

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>AMENDMENTS TO 199 IAC CHAPTERS 9 AND 12; INTERSTATE NATURAL GAS PIPELINES</p>	<p>DOCKET NO. RMU-06-2</p>
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**ORDER COMMENCING RULE MAKING AND ALLOWING FOR
ADDITIONAL COMMENTS**

(Issued May 5, 2006)

Pursuant to the authority of Iowa Code §§ 17A.4, 476.1, 479.29, 479B.20, and 2005 Acts, chapter 32, section 2, the Utilities Board (Board) proposes to amend 199 IAC chapter 9 and 199 IAC 12.1 and to rescind 199 IAC 12.3, 12.4, 12.5, and 12.7, as described in the "Notice of Intended Action" attached hereto and incorporated herein by reference. The amendments to chapter 9 and rule 12.1, and the rescission of rules 12.3, 12.4, 12.5, and 12.7 are being proposed based upon the repeal of all of the provisions in Iowa Code chapter 479A providing for regulation of the construction of interstate natural gas pipelines by the Board. The Board has retained authority to act as an agent for the federal government in determining compliance with the standards of the federal government for pipelines within the state of Iowa. This docket has been identified as Docket No. RMU-06-2.

The statutory provisions were repealed based upon the decision of the United States Court of Appeals, Eighth Circuit, in which the Court of Appeals held that the state of Iowa and the Board were preempted by federal law from enforcing construction standards for restoration of agricultural lands against interstate natural

gas pipelines. Northern Natural Gas Co. v. Munns, et al., 377 F.3d 817 (8th Cir. 2004). In that case, Northern Natural Gas Company (Northern) filed suit when the Board attempted to enforce its rules on restoration of agricultural lands in 199 IAC 9 and 12 that purported to establish standards for the construction of interstate natural gas pipelines in Iowa. The United States District Court for the Southern District of Iowa granted Northern summary judgment and entered an injunction against the Board from enforcing the provisions of 199 IAC 9 and 12 related to restoration of agricultural lands during and after construction of interstate pipelines. The Eighth Circuit affirmed the District Court decision and held that statutes conferring upon the Board power to implement certain controls over transportation of natural gas to protect landowners and tenants from environmental and economic damages, and regulations promulgated under that statute were preempted by the Natural Gas Act, which confers authority on the Federal Energy Regulatory Commission over issues involving construction of an interstate natural gas pipeline. Id.

On April 15, 2005, the provisions in Iowa Code chapter 479A establishing standards for construction and authorizing the Board to regulate interstate natural gas pipeline construction, including land restoration of agricultural land during and after construction, were repealed. (2005 Acts, chapter 32, section 2.) In this rule making, the Board is proposing to remove references to agricultural land restoration requirements for interstate pipelines in 199 IAC 9 and 12.

The Board is also reviewing the provisions of chapter 9 not addressed by this rule making to determine if those provisions still establish appropriate standards for restoration of agricultural lands during and after construction. Pipelines other than

interstate natural gas pipelines. Interested persons are invited to provide comments on the existing standards or to propose new standards in this docket, in addition to any comments on this proposed rule making. After completing its review and considering any comments, the Board will determine if additional amendments to its land restoration rules should be proposed.

IT IS THEREFORE ORDERED:

1. A rule making proceeding identified as Docket No. RMU-06-2 is commenced for the purpose of receiving comments on the proposed amendments and rescission in the notice attached hereto and incorporated herein by reference in this order.
2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin a notice in the form attached to and incorporated by reference in this order.
3. Comments on other provisions of 199 IAC chapter 9 not addressed in this rule making may be filed in this docket on or before June 13, 2006.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 5th day of May, 2006.

UTILITIES DIVISION [199]

Notice of Intended Action

Pursuant to 2005 Acts, chapter 32, section 2 and Iowa Code sections 17A.4, 476.1, 479.29, and 479B.20 (2005), the Utilities Board (Board) gives notice that on May 5, 2006, the Board issued an order in Docket No. RMU-06-2, In re: Amendments to 199 IAC chapters 9 and 12; Interstate Natural Gas Pipelines, "Order Commencing Rule Making and Allowing for Additional Comments." The proposed revisions are based upon the repeal of the provisions in Iowa Code chapter 479A providing for regulation by the Board of the construction of interstate natural gas pipelines. The authority of the Board to act as an agent for federal government was retained. The rescission of these statutory provisions was to comply with a decision by the United States Court of Appeals, Eighth Circuit, that held the state of Iowa and the Board were preempted by the federal Natural Gas Act from enforcing standards for construction of interstate pipelines. Northern Natural Gas Co. v. Munns, et al., 377 F.3d 817 (8th Cir. 2004). The order containing the background and support for this rule making can be found on the Board's Web site, www.state.ia.us/iub.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before June 13, 2006, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific

reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

No oral presentation is scheduled at this time. Pursuant to Iowa Code section 17A.4(1)"b," an oral presentation may be requested or the Board on its own motion after reviewing the statements may determine that an oral presentation should be scheduled.

