

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: PLYMOUTH ENERGY, LLC	DOCKET NO. P-868
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE AND PROPOSING TO
TAKE OFFICIAL NOTICE AND NOTICE OF HEARING**

(Issued May 31, 2007)

On March 26, 2007, Plymouth Energy, LLC (Plymouth Energy) filed a petition and exhibits with the Utilities Board (Board) for a pipeline permit. Plymouth Energy proposes to construct, operate and maintain approximately 7.5 miles of 6⁵/₈ inch diameter steel pipeline in Plymouth County, Iowa. Plymouth Energy filed an amendment to its petition and exhibits and provided additional information on April 25, 2007.

The proposed pipeline would deliver natural gas from a proposed Northern Natural Gas (NNG) delivery and metering station approximately 6 miles east of Merrill, Iowa, to the Plymouth Energy ethanol plant currently under construction north of Merrill. In its petition, Plymouth Energy requests a maximum allowable operating pressure (MAOP) of 720 pounds per square inch gauge (psig).

The proposed pipeline must have a permit from the Board because it meets the definition of a transmission line and because it will operate at a pressure higher than 150 psig. 199 IAC 10.16; 49 CFR 192.3. The proposed pipeline meets the definition of a transmission line because it will transport gas from another

transmission line to a large volume customer that is not downstream from a distribution center and because it would operate at a hoop stress of more than 20% of specified minimum yield strength (SMYS).

On May 22, 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.

Plymouth Energy must submit prepared testimony and exhibits prior to the hearing in accordance with the procedural schedule set forth in this order. At a minimum, Plymouth Energy's prepared testimony must address the issues listed above. In addition, in its prepared testimony, Plymouth Energy must address the issues listed in italics on pages two and three of Mr. Jeffrey O'Neal's staff report dated May 9, 2007. Also, on page three of his report, Mr. O'Neal refers to an April 24, 2007, letter from Mr. David Yexley that states Montana-Dakota intends to obtain competitive bids for the operation and maintenance of this pipeline from qualified operators. Plymouth Energy must provide testimony that shows its commitment to contract with a qualified operator to operate and maintain the pipeline if a permit is granted and that provides support for the statements made on pages four and five of Mr. Yexley's letter.¹ Also, Plymouth Energy must provide additional evidence to show it complies with the requirements of Iowa Code § 479.26 and 199 IAC 10.2(1)"d." Specifically, Plymouth Energy must provide testimony that the property it purchased for the plant site is owned outright and is not subject to a mortgage or other encumbrances. Along with its testimony, Plymouth Energy must provide the affidavit of a corporate officer that the company owns property within this

¹ On page five of his letter, Mr. Yexley states: "As part of that bid process, operators will have the option of using their existing qualified written plans and procedures or adopting those prepared and currently in use by Montana-Dakota Utilities Co. Although the Iowa Utilities Board received copies of those documents with earlier filings for other pipelines, Montana-Dakota Utilities Co. will provide additional copies upon request." The filing of such plans and procedures in another docket is irrelevant. If the requested pipeline permit is granted, Plymouth Energy must file the plans and procedures its operator will use in this docket.

state, other than pipelines, that is subject to execution and is of a value in excess of \$250,000. If it cannot do so, it must file a surety bond to meet the requirements of Iowa Code § 479.26 and the Board's rule. Finally, Plymouth Energy must testify whether it has acquired all needed easements for the proposed pipeline.

Plymouth Energy has the burden to prove that the proposed pipeline meets 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 Plymouth Energy 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, Plymouth Energy must also address the issues raised in those filings in its rebuttal testimony.

PARTY STATUS

Plymouth Energy 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. Plymouth Energy does not request the right of eminent domain for the proposed pipeline.

