

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: ABSOLUTE ENERGY, LLC	DOCKET NO. P-871
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REVISED PROCEDURAL SCHEDULE AND NOTICE OF HEARING

(Issued August 28, 2007)

On June 12, 2007, Absolute Energy, LLC (Absolute Energy) filed a petition and exhibits with the Utilities Board (Board) for a pipeline permit. On August 2, 2007, the undersigned administrative law judge issued an "Order Establishing Procedural Schedule and Proposing to Take Official Notice and Notice of Hearing" in this docket. The order set the hearing in this case for September 6, 2007. The order also proposed to take official notice of a staff report regarding the proposed pipeline filed by Mr. Jeffrey L. O'Neal on July 13, 2007.

On August 8, 2007, Absolute Energy filed a letter and revised petition exhibits A, B, and F, which reflected a revised route for the proposed pipeline. On August 9, 2007, Mr. O'Neal sent a letter to Absolute Energy identifying issues the company needed to address with respect to its filing. On August 16, 2007, Absolute Energy filed prepared direct testimony, exhibits, and a revised petition and exhibits.

On August 24, 2007, Mr. O'Neal filed a revised report that addressed the revised petition. In his report, Mr. O'Neal stated that the report superseded his July 13, 2007 report.

On August 27, 2007, Absolute Energy contacted the undersigned, stated that notice had not been published as required by the Board's statutes and rules, and requested a change in the hearing date. The Consumer Advocate Division of the Department of Justice (Consumer Advocate) does not object to the change in hearing date.

The hearing date must be changed so that notice can be published as required by Iowa Code §§ 479.7 and 479.8 and 199 IAC 10.4.

In addition, pursuant to Iowa Code § 17A.14(4), the undersigned proposes to take official notice of Mr. O'Neal's revised report filed August 24, 2007, and of the facts contained therein, thus making them a part of the record of this case. Iowa Code § 17A.12(6)(c). A copy of the revised report is attached to this order. 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.

In his revised report at page three, Mr. O'Neal refers to a revised page of Absolute Energy's land restoration plan filed with Mr. David Hingtgen's prepared

testimony. Absolute Energy must file a complete copy of its revised land restoration plan as discussed in Mr. O'Neal's report in accordance with the procedural schedule set forth below. In his revised report at page three, Mr. O'Neal also refers to Absolute Energy's "Legal Descriptions of Crossings," which Absolute Energy filed as an attachment to Petition Exhibit C. Absolute Energy must file a revision to this document as discussed in Mr. O'Neal's report or file prepared testimony explaining why a revised document is not needed in accordance with the procedural schedule set forth below.

IT IS THEREFORE ORDERED:

1. On or before September 13, 2007, Absolute Energy must file a complete copy of its revised land restoration plan and a revised "Legal Descriptions of Crossings" document (or prepared testimony) as discussed in the body of this order.

2. A public hearing for the presentation of evidence and the cross-examination of witnesses concerning the issues identified in the "Order Establishing Procedural Schedule and Proposing to Take Official Notice and Notice of Hearing" issued August 2, 2007, and identified in this "Revised Procedural Schedule and Notice of Hearing," will be held beginning at 1:30 p.m. on Thursday, September 20, 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 Monday, September 10, 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.

3. The hearing previously set for September 6, 2007, in this docket is cancelled.

4. The undersigned administrative law judge proposes to take official notice of Mr. O'Neal's report dated August 24, 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 Absolute 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 Absolute Energy with a notice to be published and Absolute Energy must publish the notice pursuant to Iowa Code § 479.7 and 199 IAC 10.4. Absolute 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. It would be helpful if Absolute Energy filed proof of publication prior to the hearing date.

7. All provisions of the "Order Establishing Procedural Schedule and Proposing to Take Official Notice and Notice of Hearing" issued August 2, 2007, not specifically modified by this order remain in effect.

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 28th day of August, 2007.