These amendments are intended to implement 2005 Acts, chapter 32, section 2 and Iowa Code sections 17A.4, 479.29, and 479B.20.

The following amendments are proposed.

Item 1. Amend rule 199—9.1(476,479B) as follows:

199—9.1(479,479A,479B) General information.

9.1(1) Authority. The standards contained herein are prescribed by the Iowa utilities board pursuant to the authority granted to the board in Iowa Code sections 479.29, ~~479A.14,~~ and 479B.20, relating to land restoration standards for pipelines. ~~The requirements of this chapter do not apply to natural gas pipeline projects that were both constructed between June 1, 1999, and July 1, 2000, and that also received a certificate from the Federal Energy Regulatory Commission prior to June 1, 1999. In addition, the~~ The requirements of this chapter do not apply to land located within city boundaries, unless the land is used for agricultural purposes, or to interstate natural gas pipelines.

Item 2. Amend rule 199—9.2(476,479B) as follows:

9.2 (479,479A,479B) Filing of land restoration plans. For intrastate natural gas and all hazardous liquid pipeline projects, land restoration plans shall be

prepared and filed with the appropriate petition pursuant to Iowa Code section 479.29(9) or 479B.20(9) and this chapter for pipeline construction projects which require a pipeline permit from the Iowa utilities board, or for amendments to permits that propose pipeline construction or relocation. ~~Plans for interstate natural gas pipeline construction projects requiring a certificate from the Federal Energy Regulatory Commission shall be prepared pursuant to Iowa Code section 479A.14(9) and this chapter.~~

9.2(1) Content of plan. A land restoration plan shall include but not be limited to the following:

a. A brief description of the purpose and nature of the pipeline construction project.

b. A description of the sequence of events that will occur during pipeline construction.

c. A description of how compliance with subrules 9.4(1) to 9.4(10) will be accomplished.

d. The plan should include the point of contact for landowner inquiries or claims as provided for in rule 9.5(479,479A,479B).

9.2(2) No change.

9.2(3) Environmental impact statement, environmental assessments, and agreements. ~~Preparation of a separate land restoration plan for an interstate natural gas company project subject to Federal Energy Regulatory Commission authority may be waived by the board if the requirements of Iowa Code section 479A.14 are substantively satisfied in an environmental impact statement or environmental~~

~~assessment, as defined in 18 CFR Section 380.2, and as accepted and modified by the Federal Energy Regulatory Commission certificate issued for the project.~~

Preparation of a separate land restoration plan may be waived by the board if an agricultural impact mitigation or similar agreement is reached by the pipeline company and the appropriate agencies of the state of Iowa and the requirements of this chapter are substantively satisfied therein. ~~If an environmental impact statement, environmental assessment,~~ a mitigation plan or agreement is used to fully or partially meet the requirements of a land restoration plan, the statement or agreement shall be filed with the board and shall be considered to be, or to be part of, the land restoration plan for purposes of this chapter.

Item 3. Amend rule 199—9.3(479,479B) as follows:

9.3(479,479A,479B) Procedure for review of plan.

9.3(1) An intrastate natural gas pipeline, or a hazardous liquid pipeline, that is subject to Iowa Code section 479.5 or 479B.4 shall file its proposed plan with the board at the time it files its petition for permit pursuant to 199 IAC 10.2(479) or 13.2(479B), or a petition for amendment to permit which proposes pipeline construction or relocation pursuant to 199 IAC 10.9(2) or 13.9(479B). Review of the land restoration plan will be coincident with the board's review of the application for permit, and objections to the proposed plan may be filed as part of the permit proceeding.

9.3(2) ~~An interstate natural gas pipeline company that is required by rule 9.2(479,479A,479B) to file a land restoration plan shall file a proposed land restoration plan, or a petition requesting waiver of the plan filing requirement, with~~

~~the board and the office of consumer advocate no later than 120 days prior to the date construction is scheduled to commence. If the pipeline company seeks waiver of the requirement that a plan be filed, and instead proposes board acceptance of a Federal Energy Regulatory Commission environmental impact statement or environmental assessment, or of an agricultural impact mitigation or similar agreement, the filing shall include a copy of that document. If the document is not final at the time filing is required, the most recent draft or a statement of the anticipated relevant contents shall be filed. If a Federal Energy Regulatory Commission environmental impact statement or environmental assessment information, final or draft, is filed, the filing shall identify the specific provisions which contain the subject matter required by Iowa Code section 479A.14(1).~~

~~a. Any interested person may file an objection on or before the twentieth day after the date the plan is filed.~~

~~b. Within 45 days of the filing of the plan or waiver request, the board will issue a decision on whether the filing demonstrates that the land restoration requirements of Iowa Code section 479A.14 and of these rules will be met. The board may impose terms and conditions if the filing is found to be incomplete or unsatisfactory. The board's action may also be conditional pending confirmation that the Federal Energy Regulatory Commission will not impose terms and conditions that are not consistent with the action taken by the board.~~