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 May 9, 2007, concerning Plymouth Energy'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 Plymouth Energy'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 June 20, 2007, Plymouth Energy must file prepared direct testimony and exhibits regarding its petition for a permit as discussed in this order. If Plymouth Energy chooses to file a prehearing brief, it must be filed by June 20, 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 June 29, 2007.

c. If the Consumer Advocate or any objector files prepared testimony or a brief, Plymouth Energy must file prepared rebuttal testimony on or before July 6, 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 12 p.m. on Tuesday, July 10, 2007, in the Le Mars City Council Chambers, Le Mars City Hall, 40 Central Ave SE, Le Mars, Iowa 51031. 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 to have a witness connected by telephone conference call, the party must notify the Board as soon as possible, and no later than Friday, June 22, 2007, so that appropriate arrangements may be made. Since the hearing must be held in Le Mars, it is possible that telephone conference capability will not be available. 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 fifteen 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 May 9, 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 ten 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 Plymouth Energy 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 Plymouth Energy with a notice to be published and Plymouth Energy must publish the notice pursuant to Iowa Code § 479.7 and 199 IAC 10.4. Plymouth Energy 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. Since the hearing must be held in Le Mars, it would be helpful if Plymouth Energy would file proof of publication prior to the hearing date.

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 31st day of May, 2007.

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

TO: Docket No. P-868

FROM: Jeffrey L. O'Neal

DATE: May 9, 2007

**SUBJ: Staff Review of Plymouth Energy Petition for Pipeline Permit for
Approximately 7.5 Miles of 6 5/8-inch Diameter Natural Gas
Pipeline in Plymouth County, Iowa**

On March 26, 2007, Plymouth Energy, LLC (Plymouth Energy) filed a Petition for Pipeline Permit with the Utilities Board (Board). By letter dated March 30, 2007, I advised Plymouth Energy of petition deficiencies requiring correction and requested additional information. On April 25, 2007, Plymouth Energy filed revisions to its petition exhibits and provided additional information.

In its petition, Plymouth Energy proposes to construct approximately 7.5 miles of 6 5/8-inch diameter steel pipeline. The pipeline would deliver natural gas from a proposed Northern Natural Gas delivery and metering station approximately 6 miles east of Merrill, Iowa, to the Plymouth Energy ethanol plant being constructed approximately 1 mile north of Merrill. Petition Exhibit C shows Plymouth Energy plans to design and test the pipeline for a maximum allowable operating pressure (MAOP) of 720 psig.

The purpose of the project as stated in Exhibit F is to provide the required natural gas to the Plymouth Energy ethanol plant, which is currently being constructed north of Merrill, Iowa.

An informational meeting was held for this proposed pipeline on January 18, 2007, in Plymouth County, as required by 199 IAC 10.3. Documentation of the informational meeting is included in petition Exhibit G.

The proposed pipeline requires a pipeline permit because it will operate at a pressure higher than 150 psig, and 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 gas from another transmission line (and ultimately from gathering lines and/or storage facilities) to a large volume customer that is not downstream from a distribution center, and because it will operate at a hoop stress of more than 20 percent of specified

minimum yield strength (SMYS). (See 49 CFR § 192.3.)

Exhibit D consists of documents related to Plymouth Energy's purchase of 32.19 acres of property (including county right of way) in Plymouth County, Iowa, at the site of the proposed ethanol plant, for a purchase price of \$515,040.00.

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

Plymouth Energy has not requested eminent domain for this project.

