitimate differences of opinion as to whether a permit was required when the line was constructed. It further argues that this violation is not like cases in which a permit was not required when the line was constructed, but later became required through a change in the law many years later. In addition, it argues that while more robust management systems may be pursued diligently, they cannot entirely eliminate human error, and when the error was made in this case, management believed its efforts were sufficient to make sure regulatory requirements were being met.

Therefore, the Consumer Advocate argues, due to the lack of any reasonable explanation for the error and because it is the third time in the last five years that IPL has violated the same or equivalent requirements, a reasonable civil penalty is appropriate. The Consumer Advocate argues that a civil penalty will serve to confirm the serious nature of the violation, reinforce the company's commitment to creating a

system that will minimize the risks of future mistakes, and provide an incentive for other utilities to support and maintain effective compliance systems. In closing argument, the Consumer Advocate stated this is a close case and the Board would not want to provide a disincentive for self-reporting of violations by imposing a large penalty.

IPL's Position

IPL's witness Mr. Shrimplin testified that IPL erroneously determined the construction in 1998 was a modification of a local distribution system and, therefore, similar to past improvements, did not require a permit prior to construction. He further testified that at the time of this error, IPL¹ did not have a centralized gas-engineering department to provide the needed oversight in this area. He testified that as a result of its on-going gas compliance-related initiatives, IPL discovered the error during a review of its historical pipeline records and immediately notified Board staff on January 18, 2005. He testified that on March 28, 2005, Mr. Don Stursma, manager of the Board's Safety & Engineering Section, sent IPL a letter confirming that a permit had not been issued for the pipeline. He further testified that IPL gathered the necessary data and sent its application for a permit to the Board on May 17, 2005.

Mr. Shrimplin further testified that IPL now has a centralized engineering process for high pressure transmission pipelines staffed with gas engineers who are in contact with IPL's regulatory and real estate staff. He testified that IPL identified

¹ Actually, IES Utilities Inc., n/k/a IPL.

the pipeline as one needing a permit through this centralized process. Mr. Shrimplin testified that although the current centralized engineering department and process appears to be working well, IPL is in the process of taking additional actions to more closely monitor future gas construction projects. These include making enhancements to the information technology system IPL uses to manage construction projects such as requiring field construction specialists to obtain engineering approval on all proposed changes to Iowa permitted pipelines. Mr. Shrimplin testified the system is being designed so that material cannot be ordered for a project without engineering review and approval. IPL is also modifying its Geographic Information System (GIS) to highlight the location of Iowa permitted lines. As part of this modification, IPL real estate and engineering staff are reviewing historical permit data to establish a complete record of permitted pipelines within the GIS database. Mr. Shrimplin testified that IPL expects modifications to both systems to be completed by June 1, 2006. He testified that gas engineers have been directed to complete targeted training with field staff on the permitting process by March 31, 2006. He testified that in the interim, IPL Vice-President of Customer Operations, Mr. Vern Gebhart, has issued a directive to field operations requiring all pipeline projects to be pre-approved by gas engineering prior to construction.

Mr. Shrimplin further testified that Board staff has inspected the pipeline approximately every three years. The last inspection was in June 2005. Mr. Shrimplin testified that IPL has provided all required information to the Board and completed corrective actions identified by this most recent inspection. Furthermore,

on November 2, 2005, IPL completed modifications to the pipeline to accommodate the passage of internal inspection devices.

In his testimony, Mr. Shrimplin argued that IPL should not be assessed a civil penalty. He testified that in Docket No. P-850, IPL found a similar permitting mistake through its review of historical documents and self-reported this error to the Board, and no civil penalty was assessed. Mr. Shrimplin testified IPL has operated and maintained the pipeline in accordance with its written standards and procedures that meet or exceed applicable requirements, and that it will continue to do so. He testified the public was not harmed nor put at risk by the operation of the pipeline. He further testified that Board staff has periodically inspected the pipeline for compliance with safety and operational requirements. He testified that IPL remains highly motivated to correct past deficiencies and does not believe that a civil penalty would serve as additional motivation.

