

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CITY OF SIOUX CENTER	DOCKET NO. P-869
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE AND PROPOSING TO
TAKE OFFICIAL NOTICE AND NOTICE OF HEARING**

(Issued April 11, 2007)

On January 19, 2007, the City of Sioux Center (Sioux Center) filed a petition and exhibits with the Utilities Board (Board) for a pipeline permit. Sioux Center proposes to construct, operate and maintain a new 6-inch diameter natural gas pipeline approximately 2.4 miles long. Sioux Center also proposes to acquire an existing Northern Natural Gas (NNG) 3-inch diameter natural gas pipeline approximately 2.4 miles long. Both pipelines would be entirely in Sioux County, Iowa. Sioux Center plans to install the new 6-inch pipeline parallel to the 3-inch pipeline on the existing easements for the 3-inch pipeline. Sioux Center filed amendments to its petition and exhibits and provided additional information on January 30, February 14 and 27, and March 7, 2007.

The existing NNG 3-inch pipeline supplies natural gas to Sioux Center. Sioux Center states in its petition that the proposed pipelines are necessary to serve the increased load of the SELC Ethanol Plant served by Sioux Center and to serve projected load growth for Sioux Center over the next 20 years. The pipelines would

deliver natural gas from a new NNG delivery and metering station on an existing NNG pipeline to a new Sioux Center regulator station that will supply natural gas to Sioux Center's gas distribution system.

On June 15, 1954, in Docket No. P-233, the Iowa State Commerce Commission (ISCC), predecessor agency of the Board, issued Temporary Permit No. 188 to NNG to construct, operate, and maintain the 3-inch pipeline at issue in this case. On February 3, 1955, the ISCC issued Permanent Permit No. 267 for the pipeline. On May 5, 1980, the ISCC issued Renewal Pipeline Permit No. R-908 for the pipeline.

In 1987, the Eighth Circuit Court of Appeals ruled that federal law preempted the provisions of Iowa Code Chapter 479 with respect to interstate natural gas pipelines. *ANR Pipeline Co. v. Iowa State Commerce Comm'n*, 828 F.2d 465 (8th Cir. 1987). As a result, all existing Iowa permits for interstate natural gas pipelines were rendered invalid. Therefore, the existing NNG 3-inch pipeline does not currently have a permit from the Board because Iowa permits are not required for interstate natural gas pipelines. However, when Sioux Center acquires the pipeline from NNG, it will no longer be an interstate pipeline, so a permit will be required before Sioux Center begins operating it.

The proposed 6-inch pipeline and the existing 3-inch pipeline must have a permit from the Board because they will operate at a pressure higher than 150 psig and because they are transmission lines. 199 IAC 10.16; 49 CFR 192.3. In addition,

at the requested maximum allowable operating pressure (MAOP), the 6-inch diameter pipeline would operate at a hoop stress of more than 20% of specified minimum yield strength (SMYS). In its petition, Sioux Center requests an MAOP of 800 pounds per square inch gauge (psig) for both pipelines.

On April 4, 2007, 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.

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, 479.18, and 479.23 (2007).

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, 479.23; 199 IAC 10.8. The petitioner must also satisfy the financial requirements of Iowa Code § 479.26 and file a land restoration plan that complies with Iowa Code § 479.29 and the Board rules at 199 IAC 9.

The conduct of this case is governed by Iowa Code chapters 17A and 479, and by Board rules at 199 IAC 9 and 10.

THE ISSUES

Pursuant to Iowa Code §§ 479.7 and 479.8, and 199 IAC 10.6 and 10.8, 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, any issues regarding the land restoration plan, and issues raised by objectors or any other party.

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.

Sioux Center must submit prepared testimony and exhibits prior to the hearing in accordance with the procedural schedule set forth in this order. At a minimum, Sioux Center's prepared testimony must address the issues listed above. In addition, in its prepared testimony, Sioux Center must address the issues listed in italics on page three of Mr. Jeffrey O'Neal's staff report dated March 8, 2007.

Sioux Center has the burden to prove that the proposed 6-inch pipeline and the existing 3-inch pipeline meet all of the statutory and regulatory requirements discussed above. Failure to file adequate prepared testimony and exhibits to support the petition for a pipeline permit may result in delays of these proceedings or in 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 set forth in this order.

Parties other than Sioux Center 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.

If any objector or the Consumer Advocate files prepared testimony or other information, Sioux Center must also address the issues raised in those filings in its rebuttal testimony.

PARTY STATUS

Sioux Center and the Consumer Advocate are currently the parties to this proceeding. Iowa Code §§ 17A.2(8) and 475A.2(2). As of the date of this order, no objectors have filed an objection to the petition. Sioux Center does not request the right of eminent domain for the pipelines.