~~c. Interstate natural gas pipeline companies proposing pipeline construction requiring a Federal Energy Regulatory Commission certificate shall include a copy of 199—Chapter 9 in the notice mailed to affected landowners required by Federal~~

~~Energy Regulatory Commission rule 18 CFR Part 157.6(d). Interstate natural gas pipeline companies proposing pipeline construction requiring a Federal Energy Regulatory Commission certificate shall also file the following with the board:~~

~~(1) A copy of the landowner notification required by Federal Energy Regulatory Commission rule 18 CFR Part 157.6(d), filed coincident with the mailing to landowners.~~

~~(2) Notice of any open public meeting with Iowa landowners scheduled by the company or by the Federal Energy Regulatory Commission.~~

~~(3) Copies of letters from Iowa landowners concerning the project filed with the Federal Energy Regulatory Commission, within 20 days of such filing.~~

~~(4) A copy of any agricultural impact mitigation or similar agreement reached with another state.~~

9.3(3) After the board has accepted the plan, but prior to construction, the pipeline company shall provide copies of the plan to all landowners of property that will be disturbed by the construction, and to the county board of supervisors and the county engineer of each affected county. ~~However, if a waiver is granted pursuant to subrule 9.3(2), an interstate natural gas pipeline company need not provide landowners with second copies of environmental impact statements or environmental assessments if copies are provided to landowners by the Federal Energy Regulatory Commission.~~

Item 4. Amend rule **199—9.4(479,479A,479B)** by striking 479A from the parenthetical implementation statutes.

Item 5. Amend rule **199—9.5(479,479A,479B)** by striking 479A from the parenthetical implementation statutes.

Item 6. Amend rule **199—9.6(479,479A,479B)** by striking 479A from the parenthetical implementation statutes.

Item 7. Amend rule 199—9.4(479,479A,479B) as follows:

199—9.7(479,479A,479B) Enforcement. A pipeline company shall fully cooperate with county inspectors in the performance of their duties under Iowa Code sections 479.29, ~~479A.14~~, and 479B.20, including giving proper notice of trenching, permanent tile repair, or backfilling. If the pipeline company or its contractor does not comply with the requirements of Iowa Code section 479.29, ~~479A.14~~, or 479B.20, with the land restoration plan, or with an independent agreement on land restoration or line location, the county board of supervisors may petition the utilities board for an order requiring corrective action to be taken or seeking imposition of civil penalties, or both. Upon receipt of a petition from the county board of supervisors, the board will schedule a hearing and such other procedures as appropriate. The county will be responsible for investigation and for prosecution of the case before the board.

These rules are intended to implement Iowa Code sections 479.29, ~~479A.14~~, and 479B.20.

Item 8. Amend rule 199—12.1(479A) as follows:

199—12.1(479A) General Information Authority. The Iowa utilities board is authorized to act as an agent for the federal government pursuant to Iowa Code

section 479A.1 in determining pipeline company compliance with the standards of the federal government for pipelines within the boundaries of the state of Iowa.

~~12.1(1) Authority: The standards relating to interstate natural gas pipelines and underground gas storage in this chapter are prescribed by the Iowa utilities board pursuant to Iowa Code section 479A.1.~~

~~12.1(2) Purpose. The purpose of this chapter is to establish standards regarding the transportation of natural gas to protect landowners and tenants from environmental or economic damages resulting from the construction, operation, or maintenance of pipelines.~~

~~12.1(3) Definitions. Terms not otherwise defined in this chapter shall be understood to have their usual meaning. Technical terms not defined shall be as defined by the U.S. Department of Transportation, Office of Pipeline Safety. For the administration and interpretation of this chapter, the following words and terms, when used in these rules, shall have the meanings indicated below:~~

~~"Board" means the Iowa utilities board within the utilities division of the department of commerce.~~

~~"Construction" means the placement or replacement of pipe in the earth, excluding maintenance, repair, or emergency work affecting only short sections of a company's pipeline facilities.~~

~~"Pipeline" means any pipe, pipes, or pipelines and appurtenances thereto used for the transportation of natural gas in interstate commerce within or through this state.~~

~~"Pipeline company" means a person engaged in or organized for the purpose of owning, operating, or controlling pipelines used for the interstate transportation of natural gas.~~

~~"Underground storage" means the storage of natural gas in a subsurface stratum or formation of the earth by a pipeline company engaged in interstate commerce.~~

Item 9. Rescind rule **199—12.3(479A)**.

Item 10. Rescind rule **199—12.4(479A)**.

Item 11. Rescind rule **199—12.5(479A)**.

Item 12. Rescind rule **199—12.7(479A)**.

May 5, 2006

/s/ John R. Norris
John R. Norris
Chairman