Mr. Shrimplin testified that IPL continues to diligently review its records in an attempt to self-report any violations and to work with Board staff to correct any violations. He testified IPL understands that it should have permitted the pipeline and regrets that a permit was not obtained in 1998. He testified that IPL demonstrated good faith by self-reporting and attempting to achieve compliance by filing a petition for a permit. He testified IPL discovered the violation during a search of historical pipeline records while trying to create a complete and accurate account of pipelines in the Marshalltown area. Mr. Shrimplin testified that although a violation was discovered through this process, IPL believes the historical search is a necessary

task that will aid the company in avoiding future violations. He testified IPL continues to scrutinize its pipeline system and confers with Board staff when regulatory questions arise. He testified it is IPL's intent to correct any and all errors that may have occurred in the past by either IPL or its predecessor companies.

Analysis

Iowa Code § 479.31 provides that in determining the amount of a penalty, the appropriateness of the penalty to the size of the company, the gravity of the violation, and the good faith of the company in attempting to achieve compliance after notification of a violation, shall be considered. Each case is fact sensitive and is to be judged on its own merits. In re: Interstate Power and Light Company, Docket No. P-850, "Order Affirming Proposed Decision and Order Granting Permit and Waiver" (November 17, 2003) (Interstate Power I).

In the past few years, the Board and the undersigned administrative law judge have considered assessment of civil penalties in nine prior electric franchise and pipeline permit cases: In re: Corn Belt Power Cooperative, Docket No. E-21570, "Order Canceling Hearing, Accepting Compromise, and Assessing Civil Penalty," (February 1, 2002) (Corn Belt I); In re: Corn Belt Power Cooperative, Docket No. E-21519, "Order Canceling Hearing, Accepting Compromise, and Assessing Civil Penalty," (August 28, 2003) (Corn Belt II); Interstate Power I; In re: Moulton Municipal Gas Company, Docket No. P-853, "Proposed Decision and Order Granting Permit," (January 21, 2004) (Moulton); In re: City of Lorimor, Docket No. P-852, "Proposed Decision and Order Granting Permit," (June 21, 2004) (Lorimor); In re:

Interstate Power and Light Company, Docket No. E-21686, "Order Canceling Hearing, Accepting Compromise, and Assessing Civil Penalty," (September 15, 2004) (Interstate Power II); In re: MidAmerican Energy Company, Docket No. P-857, "Proposed Decision and Order Granting Permit," (May 12, 2005) (MidAmerican); In re: Emmetsburg Municipal Utilities, Docket No. P-854, "Proposed Decision and Order Imposing Civil Penalty and Granting Permit," (July 22, 2005) (Emmetsburg); and In re: Atmos Energy Corporation, Docket No. P-856, "Proposed Decision and Order Imposing Civil Penalty and Granting Permit," (October 6, 2005) (Atmos).

Several of these cases involved the failure to renew a permit that had already been obtained. Several involved the failure to seek an electric franchise or a pipeline permit in the first place. The cases are sufficiently analogous so it is valid to consider them as guidance when determining whether a civil penalty should be assessed in this case, and if so, the amount of the penalty to be assessed. The Corn Belt and Interstate Power II cases involved failure to seek an electric franchise prior to construction rather than failure to seek or renew a pipeline permit. Although there are differences in the amounts and types of penalties that may be imposed for violations of the electric franchise and pipeline permit statutes, the factors to be considered in compromising or determining the amount of the penalty are the same. Iowa Code §§ 478.24, 478.29, and 479.31. Therefore, the Corn Belt and Interstate Power II cases may also be considered as guidance when deciding whether to assess a civil penalty and the appropriate amount to assess.