Any person who files an objection pursuant to Iowa Code §§ 479.9 and 479.10 and 199 IAC 10.5 will be presumed to be a party to this proceeding unless it is established at hearing that the objector has no right or interest that may be affected by the grant or denial of the petition. 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 that 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 are presumed to be parties up to the time of the hearing, objectors will receive copies of all documents filed in this docket by other parties after their own objections have 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 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 issues of fact 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 issues of fact 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 9 and 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.

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 March 8, 2007, concerning Sioux Center's petition. A copy of this 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 them 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 Sioux Center'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 or the grant or denial of the requested permit.

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 April 30, 2007, Sioux Center must file prepared direct testimony and exhibits regarding its petition for a permit as discussed in this order. If Sioux Center chooses to file a prehearing brief, it must be filed by April 30, 2007.

b. If the Consumer Advocate or any objector chooses to file prepared responsive testimony or a brief, it must do so on or before May 11, 2007.

c. If the Consumer Advocate or any objector files prepared testimony or a brief, Sioux Center must file prepared rebuttal testimony on or before May 17, 2007.

d. 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, May 24, 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, May 11, 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.

e. 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 March 8, 2007, 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 Sioux Center and will be delivered to the Consumer Advocate. No person has filed an objection to the petition as of the date of this order.

6. Board staff will provide Sioux Center with a notice to be published and Sioux Center must publish the notice pursuant to Iowa Code § 479.7 and 199 IAC 10.4. Sioux Center must file proof of publication prior to or at the beginning of the hearing. Failure to publish notice and file proof of publication as required will result in delay 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 11th day of April, 2007.

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

TO: Docket No. P-869

FROM: Jeffrey L. O'Neal

DATE: March 8, 2007

SUBJ: Staff Review of City of Sioux Center Petition for Pipeline Permit for Approximately 2.4 Miles of 6-inch Diameter Natural Gas Pipeline and Approximately 2.4 miles of 3-inch Diameter Natural Gas Pipeline in Sioux County, Iowa

On January 19, 2007, the City of Sioux Center (Sioux Center) filed a Petition for Pipeline Permit with the Utilities Board (Board). By letters dated January 23, 2007, February 7, 2007, and February 21, 2007, I advised Sioux Center of petition deficiencies requiring correction, and requested additional information. On January 30, 2007, February 14, 2007, February 27, 2007, and March 7, 2007, Sioux Center filed revisions to its petition and exhibits or provided additional information.

An informational meeting was not held for this proposed pipeline. An informational meeting was not required because the pipeline will be less than 5 miles long. (See 199 IAC 10.3.)

In its petition, Sioux Center proposes to construct approximately 2.4 miles of 6-inch diameter steel pipeline. Sioux Center also proposes to acquire the existing 3-inch diameter Northern Natural Gas Company (NNG) pipeline that currently supplies gas to Sioux Center. Sioux Center plans to install the new 6-inch pipeline parallel to the existing 3-inch pipeline, on the existing easements for the 3-inch pipeline. The pipelines would deliver natural gas from a new NNG delivery and metering station (town border station or TBS) on an existing NNG pipeline to a new Sioux Center regulator station that will supply natural gas to Sioux Center's gas distribution system. These new facilities will replace the existing NNG TBS and the adjacent Sioux Center regulator station, which are located within the city limits of Sioux Center. The new regulator station will be outside the city limits, about 1 mile from the existing TBS and regulator station. The new regulator station will deliver gas through distribution mains at 32 psig and at 100 psig to the Sioux Center distribution system. Sioux Center would operate the portion of the 3-inch pipeline from the new TBS to the new regulator station along with the new 6-inch pipeline. Both the new 6-inch pipeline and the existing 3-inch pipeline would have a maximum allowable operating pressure (MAOP) of 800 psi, which is currently the MAOP of the existing 3-inch pipeline. The southernmost approximately 1 mile of the existing 3-inch pipeline would be abandoned.

On June 15, 1954, in Docket No. P-233, Temporary Permit No. 188 was issued to NNG, to construct, maintain and operate a natural gas pipeline. Permanent Permit No. 267 was issued to NNG for the Sioux Center Lateral on February 3, 1955. The permit was for 3.62 miles of 3-inch diameter pipeline to operate at a maximum pressure of 800 psi. On May 5, 1980, Renewal Pipeline Permit No. R-908 was issued to NNG for this pipeline. This pipeline is the existing 3-inch pipeline that Sioux Center proposes to acquire from NNG. In *ANR Pipeline Co. v. Iowa State Commerce Comm'n*, 828 F.2d 465 (8th Cir. 1987) the court held that Iowa Code Chapter 479 was preempted with respect to interstate natural gas pipelines. All existing permits for interstate natural gas pipelines were rendered invalid by this decision. Interstate natural gas pipelines, such as the ones operated by NNG, are no longer required to have pipeline permits from the Board, so the existing 3-inch pipeline does not currently have a pipeline permit from the Board. When Sioux Center acquires the existing 3-inch pipeline from NNG, it will no longer be an interstate pipeline, so Sioux Center must obtain a pipeline permit from the Board before it begins operating the existing 3-inch pipeline.

