

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

<p>IN RE:</p> <p>IOWA ELECTRIC LIGHT AND POWER COMPANY n/k/a INTERSTATE POWER AND LIGHT COMPANY</p>	<p>DOCKET NO. P-517</p>
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**PROPOSED DECISION AND ORDER IMPOSING  
CIVIL PENALTY AND GRANTING PERMIT**

(Issued May 18, 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 October 17, 2005, Interstate Power and Light Company (IPL) filed a petition and exhibits for an amendment to pipeline Permit No. 531 for an existing 2-inch diameter natural gas pipeline approximately 0.29 miles long in Cedar County, Iowa. (petition for permit; O'Neal report; testimony of Mr. Janvrin.) The predecessor agency of the Utilities Board (Board) issued Permanent Permit No. 531 to the Lateral Gas Pipeline Company in 1962 for 27.1 miles of 6-inch and 2-inch diameter pipeline, called the Conesville-West Branch Lateral, for the transportation of natural gas in

Cedar, Johnson, and Muscatine Counties, Iowa. (O'Neal report; petition for permit; testimony of Mr. Janvrin.) The permit was transferred to Iowa Electric Light and Power Company on March 2, 1970. (O'Neal report; petition for permit.) On July 27, 1988, the Board issued Pipeline Renewal Permit No. R1061 to Iowa Electric Light and Power Company, n/k/a IPL. (O'Neal report; petition for permit.) The Board called the pipeline the West Branch Lateral. (O'Neal report; Docket No. P-517 file.) The renewal permit had an expiration date of September 6, 2012. (O'Neal report.)

In 2004, without first obtaining an amendment to its permit, IPL constructed 0.29 miles of 2-inch pipeline extending east from the West Branch Lateral to transport natural gas from the existing pipeline to a new regulator station on the south side of West Branch, Cedar County, Iowa. (O'Neal report; petition for permit; testimony of Mr. Janvrin.) The petition for amendment at issue in this case is for this existing 0.29-mile pipeline extension. (O'Neal report; petition for permit; testimony of Mr. Janvrin.)

The record supports a maximum allowable operating pressure (MAOP) of 720 pounds per square inch gauge (psig). (O'Neal report; petition for permit; testimony of Mr. Janvrin.) However, the pipeline extension operates at a common pressure with the remainder of the West Branch Lateral and the Conesville pipeline, which has an MAOP of 712 psig. (O'Neal report; petition for permit; testimony of Mr. Janvrin.) As a result, the pipeline extension at issue in this case will also have an MAOP of 712 psig. (testimony of Mr. Janvrin; petition for permit.) The pipeline will actually operate at a nominal pressure of 680 psig. (testimony of Mr. Janvrin.)

The pipeline extension 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. Janvrin.) 199 IAC 10.16; 49 CFR § 192.3. The pipeline extension required an amendment of IPL's existing permit because the extension was longer than 660 feet. 199 IAC 10.9(1).

IPL filed amendments to its petition and exhibits and provided additional information on January 9, February 7, and March 9, 2006. (petition for permit; O'Neal report.) On March 28, 2006, the 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 March 30, 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 May 11, 2006, as the date for the hearing on the petition, and proposed to take official notice of a report concerning the pipeline dated March 14, 2006, prepared by Mr. Jeffrey O'Neal, utility regulatory engineer for the Board. On May 4, 2006, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a prehearing brief supporting the assessment of a civil penalty. IPL filed proof of publication of the official notice on May 8, 2006.

The hearing was held on May 11, 2006, in Board Conference Room 3, 350 Maple Street, Des Moines, Iowa. IPL was represented by its attorney, Mr. Kent Ragsdale. Mr. Eric P. Janvrin, 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 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 the past few years, the Board and the undersigned administrative law judge have considered assessment of civil penalties in ten 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); 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 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); In re: Atmos Energy Corporation, Docket No. P-856, "Proposed Decision and Order Imposing Civil Penalty and Granting Permit," (October 6, 2005) (Atmos); and In re: Interstate Power and Light Company, Docket No. P-860, "Proposed Decision and Order Imposing Civil Penalty and Granting Permit," (March 2, 2006) (Interstate Power III).

In this case, IPL violated the statute by failing to obtain a permit amendment prior to constructing the extension of the West Branch Lateral in 2004. At the hearing, the parties stipulated that assessment of a civil penalty of \$1,000 for the violation would be reasonable.

In an order issued March 2, 2006,<sup>1</sup> the undersigned assessed IPL a civil penalty of \$1,000 for its failure to obtain a permit prior to construction of a pipeline that IPL constructed in 1998. A penalty was imposed: " 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

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<sup>1</sup> "Proposed Decision and Order Imposing Civil Penalty and Granting Permit," Docket No. P-860.

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<sup>2</sup> testimony that IPL is taking significant actions to prevent future violations."

In his closing argument in this case, the attorney for IPL argued that the order in Docket No. P-860 had not been issued yet when the violation at issue in this case took place. Therefore, IPL argued, there is no need to impose an escalating civil penalty for the violation in this case. The undersigned will accept this argument for purposes of this case. However, the argument will not necessarily be accepted in future cases, particularly if it appears that IPL's actions to achieve compliance with permitting requirements are not effective. Considering the particular facts in this case, the parties' stipulation, the potential statutory penalty amounts, and prior Board decisions, imposition of a civil penalty of \$1,000 for the failure to obtain a permit amendment prior to construction is reasonable. Iowa Code § 479.31; Corn Belt I; Corn Belt II; Interstate Power I; Moulton; Lorimor; Interstate Power II; MidAmerican; Emmetsburg; Atmos; and Interstate Power III.