In Corn Belt I, Corn Belt filed a petition for a franchise to construct an electric line in December 2001, but began construction of the line prior to receiving the franchise. Board staff discovered the violation and notified Corn Belt that construction must cease immediately and not resume until a franchise was obtained from the Board. Corn Belt immediately ceased construction activities after this notification, accepted full responsibility for the violation, and by motion and affidavit, asked the Board to impose an appropriate penalty without hearing. In imposing a civil penalty of \$600, the Board stated: "While the Board finds the violation to be serious, Corn Belt's actions are mitigated by the fact it immediately ceased construction after notification from Board's staff. Corn Belt has also accepted responsibility for the violation and taken corrective action so similar violations will not occur in the future." The Board also stated: "Since this is the first time this has happened, there is no reason to assess the maximum fine." Corn Belt I, pp. 5-6.

In Corn Belt II, Corn Belt converted a segment of single circuit transmission line to double circuit without first filing a petition for amendment of its electric franchise in February 2003. Corn Belt became aware of the violation in May 2003 and immediately notified Board staff. The Board stated it did not view the violation to be as serious as that in Corn Belt I. Although Corn Belt promptly reported the violation and began corrective action, took steps to prevent additional violations in the future, and the violation was inadvertent, the Board imposed a civil penalty of \$300 because it was the second violation by Corn Belt in less than two years. In the Corn Belt II Decision, the Board stated the following: "By bringing this action and

assessing this fine, the Board puts all companies on notice that franchise requirements must be followed. However, the Board recognizes that there are some violations that may have occurred many years ago that have only recently been detected. The Board encourages companies to report any such violations immediately and to cooperate with the Board's staff in remedying such violations. Any penalties that may be imposed would likely be mitigated if the violations are self-reported and not discovered by the Board's staff. The companies should also examine their processes, like Corn Belt has, to see if additional personnel or training are needed to ensure future compliance with the Iowa statutes and Board rules."

Corn Belt II Decision, p. 5.

In Interstate Power II, IPL received a franchise from the Board for a segment of electric transmission line in 2003. Other parts of the line were to be constructed inside the city limits of Iowa Falls, so no franchise was required. Iowa Code § 478.1. However, IPL moved the line location to outside the city limits (thereby triggering the franchise requirement), and began construction without first obtaining a franchise. Once the problem was identified, IPL ceased construction on the segment and filed a petition for a franchise. The Board imposed a civil penalty of \$1,000. In imposing the penalty, the Board stated the violation's seriousness was in between the two Corn Belt cases, but was not a self-reported violation like Corn Belt II, because IPL did not discover the error until after Board staff had made inquiries unrelated to the possible franchise violation. The Board also stated IPL immediately ceased construction activities, accepted full responsibility for the violation, requested the Board to impose

an appropriate penalty without hearing, and identified specific steps it was taking to avoid future violations. The Board stated IPL did not adequately examine its processes after the warning the Board issued to all companies in Corn Belt II. The Board further stated it is serious about obtaining compliance with the requirements and again issued a warning to all companies to examine their processes. It stated that all companies "are put on notice that future violations that are not self-reported could result in significantly higher penalties." Interstate Power II, p. 6.

The Interstate Power I case involved a failure to obtain a permit for a pipeline constructed in 1980 and 1982 when a permit was clearly required as of 1982. IPL did not discover it had failed to obtain the required permit until August 2002. In reaching a decision not to impose a penalty, the undersigned and the Board considered that the company discovered the violation, immediately contacted the Board upon discovery, promptly filed a petition for a permit, took steps to prevent future violations, did not have any other known violations of this nature, constructed, operated, and maintained the pipeline in conformance with all other Board rules, and there was no safety issue associated with the pipeline. Also considered were the facts that the violation was committed by prior staff who no longer worked for the company and current staff exhibited exemplary behavior once the violation was discovered. Therefore, the proposed and final decisions held that imposition of a civil penalty would not serve a valid punitive or deterrent purpose.