I examined the route of the proposed pipeline on February 8, 2006. The route runs through flat to hilly terrain. The route is on private property except where it crosses Iowa Highway 75 and several county roads. Iowa Highway 75 is currently a 2-lane highway in the area where the pipeline route crosses it, but construction has begun to add another 2 lanes to make this a divided 4-lane highway through this area. The pipeline route crosses the Canadian National Railroad, which runs along the east side of Iowa Highway 75 in the area where it will be crossed by the pipeline, and the route crosses the Burlington Northern and Santa Fe Railroad northeast of the Plymouth Energy ethanol plant site. The route crosses the West Branch Floyd River, the Floyd River, Plymouth Creek, and three unnamed creeks. Exhibit C states that all rivers and streams with flowing water at the time of construction will be directionally drilled. The route is on agricultural land except for road crossings, locations where it crosses between houses and the road, and some untilled land near creek and river crossings. Much of the route runs parallel to, but outside of county road right-of-way. The route crosses between the road and a house at two locations, and it passes along the road on the opposite side of the road from six houses. Most of the land crossed by the route appeared to have been planted in row crops last year. The route crosses fields with agricultural terraces in the areas west of Highway 75 and near the east end of the route. The entire route appears to be 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 the lowest population density classification. The only potential exception noted would be if construction of the Plymouth Energy ethanol plant would create a Class 3 location. Class 3 is a high population density classification. *It is recommended Plymouth Energy be asked to address in its testimony whether any building or small, well-defined outside area at the ethanol plant that would be occupied by more than 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period will be within 100 yards of the pipeline.* If so, this would create a Class 3 location. No problems were noted with the proposed route. No conflicts with safety standards or significant impediments to pipeline construction were found.

Subpart O of 49 CFR Part 192 requires pipeline operators to develop and implement an Integrity Management Program for gas transmission pipelines in high consequence areas (HCAs) as defined by the rules. An HCA is an area within the potential impact radius (PIR) for the pipeline that contains an identified site as defined in the rules, or that contains 20 or more buildings intended for human occupancy. Based on the pipe diameter and maximum allowable operating pressure specified in the filing, the PIR for this pipeline would be 111 feet. Based on information provided by Montana-Dakota in a letter dated April 25, 2007, it appears two houses along the route will be within the PIR for this pipeline: one at 102 feet from the pipeline and one at 111 feet. According to the letter, one hog barn will also be within the PIR at 39 feet from the pipeline. There does not appear to be more than one house within the PIR at any one location, and the only potential identified site that I observed along the route would be the Plymouth Energy ethanol plant to be served by this pipeline. *It is recommended Plymouth Energy be asked to address in its testimony whether any identified site (as defined by 49 CFR § 192.903) at the ethanol plant will be within the PIR of the pipeline.* Plymouth Energy will need to conduct a review of the route to look for HCAs after construction as required by the rules, but unless the ethanol plant will create an HCA, it appears the pipeline will most likely not require an integrity management program under Subpart O of 49 CFR Part 192, and most of the requirements under Subpart O will not apply to this pipeline.

Natural gas pipelines must comply with the federal pipeline safety standards of 49 CFR Parts 192, which have been adopted by the Board in 199 IAC 10.12(1)*b*. The information filed by Plymouth Energy shows the proposed pipeline will be designed, constructed and tested in compliance with these standards. Petition Exhibit I states Plymouth Energy will own and operate the proposed pipeline, but has contracted with Montana-Dakota Utilities Company (Montana-Dakota) to build the pipeline. Montana-Dakota has previously constructed transmission pipelines in Iowa, and currently operates a transmission pipeline in Iowa. Plymouth Energy has not previously operated a pipeline in the state of Iowa that is subject to the safety rules adopted by the Board. In a letter signed by David Yexley of Montana-Dakota, dated April 24, 2007, Mr. Yexley states that Montana-Dakota intends to obtain competitive bids for the operation and maintenance of this pipeline from qualified operators, and bidders will have the option of using their existing written plans and procedures or adopting those prepared and currently in use by Montana-Dakota. *It is recommended Plymouth Energy be asked to address in its prefiled testimony whether it has been determined who will operate the pipeline, and whether it has been determined which written plans and procedures will be used to operate and maintain the pipeline in compliance with 49 CFR Parts 192 and 199, including the Operations and Maintenance Plan, Emergency Response Plan, Operator Qualification Program, Integrity Management Program (if required for this pipeline), and Anti-Drug and Alcohol Misuse Plan. Plymouth Energy should be asked to address*

what qualified personnel will be available to promptly respond to leaks, emergencies, line locate and marking requests, and other issues that might arise.

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 Plymouth Energy be asked to address in its prefiled testimony.