### **FINDINGS OF FACT**

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

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<sup>2</sup> IPL's witness in the case.

2. On October 17, 2005, IPL filed a petition and exhibits for an amendment to pipeline Permit No. 531 for an existing 2-inch diameter natural gas transmission pipeline approximately 0.29 miles long in Cedar County, Iowa, with an MAOP of 712 psig. (petition for permit; O'Neal report; testimony of Mr. Janvrin.) IPL filed amendments to its petition and exhibits and provided additional information on January 9, February 7, and March 9, 2006. (petition for permit; O'Neal report.) IPL constructed the extension of the West Branch Lateral in 2004 without first obtaining a permit amendment from the Board. (petition for permit; O'Neal report; testimony of Mr. Janvrin.)

3. The pipeline transports natural gas from IPL's West Branch Lateral transmission pipeline to an IPL regulator station in Cedar County, Iowa. (petition for permit; O'Neal report; testimony of Mr. Janvrin.)

4. IPL caused notice of the hearing to be published in Cedar County in the West Branch Times, a newspaper of general circulation in the county, once each week for two consecutive weeks, on April 13 and 20, 2006. (proof of publication.)

5. 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; testimony of Mr. Janvrin.)

6. The pipeline supplies natural gas to the West Branch Industrial Park regulator station that feeds a distribution system serving retail customers in West Branch, Iowa. (testimony of Mr. Janvrin; petition for permit; O'Neal report.) Customers served by the West Branch Lateral transmission pipeline have several fuel options available for heating and processing including natural gas, liquid propane, and other petroleum products. (testimony of Mr. Janvrin.) Natural gas is a clean burning fuel with fewer emissions and less negative impact on air quality than some available alternative fuels. (testimony of Mr. Janvrin.) Since the pipeline is already constructed, delivery of natural gas can be done without inconvenience to landowners or interference with normal highway traffic. (testimony of Mr. Janvrin.) Alternate fuels would need to be trucked to the area and stored on site, which would substantially increase heavy truck traffic transporting flammable fuels on state and county roads. (testimony of Mr. Janvrin.) Therefore, the pipeline promotes the public convenience and necessity. (testimony of Mr. Janvrin; petition for permit; O'Neal report.)

7. Mr. O'Neal inspected the pipeline in January 2006. (testimony of Mr. Janvrin; O'Neal report.) The inspection found no probable violations of the minimum federal safety standards in 49 CFR Part 192, but listed one advisory, noting that more frequent patrolling intervals will be required due to a recent change from a Class 1 to a Class 3 location. (O'Neal report; testimony of Mr. Janvrin.) IPL will operate and maintain the pipeline in accordance with IPL's written standards and procedures that meet or exceed the requirements of 49 CFR Part 192 and the Iowa

Code. (testimony of Mr. Janvrin.) There are no outstanding operational or safety issues with the pipeline. (O'Neal report; testimony of Mr. Janvrin; petition for permit.) 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. Janvrin.) 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. Janvrin.)

8. IPL has filed satisfactory proof it owns property of a value in excess of \$250,000 in Iowa, other than pipelines, that is subject to execution as required by Iowa Code § 479.26 and 199 IAC 10.2(1)"d." (petition Exhibit D; testimony of Mr. Janvrin.)

9. 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-517 file.)

10. It is reasonable to assess IPL a civil penalty in the amount of \$1,000 for IPL's failure to obtain a permit amendment prior to constructing the pipeline extension in 2004. (testimony of Mr. Janvrin; petition for permit; O'Neal report; stipulation of the parties.)

### **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 amendment it filed. Iowa Code §§ 479.2, 479.3, 479.5, 479.6, 479.12, and 479.18.

3. IPL was required to obtain a permit amendment prior to construction of the pipeline extension in 2004 because the length of the pipeline extension exceeded 660 feet. 199 IAC 10.9(1). The pipeline is required to have a permit because it is a transmission line and it operates at a pressure greater than 150 psig. 199 IAC 10.16; 49 CFR § 192.3. It is a transmission line because it transports natural gas from another transmission line to a distribution center. (O'Neal report; petition for permit.) 199 IAC 10.16; 49 CFR § 192.3.

4. The petition of IPL for issuance of a permit amendment 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. However, since approximately 150 feet of the pipeline was constructed in agricultural land, IPL should have filed a plan prior to construction and was required to follow the land restoration rules in 199 IAC 9. IPL filed petition Exhibit I that shows it complied with these requirements during construction and that it will comply with the requirements if any land issues resulting from the construction arise in the future. (petition for permit Exhibit I; O'Neal report.) 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. As discussed in the body of this decision, considering the particular facts in this case, the parties' stipulation, the potential statutory penalty amounts, and prior Board decisions, it is reasonable to assess IPL a civil penalty in the amount of \$1,000 for the failure to obtain a permit amendment prior to construction. Iowa Code § 479.31; Corn Belt I; Corn Belt II; Interstate Power I; Moulton; Lorimor; Interstate Power II; MidAmerican; Emmetsburg; Atmos; and Interstate Power III.

**IT IS THEREFORE ORDERED:**

1. Official notice is taken of the report dated March 14, 2006, 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 amendment filed by IPL in this docket is granted. A permit amendment will be issued if this proposed decision and order becomes the final order of the Board.
3. Pursuant to Iowa Code § 479.31 and the stipulation of the parties, 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 18<sup>th</sup> day of May, 2006.