In its decision affirming the proposed decision and imposing no penalty issued on November 17, 2003, the Board stated: "The evidence supports the ALJ's findings

that IPL's actions fully mitigated imposition of a civil penalty. This is consistent with the Board's decision in Corn Belt regarding self-reported violations that occurred many years ago." Interstate Power I, p. 5. The Board also stated: "Cases of this nature are very fact-sensitive. Minor changes in the facts and circumstances may make significant changes in the outcome. Even in this case, the Board is concerned that it took IPL 20 years to discover this violation. However, that concern is at least partially alleviated by the ALJ's finding that, as of the date of the hearing, IPL had established a centralized process for review of gas pipeline permits and, based on that review, IPL had not identified any other situation in which IPL constructed a pipeline without first obtaining a permit. (Proposed Decision, Findings of Fact Nos. 18 and 20.) Any future cases will be judged on their own merits." Interstate Power I, p. 6.

The Moulton case involved the failure to timely renew a pipeline permit, rather than the failure to obtain a permit when one was required. At the hearing in the Moulton case, the parties proposed a compromise of the civil penalty issue, in which Moulton agreed to pay a civil penalty of \$375. Moulton, p. 3. Important factors considered in approving the compromised penalty amount included that the failure to renew the permit was a relatively recent violation and Board staff, rather than Moulton's staff, discovered the violation. Other important factors included that Moulton was a very small town with limited staff, Moulton cooperated with Board staff upon discovery of the violation and promptly filed a petition for a permit, there were no other known violations, the pipeline had been operated and maintained in

compliance with all requirements other than the failure to renew, there was no safety issue with respect to the pipeline, and Moulton implemented a procedure to ensure its permit would be timely renewed in the future.

The Lorimor case involved a transmission pipeline with a maximum allowable operating pressure (MAOP) of 150 psig that had been constructed in 1971 without a permit. There were a number of factors considered important in the decision not to impose a penalty. A permit was not required when the pipeline was constructed in 1971 because it had an MAOP of 150 psig. A permit was required when the statute changed in 1988. The decision stated that failure to seek a permit when the law changed is different than failure to seek a permit when a company takes some affirmative action such as construction of a pipeline. It stated when a pipeline company plans to construct a pipeline, it must do so in conformance with applicable law and, it therefore, must learn what the law requires. There was no triggering action on the part of Lorimor that would have caused it to know the statute changed, and the decision noted the statutory change was subtle and was contained in a bill that primarily dealt with regulation of interstate pipelines. However, the decision stated that pipeline owners continue to have an affirmative duty to know what is in the law and comply with it, even if the law changes.

Other important factors included that Lorimor was a very small town with a limited number of customers, one full-time employee, and one part-time employee. The Lorimor pipeline had been inspected by Board staff for many years, and when citations were issued as a result of the inspections, Lorimor timely corrected the

matters. There were no major violations of applicable requirements. It was not known why a permit was not obtained prior to construction, although an engineer testified that to the best of his knowledge, the consultants hired to design and construct the pipeline assumed no permit was required because the pipeline would be operated at 150 psig or less. Board staff discovered the line had no permit, notified the city a permit was required, and as soon as the city learned of the permit requirement, it promptly applied for one. Lorimor was cooperative with Board staff in seeking to obtain a permit once it learned one was required, and worked with Board staff to amend its petition as needed. The Lorimor pipeline conformed to all pipeline safety standards and there were no safety issues with respect to the pipeline. The city took steps to ensure the pipeline would be operated in conformance with all applicable requirements and the city owned no other pipelines.

The MidAmerican case involved a petition for an existing transmission pipeline with an MAOP of 125 psig that was constructed in 1970. Several factors were considered in the decision not to assess a penalty. It was unclear whether a permit was required when the line was constructed. From January 1 through July 1, 1970, a permit would have been required, but as of July 1, 1970, when the statute was amended, it apparently no longer required a permit since the line had an MAOP of less than 150 psig. Between 1971 and 1988, there was confusion regarding whether pipelines that operated at less than 150 psig were required to obtain a permit, and board decisions interpreting the statute as it existed from July 1, 1970, to July 1, 1988, were not consistent. The first time it was clear that a permit was required was

in 1988 when the statute was changed, and the considerations discussed above with respect to this statutory change and civil penalty assessment in the Lorimor decision were applicable to the MidAmerican case as well.

