

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

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| IN RE: EAST FORK BIODIESEL, LLC | DOCKET NO. P-870 |
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE AND PROPOSING TO
TAKE OFFICIAL NOTICE AND NOTICE OF HEARING**

(Issued July 13, 2007)

On May 21, 2007, East Fork Biodiesel, LLC (East Fork) filed a petition and exhibits with the Utilities Board (Board) for a pipeline permit. East Fork proposes to construct, operate, and maintain approximately 1.3 miles of 6-inch diameter plastic pipeline in Kossuth County, Iowa. East Fork filed amendments to its petition and exhibits and provided additional information on June 5, June 13, and July 9, 2007.

The proposed pipeline would deliver natural gas from a new Northern Natural Gas (NNG) delivery and metering station on an existing NNG pipeline east of Algona, Iowa, to the East Fork biodiesel plant currently under construction east of Algona. In its petition, East Fork requests a maximum allowable operating pressure (MAOP) of 100 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. 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.

On July 6, 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.

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 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, 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.

East Fork must submit prepared testimony and exhibits prior to the hearing in accordance with the procedural schedule set forth in this order. At a minimum, East Fork's prepared testimony must address the issues listed above. In addition, in its prepared testimony, East Fork must address the issues listed in italics in Mr. Jeffrey O'Neal's staff report dated June 14, 2007. Also, on page two of his report, Mr. O'Neal refers to a June 5, 2007, letter from Mr. David Hingtgen that states East Fork has contracted with Aquila to construct and operate the proposed pipeline. East Fork must provide testimony that shows its commitment to contract with a qualified operator to construct, operate, and maintain the pipeline if a permit is granted and that provides support for the statements made in Mr. Hingtgen's letter. In addition, it appears there may be a typographical error in petition Exhibit A. In the legal description of the route, there is a reference to "North Fork Bio-diesel property." East Fork must testify whether this is an error, and if it is, must file a corrected petition Exhibit A with its prepared testimony. Finally, East Fork must testify whether it has acquired all needed easements for the proposed pipeline.

East Fork 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 East Fork 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, East Fork must also address the issues raised in those filings in its rebuttal testimony.

PARTY STATUS

East Fork 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. East Fork 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 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 June 14, 2007, concerning East Fork'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 East Fork'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 August 2, 2007, East Fork must file prepared direct testimony and exhibits regarding its petition for a permit as discussed in this order. If East Fork chooses to file a prehearing brief, it must be filed by August 2, 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 August 16, 2007.

c. If the Consumer Advocate or any objector files prepared testimony or a brief, East Fork must file prepared rebuttal testimony on or before August 23, 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 9:30 a.m. on Tuesday, August 28, 2007, in Board Conference Room 3, 350 Maple Street, Des Moines, Iowa 50319. 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 Wednesday, August 8, 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 June 14, 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 East Fork 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 East Fork with a notice to be published and East Fork must publish the notice pursuant to Iowa Code § 479.7 and 199 IAC 10.4. East Fork 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. It would be helpful if East Fork filed 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 13th day of July, 2007.

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

TO: Docket No. P-870

FROM: Jeffrey L. O'Neal

DATE: June 14, 2007

SUBJ: Staff Review of City of East Fork Biodiesel, LLC, Petition for Pipeline Permit for Approximately 1.3 Miles of 6-inch Diameter Natural Gas Pipeline in Kossuth County, Iowa

On May 21, 2007, East Fork Biodiesel, LLC, (East Fork Biodiesel) filed a Petition for Pipeline Permit with the Utilities Board (Board). By letters dated May 22, 2007, and June 8, 2007, I advised East Fork Biodiesel of petition deficiencies requiring correction, and requested additional information. On June 5, 2007, and June 13, 2007, East Fork Biodiesel filed revisions to its petition and exhibits and provided additional information.

In its petition, East Fork Biodiesel proposes to construct approximately 1.3 miles of 6-inch diameter plastic pipeline. The pipeline would deliver natural gas from a new Northern Natural Gas Company (NNG) delivery and metering station (also known as a town border station or TBS) on an existing NNG pipeline east of Algona, Iowa, to the East Fork Biodiesel plant currently under construction east of Algona. The proposed pipeline would have a maximum allowable operating pressure (MAOP) of 100 psi.

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, and because it is to be operated at a pressure less than 150 psi. (See 199 IAC 10.3.)

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 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. (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 East Fork Biodiesel shows the proposed pipeline will be designed, constructed and tested in compliance with these standards. East Fork Biodiesel has not previously constructed or operated a

pipeline in the state of Iowa that is subject to the safety rules adopted by the Board. Petition Exhibit F states East Fork Biodiesel is in the process of finalizing a contract with Aquila for the operation and maintenance of the pipeline following construction. In a cover letter for its revised exhibits filed June 5, 2007, East Fork Biodiesel states Aquila has been contracted by East Fork Biodiesel LLC to design and construct this pipeline, and Aquila and East Fork Biodiesel LLC have entered into an O&M agreement for this line. *It is recommended East Fork Biodiesel be asked to address in its prefiled testimony who will construct the pipeline, who will operate and maintain the pipeline, and what 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. East Fork Biodiesel 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.*

The purpose of the project as stated in Exhibit F is to supply natural gas to the East Fork Biodiesel plant east of Algona.

The proposed route does not include agricultural land. Therefore, a Land Restoration Plan is not required for this project.

East Fork Biodiesel has not requested eminent domain for this project.

I examined the route of the proposed pipeline on May 23, 2007. The route map filed as Exhibit B was used as a guide. The route runs through flat to gently rolling terrain. The route begins at a proposed new NNG TBS adjacent to the road, to be supplied by an existing NNG pipeline. The route enters the county road right of way, and runs north to the East Fork Biodiesel plant, which was under construction at the time of the inspection. Except for the endpoints within the proposed NNG TBS and the East Fork Biodiesel plant, the entire route is within county road right of way, running along the east side of 140th Avenue, a gravel county road. The route crosses one county road, and one railroad. The land along the route on both sides of the road was planted in row crops. There were no houses along the proposed route. The nearest house to the proposed route was approximately 200 yards southeast of the proposed new NNG TBS at the southern end of the route. There was a MaxYield Cooperative building along the proposed route, just south of the East Fork Biodiesel plant and just north of the railroad. The MaxYield Cooperative building appeared to be over 100 yards from the pipeline route, which is too far from the pipeline to potentially create a Class 3 (high population density) location as defined in § 192.5 or a high consequence area (HCA) as defined in § 192.903. The nearest building under construction at the Biodiesel plant was approximately 300 yards from the road; it appears the Biodiesel plant will not create a Class 3 location or an HCA. 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 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.

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 41 feet. Exhibit C, Item 2, states there will be no buildings or structures within 100 yards of the pipeline. East Fork Biodiesel will need to conduct a review of the route to look for HCAs after construction as required by the rules, but based on my field inspection of the route, and the statement in Exhibit C, 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.

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 East Fork Biodiesel be asked to address in its prefiled testimony.