The proposed 6-inch and existing 3-inch pipelines require a pipeline permit because they will operate at a pressure higher than 150 psig, and because they will meet the definition of a transmission line under 49 CFR Part 192. (See 199 IAC 10.16.) They will meet the definition of a transmission line because they will transport gas from another transmission line (and ultimately from gathering lines and/or storage facilities) to a distribution center. Also, at the proposed maximum allowable operating pressure (MAOP) the 6-inch pipeline would operate at a hoop stress of more than 20 percent of specified minimum yield strength (SMYS). (See 49 CFR § 192.3.)

Natural 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 Sioux Center shows the proposed 6-inch pipeline will be designed, constructed and tested in compliance with these standards. The NNG inspection unit that operates the existing 3-inch Sioux Center Lateral was last inspected by Board staff for compliance with pipeline safety standards in May of 2005. No probable violations of pipeline safety standards were found. Sioux Center does not currently operate any transmission pipelines, but it does operate the natural gas distribution system in Sioux Center. Board staff last inspected Sioux Center for compliance with pipeline safety standards in April of 2005. No probable violations of pipeline safety standards were found.

Sioux Center's Operating and Maintenance Plan, which also contains its Emergency Plan procedures, is based on the Iowa Association of Municipal Utilities (IAMU) model plan. The IAMU model plan includes procedures for both distribution and transmission pipelines. I have reviewed Sioux Center's Operating and Maintenance Plan. The plan contains the necessary procedures for operation

of a transmission line, and it appears to comply with the pipeline safety regulations adopted by the Board. I also reviewed Sioux Center's Public Awareness Program required by 49 CFR § 192.616. Sioux Center will need to update its Public Awareness Program to reflect the fact that it will now operate a transmission pipeline, before it begins to operate a transmission pipeline. *Sioux Center should be asked to address in its prefiled testimony whether it will update its Public Awareness Program before it begins operation of a transmission line.* Sioux Center will need to obtain from NNG copies of certain operating and maintenance records for the existing 3-inch pipeline before it begins operation of that pipeline, (e.g., the records required by 49 CFR §§ 192.709 and 192.491, and any records necessary to document the MAOP under § 192.619.) *Sioux Center should be asked to address in its prefiled testimony whether it will obtain from NNG the operating and maintenance records that are necessary for compliance with pipeline safety regulations, before Sioux Center begins operation of the existing 3-inch pipeline.*

Sioux Center plans to construct a new 100 psi pipeline and a new 32 psi pipeline to connect the new regulator station at the downstream end of the pipeline proposed in this docket to its existing gas distribution system. The new 100 psi and 32 psi pipelines will meet the definition of a distribution main, and will operate at less than 150 psi, so they will not require a pipeline permit from the Board, and they are not included in the petition in this docket.

Exhibit C shows Sioux Center plans to design and test the proposed 6-inch pipeline for a maximum allowable operating pressure (MAOP) of 800 psig, and the existing 3-inch pipeline has an MAOP of 800 psig. The filing supports specifying a maximum operating pressure of 800 psig in a pipeline permit for these pipelines.

The purpose of the project as stated in Exhibit F is to serve the increased load of the SELC Ethanol Plant currently served by Sioux Center, along with projected load for the city over the next 20 years. Exhibit I states the SELC Ethanol Plant is expanding its facility, which requires a substantial increase in gas load at the facility.

The proposed route includes agricultural land. Sioux Center filed a land restoration plan as Exhibit I. Sioux Center's Land Restoration Plan appears to comply with the applicable provisions of I99 IAC Chapter 9.

Sioux Center has not requested eminent domain for this project.

I examined the route of the proposed 6-inch pipeline and the existing 3-inch pipeline on February 8, 2006. The route map filed as Exhibit B was used as a guide. The route runs through flat to gently rolling terrain. The route is on private property on agricultural land that was mostly planted in row crops last year, except where it crosses three county roads. I confirmed the entire route is in a Class 1 location as defined by Federal Minimum Safety Standards in 49 CFR

Part 192, as is stated in Exhibit C of the petition filing. Class 1 is a low population density classification. No problems were noted with the proposed route. No conflicts with safety standards or significant impediments to pipeline construction were found.

Summary and Conclusions

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. This report identifies, in *italic type*, items it is recommended Sioux Center be asked to address in its prefiled testimony.