In MidAmerican, Board staff discovered the pipeline did not have a permit and notified the company. MidAmerican immediately researched whether there was a permit, and once it learned there was not, it promptly filed a petition for a permit with the Board. MidAmerican was cooperative with Board staff in working on obtaining a permit for the pipeline. Other important factors included that Board staff had regularly inspected the pipeline, there were only four minor safety violations that were promptly corrected, and there were no other safety issues regarding the pipeline.

MidAmerican had no prior violations of the requirement to obtain a permit, it put procedures in place to ensure there would be no future violations, and it stated it consults with Board staff when there is any question whether a permit is required.

In Emmetsburg, the municipal utility constructed a pipeline in 1996 without seeking a permit from the Board. The undersigned imposed a civil penalty of \$300 for the violation. The law clearly required Emmetsburg to obtain a pipeline permit before it began construction. Unlike in MidAmerican and Lorimor, the Emmetsburg violation did not arise from a subtle change in the law without new construction by the pipeline owner. The fact that Emmetsburg did not discover the violation itself and report it to the Board was important to the decision to impose a civil penalty.

In determining the amount of the civil penalty, the following factors were considered. The violation was serious. However, once notified, Emmetsburg staff

began preparing a petition and promptly filed it. Emmetsburg staff was professional and cooperative with Board staff in getting the pipeline permitted and current. Emmetsburg staff was not involved in the decision that a permit was not required. Emmetsburg is a relatively small town with limited utility staff. Board staff had inspected the pipeline every other year and the only probable violation had been corrected. There were no safety or route problems with the pipeline and Emmetsburg had no other violations. Emmetsburg accepted responsibility for the violation and took affirmative steps to ensure there would be no future violations.

In the Atmos case, Atmos failed to timely renew two pipeline permits that had expired in 2000. In deciding to impose a civil penalty of \$500, the undersigned considered a number of factors to be important. The violation was serious, although not as serious as the failure to obtain a permit in the first place. The violation was relatively recent. Atmos did not discover that its pipeline permits had expired. Rather, Board staff discovered this and notified Atmos. The law clearly required Atmos to timely renew its permits. Atmos is a large company with operations in 12 states and it serves approximately 3.2 million customers. Once Board staff discovered the permits had expired and told Atmos it would have to file a petition for a new permit, Atmos promptly filed its petition and cooperated with Board staff to get the pipeline permitted. Board staff had inspected the pipeline since at least 1977. The most recent inspection revealed several probable violations of the Minimum Federal Safety Standards in 49 CFR Part 192, which Atmos corrected. There were no operational or maintenance problems with the pipeline that would prevent it from

continuing to operate. The pipeline appeared to be in good condition and capable of continuing in operation as it had been operated, and there were no problems with the route of the pipeline. There were no other instances in which Atmos failed to timely file for permit renewal, although Atmos only operates one other pipeline in Iowa, and that pipeline was recently permitted. Atmos implemented a system to keep track of its property records and to ensure that its permits are timely renewed in the future.

In this case, the violation is serious. Failure to obtain a permit prior to construction means the statutory system for Board oversight of design and construction of the pipeline through the permitting process cannot be followed. The Consumer Advocate is correct that after-the-fact review by Board staff is an inadequate substitute because the materials and construction of the pipeline cannot be observed. The violation is relatively recent. This case is not the same as the cases, including Interstate Power I, in which a violation occurred many years ago. In addition, the law was clear that a permit was required at the time construction occurred in 1998. This is not the same situation as the cases in which the law was unclear or the law changed and a permit became required without construction activity by the company. IPL is a relatively large utility. (petition for permit; testimony of Mr. Shrimplin.)

On the other hand, very important mitigating factors include that IPL staff discovered the violation through an internal review of its pipeline records, promptly reported it to the Board, and once Board staff verified the pipeline did not have a permit, IPL promptly filed a petition for a permit. (petition for permit; testimony of Mr.

