

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  WATERLOO GAS TRANSPORT, LLC	DOCKET NO. P-867
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE AND PROPOSING TO  
TAKE OFFICIAL NOTICE AND NOTICE OF HEARING**

(Issued December 7, 2006)

On September 28, 2006, Waterloo Gas Transport, LLC (WGT) filed a petition and exhibits for a pipeline permit for a proposed 4-inch diameter pipeline approximately 1.135 miles long in Black Hawk County, Iowa. The proposed pipeline would transport flammable digester gas from the City of Waterloo digester to the Tyson Foods Plant in Waterloo, Iowa. The gas would be used at the Tyson Foods Plant for boiler fuel. Currently, the gas is being flared at the City of Waterloo digester. The petition requests a maximum allowable operating pressure of 53.3 psig. The proposed pipeline requires a permit because it meets the definition of a transmission line under 49 CFR Part 192 because it would transport flammable gas from gas gathering or storage to a large volume customer that is not downstream of a distribution center. 199 IAC 10.16; 49 CFR 192.3. WGT filed amendments to its petition and exhibits on November 13 and 16, 2006.

On December 5, 2006, 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 conduct of this case is governed by Iowa Code chapters 17A and 479, and by Board rules at 199 IAC 10.

### **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. The proposed pipeline would not cross any agricultural land, so the requirements of Iowa Code § 479.29 do not apply.

### **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.

WGT must submit prepared testimony and exhibits prior to the hearing. At a minimum, WGT's prepared testimony must address the issues listed above. With its prepared testimony, WGT must file current company financial statements sufficient to support the affidavit it filed in petition Exhibit D. Iowa Code § 479.26.

WGT has the burden to prove that its proposed pipeline meets all the statutory and regulatory requirements discussed above. Failure to file adequate prepared testimony and exhibits to support its petition for permit may result in delay of this proceeding or denial of the requested permit.

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 WGT 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.

### **PARTY STATUS**

WGT 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. WGT 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 November 17, 2006, concerning WGT'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 WGT'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 December 22, 2006, WGT must file prepared direct testimony and current company financial statements as discussed in this order. If WGT wishes to file a prehearing brief, it must do so on or before December 22, 2006.

b. If the Consumer Advocate or any objector chooses to file prepared responsive testimony or a prehearing brief, it must do so on or before January 5, 2007.

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, January 11, 2007, 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 Friday, January 5, 2007, 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 November 17, 2006, 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 WGT, and will be delivered to the Consumer Advocate. No persons have filed objections to the petition as of the date of this order.

6. Board staff will provide WGT with a notice to be published and WGT must publish the notice as required by Iowa Code § 479.7 and 199 IAC 10.4. WGT must file proof of publication prior to or at the hearing. Failure to comply with these requirements will require rescheduling of 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 7<sup>th</sup> day of December, 2006.

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

**TO: Docket No. P-867**

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

**DATE: November 17, 2006**

**SUBJ: Staff Review of Waterloo Gas Transport LLC Petition for Pipeline Permit for Approximately 6000 Feet of 4-inch Diameter Digester Gas Pipeline in Black Hawk County, Iowa**

On September 28, 2006, Waterloo Gas Transport, LLC, (WGT) filed a Petition for Pipeline Permit with the Utilities Board (Board) for 6,000 feet (approximately 1.135 miles) of 4-inch diameter pipeline to transport flammable digester gas from the City of Waterloo digester to the Tyson Foods plant in the city of Waterloo, in Black Hawk County, Iowa. By letters dated October 12, 2006, and November 14, 2006, I advised WGT of petition deficiencies requiring correction, and requested additional information on certain items. On November 13, 2006, and November 16, 2006, WGT filed revisions to its petition and exhibits and provided additional information.

An informational meeting was not held for this project. An informational meeting was not required because the proposed pipeline project is less than 5 miles long, and because the proposed pipeline is to be operated at less than 150 psi. See 199 IAC 10.3.

The petition is for construction of approximately 6,000 feet (or 1.14 miles) of 4-inch diameter plastic pipeline. WGT plans to design and test the proposed pipeline for a maximum allowable operating pressure (MAOP) of 53.3 psig. The proposed pipeline would deliver digester gas from the City of Waterloo digester to the Tyson Foods plant. Currently the gas is being flared (burned in the atmosphere) at the City of Waterloo digester.

The purpose of the project as stated in Exhibit F is to provide digester gas to the Tyson Foods plant for use as boiler fuel. Digester gas is a by-product of wastewater treatment formed through the anaerobic decomposition of organic waste materials and is composed principally of methane and carbon dioxide.<sup>1</sup> The gas produced by anaerobic digestion is usually more than 60 percent methane and can be used as a natural gas fuel substitute in applications such as boilers, hot water heaters, reciprocating engines, turbines and fuel cells.<sup>2</sup>

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<sup>1</sup> 40 CFR § 63.6175

<sup>2</sup> [http://www.eere.energy.gov/femp/newsevents/fempfocus\\_article.cfm/news\\_id=8961](http://www.eere.energy.gov/femp/newsevents/fempfocus_article.cfm/news_id=8961)

Iowa Code § 479.1 gives the Board the authority to supervise the transportation or transmission of any solid, liquid, or gaseous substance, except water, by intrastate pipeline. Digester gas is a gaseous substance, so the proposed pipeline is subject to this law.

The proposed pipeline requires a pipeline permit because it will meet the definition of a transmission line under 49 CFR Part 192. (See 199 IAC 10.16.) It will meet the definition of a transmission line because it will transport flammable gas from gas gathering or storage to a large volume customer that is not downstream of a distribution center. (See 49 CFR § 192.3.)

Gas pipelines must comply with the federal pipeline safety standards of 49 CFR Part 192, which have been adopted by the Board in 199 IAC 10.12(1)*b*. The information filed by WGT shows the pipeline will be designed, constructed and tested in compliance with these standards. The filing supports specifying a maximum operating pressure of 53.3 psig in a pipeline permit for this pipeline.

I examined the route of the proposed pipeline on October 11, 2006. The route map filed as Exhibit B was used as a guide. The proposed route begins at an existing City of Waterloo digester located on the south side of Martin Luther King Jr. Drive in Waterloo, Iowa. The proposed route enters the right-of-way of Martin Luther King Jr. Drive, and runs generally easterly and southeasterly along the south side of Martin Luther King Jr. Drive, within the street right-of-way. South of the Tyson Foods plant, the route crosses the street and runs north and east on Tyson Foods property to its endpoint at the existing Tyson Foods plant.

The route runs through flat terrain. The route is on public (City of Waterloo) property, except where it is on the property of the end user, Tyson Foods. Most of the route runs within the right of way of Martin Luther King Jr. Drive, and the route crosses Martin Luther King Jr. Drive once, south of the Tyson Foods plant. Most of the land just south of the route along Martin Luther King Jr. Drive was in row crops this year. A bike trail runs along the north side of Martin Luther King Jr. Drive, on the opposite side of the road from the proposed pipeline route. There is a pond and surrounding wetlands north of the bike trail, and land planted in row crops. Near the east end of the route there is a Ferguson Waterloo Distribution Center building on the south side of the road. It appears this will create a Class 3 location in the area near this building. The route also runs near the Tyson plant building on the north side of the road, which will create a Class 3 location near that building as well. The remainder of the route appears to be in a Class 1 location as defined by Federal Minimum Safety Standards in 49 CFR Part 192. Class 1 is a low population density classification. Class 3 is a higher population density classification.

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

The proposed route does not cross any agricultural land, so a land restoration plan is not required. WGT has not requested eminent domain for this project.

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