Shrimplin, Mr. O'Neal; O'Neal report.) IPL was cooperative with Board staff in seeking to obtain a permit once it knew one was required. (testimony of Mr. O'Neal.) IPL has developed processes to discover pipelines without required permits and to prevent construction without required permits in the future. (testimony of Mr. Shrimplin.) Board staff has inspected the pipeline and there do not appear to be any safety or operational problems with the pipeline. (petition for permit; testimony of Mr. Shrimplin, Mr. O'Neal; O'Neal report.) IPL promptly corrected the probable violations of the federal pipeline safety standards identified by the June 2005, inspection by Mr. O'Neal. (O'Neal report.) There are no problems with the route of the pipeline. (O'Neal report; petition for permit.)

If this were the first violation by IPL of the requirement to obtain a permit prior to construction, the undersigned would be inclined to impose no civil penalty. IPL appears to be making a concerted effort to examine its records, improve its information technology and GIS systems, train its staff, and impose appropriate managerial/engineering oversight, all in an effort to discover existing lines that need permits and to prevent construction of lines in the future without required permits. (testimony of Mr. Shrimplin.) These actions are important and need to continue. The undersigned does not want to impose a penalty so harsh that it could serve as a disincentive for IPL to self-report discovered violations in the future.

However, three years ago, in Interstate Power I, IPL presented evidence that it had established a centralized process for review of its gas pipeline permits and it was unaware of any other situation in which IPL constructed a pipeline without first

obtaining a required permit. Evidently, IPL's centralized process was inadequate at the time. In 2004, in Interstate Power II, IPL began construction of an electric transmission line without first obtaining a required franchise.

It is still not clear from the evidence presented in this case whether IPL has completed an effective comprehensive review of its pipelines to determine whether all required permits have been obtained. (testimony of Mr. Shrimplin.) IPL must continue to devote sufficient attention to permitting issues, examine its historical records to discover lines that require permits and get them permitted if needed, and improve its systems so it complies with permitting requirements in the future. Given the entire circumstances of this case, the undersigned believes a reasonable civil penalty should be imposed in this case to reinforce IPL's awareness that this violation is serious, that it must promptly complete a comprehensive review to determine whether any additional permits are required, and that it must continue to take significant actions to ensure that it complies with permitting requirements in the future. The penalty should not be large because IPL self-discovered the violation, promptly reported it and filed a petition with the Board, and because it appears from Mr. Shrimplin's testimony that IPL is taking significant actions to prevent future violations.

FINDINGS OF FACT

1. IPL is a pipeline company within the meaning of Iowa Code § 479.2. (testimony of Mr. Shrimplin; petition for permit; O'Neal report.)

2. On May 18, 2005, IPL filed a petition and exhibits for a pipeline permit for an existing 4-inch diameter natural gas transmission pipeline in Marshall County, Iowa with a maximum allowable operating pressure of 175 psig. (petition for permit; O'Neal report; testimony of Mr. Shrimplin.) IPL filed amendments to its petition and exhibits and provided additional information on June 20, August 22, and November 7, 2005. (petition for permit; O'Neal report.)

3. In 1969, IPL's predecessor company constructed a 2-inch diameter steel pipeline along the route with an operating pressure of 120 psig. (petition for permit; O'Neal report; testimony of Mr. Shrimplin.) IPL and its predecessor company modified the pipeline several times. (petition for permit; O'Neal report; testimony of Mr. Shrimplin.) 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 on the Koch Fertilizer plant site, and began operating the pipeline at 175 psig. (petition for permit; O'Neal report; testimony of Mr. Shrimplin.)

4. 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. (petition for permit; O'Neal report; testimony of Mr. Shrimplin.)

5. IPL caused notice of the hearing to be published in Marshall County in the Times-Republican, a newspaper of general circulation in the county, once each week for two consecutive weeks, on January 30 and February 6, 2006. (proof of publication.)

6. The pipeline follows a route described in Exhibit A and shown on Exhibit B attached to the petition for a permit (as amended). (petition Exhibits A and B; O'Neal report.) There are no problems with the location and route of the pipeline and no further terms, conditions, or restrictions regarding them need to be imposed pursuant to Iowa Code § 479.12. (petition for permit; O'Neal report.)

7. The pipeline supplies natural gas to the Koch Fertilizer Plant. Koch Fertilizer has several fuel options available. Natural gas is a clean burning fuel with fewer emissions and less negative impact on air quality than some available alternative fuels. Since the pipeline is already constructed, delivery of natural gas can be done without inconvenience to landowners or interference with normal highway traffic. Alternate fuels would need to be trucked to the Koch facility and stored on site, which would substantially increase heavy truck traffic transporting flammable fuels on state and county roads. The pipeline also transports natural gas to the regulator station, where gas pressure is reduced to serve residential customers in and around Green Mountain, Iowa. Without the pipeline, these customers would not have access to natural gas. (testimony of Mr. Shrimplin; petition for permit; O'Neal report.) Therefore, the pipeline promotes the public convenience and necessity. (testimony of Mr. Shrimplin; petition for permit; O'Neal report.)

8. Board staff has inspected the pipeline approximately every three years during its operation. (testimony of Mr. Shrimplin.) Mr. O'Neal inspected the pipeline in June 2005. (testimony of Mr. Shrimplin; O'Neal report.) This inspection revealed

several probable violations of the minimum federal safety standards in 49 CFR Part 192. (O'Neal report.) IPL has corrected the probable violations. (testimony of Mr. Shrimplin; O'Neal report.) There are no outstanding operational or safety issues with the pipeline. (O'Neal report.) The pipeline complies with the design, construction, and safety requirements of Iowa Code chapter 479, 199 IAC § 10.12, and 49 C.F.R. Part 192. (petition for permit; O'Neal report; testimony of Mr. Shrimplin, Mr. O'Neal.) No further safety-related terms, conditions, or restrictions need to be imposed pursuant to Iowa Code § 479.12. (petition for permit; O'Neal report; testimony of Mr. Shrimplin, Mr. O'Neal.)

9. IPL has filed satisfactory proof of its solvency and ability to pay damages as required by Iowa Code § 479.26 and 199 IAC 10.2(1)"d." (petition Exhibit D; affidavit of Mr. Thomas L. Aller.)

10. No written objections to the petition for a permit were filed and no objectors appeared at the hearing. (testimony of Mr. O'Neal; Docket No. P-860 file.)

11. IPL's failure to obtain a permit prior to construction of the modifications to the pipeline in 1998 is a serious violation. The law was clear that a permit was required at the time construction occurred in 1998. IPL is a relatively large utility. (petition for permit; testimony of Mr. Shrimplin.) Important mitigating factors include that IPL staff discovered the violation through an internal review of its pipeline records, promptly reported it to the Board, and once Board staff verified the pipeline did not have a permit, IPL promptly filed a petition for a permit. (petition for permit; testimony of Mr. Shrimplin, Mr. O'Neal; O'Neal report.) IPL has developed processes

to discover pipelines without required permits and to prevent construction without required permits in the future. (testimony of Mr. Shrimplin.) Board staff has inspected the pipeline and there do not appear to be any safety or operational problems with the pipeline. (petition for permit; testimony of Mr. Shrimplin, Mr. O'Neal; O'Neal report.) IPL promptly corrected the probable violations of the federal pipeline safety standards identified in the June 2005, inspection by Mr. O'Neal. (O'Neal report.) There are no problems with the route of the pipeline. (O'Neal report; petition for permit.) IPL appears to be making a concerted effort to examine its records, improve its information technology and GIS systems, train its staff, and impose appropriate managerial/engineering oversight, all in an effort to discover existing lines that need permits and to prevent construction of lines in the future without required permits. (testimony of Mr. Shrimplin.) It is not clear from the evidence presented whether IPL has completed an effective comprehensive review of its pipelines to determine whether all required permits have been obtained. (testimony of Mr. Shrimplin; petition for permit.) This case is not the first time IPL has violated the requirement to obtain a pipeline permit or an electric franchise prior to construction. Three years ago, in Interstate Power I, IPL presented evidence that it had established a centralized process for review of its gas pipeline permits and it was unaware of any other situation in which IPL constructed a pipeline without first obtaining a required permit. Evidently, IPL's centralized process was inadequate at the time. In 2004, in Interstate Power II, IPL began construction of an electric transmission line without first obtaining a required franchise.

CONCLUSIONS OF LAW

1. The Board has the authority to grant, amend, and renew permits for the construction, operation, and maintenance of pipelines for the intrastate transportation of natural gas. Iowa Code §§ 479.1, 479.4, 479.12, and 479.18; 199 IAC 10.

2. The Board has jurisdiction over IPL and over the petition for a natural gas pipeline permit it has filed. Iowa Code §§ 479.2, 479.3, 479.5, 479.6, 479.12, and 479.18.

3. IPL was required to obtain a permit for the pipeline in 1998 because it increased the pipeline's operating pressure to 175 psig and because it installed a regulator station at the Koch Fertilizer Plant. The pipeline then met the definition of a transmission line because it transports natural gas from another transmission line to a distribution center and to a large volume customer that is not downstream of a gas distribution center. (testimony of Mr. Shrimplin; O'Neal report.) 199 IAC 10.16; 49 CFR § 192.3.

4. The petition of IPL for issuance of a permit for the natural gas pipeline in this docket should be granted. Iowa Code §§ 479.11, 479.12, and 479.26; 199 IAC 10.

5. Since there will be no new construction and IPL will not disturb any agricultural land, IPL is not required to file a land restoration plan. Iowa Code § 479.29; 199 IAC 9.

6. Iowa Code § 479.31 provides that a person who violates chapter 479 or a Board rule issued pursuant to the chapter is subject to a civil penalty not to exceed

\$10,000 for each violation. Each day the violation continues constitutes a separate offense, but the maximum civil penalty is \$500,000 for any related series of violations. Iowa Code § 479.31. In determining the amount of the penalty, the appropriateness of the penalty to the size of the company, the gravity of the violation, and the good faith of the company in attempting to achieve compliance after notification of a violation, shall be considered. Iowa Code § 479.31.

7. Self-discovery of a violation by the owner and prompt reporting of the violation to the Board is a very important mitigating factor in the decision whether to impose a civil penalty and in lowering the amount of any penalty if one is assessed. Corn Belt I; Corn Belt II; Interstate Power I; Moulton; Lorimor; Interstate Power II; MidAmerican; Emmetsburg; and Atmos.

8. As discussed in the body of this decision, considering the entire circumstances and prior decisions, it is appropriate to impose a civil penalty in this case, although it is not necessary or appropriate to impose a large civil penalty. Iowa Code §§ 479.5, 479.23, 479.31 (2005); 199 IAC 10.7, 10.8; Corn Belt I; Corn Belt II; Interstate Power I; Moulton; Lorimor; Interstate Power II; MidAmerican; Emmetsburg; and Atmos.

IT IS THEREFORE ORDERED:

1. Official notice is taken of the report dated December 7, 2005, filed in this docket by Mr. Jeffrey O'Neal, utility regulatory engineer for the Board.

2. Pursuant to Iowa Code chapter 479, the petition for a pipeline permit filed by IPL in this docket is granted. A permit will be issued if this proposed decision and order becomes the final order of the Board.

3. Pursuant to Iowa Code § 479.31, IPL is assessed a civil penalty in the amount of \$1,000. Payment in the form of a check made payable to the Iowa Utilities Board shall be forwarded to the Executive Secretary of the Iowa Utilities Board at 350 Maple Street, Des Moines, Iowa 50319-0069. Payment is due within 30 days of the date of this order. The docket number listed on this order shall be listed on the check or in the accompanying correspondence.

4. The Board retains jurisdiction of the subject matter in this docket.

5. This proposed decision will become the final decision of the Board unless appealed to the Board within 15 days of its issuance or the Board votes to review the decision on its own motion. Iowa Code § 17A.15(3); 199 IAC § 7.8(2).

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 2nd day of March, 2006.