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

TO: Docket No. P-871

FROM: Jeffrey L. O'Neal

DATE: August 24, 2007

SUBJ: Staff Review of Absolute Energy, LLC, Petition for Pipeline Permit for Approximately 3.2 Miles of 6-inch Diameter Natural Gas Pipeline in Mitchell County, Iowa

On June 12, 2007, Absolute Energy, LLC, (Absolute Energy) filed a Petition for Pipeline Permit with the Utilities Board (Board). By letters dated June 14, June 18, June 27, and July 9, 2007, I advised Absolute Energy of petition deficiencies requiring correction, and requested additional information. On June 26, July 5, and July 12, 2007, Absolute Energy filed revisions to its petition and exhibits and provided additional information. On July 13, 2007, I filed a report regarding the petition. On August 2, 2007, an Order Establishing Procedural Schedule And Proposing To Take Official Notice And Notice Of Hearing was issued in this docket. On August 8, 2007, Absolute Energy filed revised petition exhibits reflecting a revised route for the proposed pipeline. By letter dated August 9, 2007, I advised Absolute Energy of petition deficiencies. On August 16, 2007, Absolute Energy filed revisions to its petition and exhibits and filed direct testimony of three witnesses. This report addresses the petition as revised as of August 16, 2007, and supersedes the report I filed in this docket on July 13, 2007.

In its petition, Absolute Energy proposes to construct approximately 3.2 miles of 6-inch diameter steel pipeline in Mitchell County, Iowa. The pipeline would deliver natural gas from a new Alliance Pipeline delivery and metering station to be constructed at an existing Alliance Pipeline valve station on its pipeline east of Mona, Iowa, to the Absolute Energy ethanol plant northwest of Mona. Petition Exhibit C shows the proposed pipeline would have a maximum allowable operating pressure (MAOP) of 500 psig.

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 *also* 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 Absolute Energy shows the proposed pipeline will be designed, constructed and tested in compliance with these standards. Absolute Energy 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 Aquila, Inc. (Aquila) will be under contract with Absolute Energy for the operation and maintenance of the pipeline following construction. In direct testimony filed August 16, 2007, Absolute Energy witnesses Pauling and Schwarck state Aquila and Absolute Energy have entered into an Operating and Maintenance agreement for this pipeline, and that Aquila is responsible for overseeing design and construction of the pipeline. In his direct testimony, Pauling states Aquila will develop and maintain on Absolute's behalf an operations and maintenance plan and other plans required for compliance with 49 CFR Parts 192 and 199. Aquila is an established operator of natural gas distribution systems and natural gas transmission pipelines in Iowa.

Petition Exhibit E states that a permit has been applied for from Mitchell County to cross county road right-of-way at less than 90 degrees, and that a license will be applied for from the Iowa, Chicago and Eastern Railroad Company for a diagonal crossing. Exhibit E states the approved permit or license for each of these crossings will be supplied upon receipt. In his direct testimony, Absolute Energy witness Hingtgen states all easements and permits will be submitted to the Iowa Utilities Board prior to construction. Exhibits A and B show parts of the route will be located longitudinally in Mitchell County road right of way. For each crossing of a highway or railroad at other than an approximate right angle, or longitudinal occupancy of road or railroad right-of-way, a showing of consent of the highway authority or railroad company must be filed with the Board prior to construction. See 199 IAC 10.2(1)*e* and 10.14(2). The county roads that are crossed or occupied longitudinally by the proposed pipeline route are considered to be "highways" for the purpose of these rules. Therefore, although a pipeline permit can be issued prior to Absolute Energy's filing of these permits or licenses with the Board, construction of the pipeline cannot begin until showings of consent by Mitchell County and the Iowa, Chicago and Eastern Railroad Company have been filed with the Board.

Petition Exhibit F states the purpose of the project is to supply natural gas to the Absolute Energy ethanol plant, which is under construction northwest of Mona, Iowa.

The proposed route includes agricultural land. Absolute Energy filed a land restoration plan as petition Exhibit I. Absolute Energy's Land Restoration Plan appears to comply with the applicable provisions of 199 IAC Chapter 9. However, I have a question regarding the most recent revision to Exhibit I. A revised page

1 of Exhibit I was filed as an exhibit attached to the direct testimony of David Hingtgen, filed August 16, 2007. The previous version of this page (filed July 5, 2007) contained a heading for Item No. 3, titled "Compliance With The Iowa Code", and the first paragraph under that heading. This heading and paragraph were not included in the revised page 1 filed on August 16, 2007, with Hingtgen's testimony. *It is recommended Mr. Hingtgen be asked to address whether he intended to delete the heading and paragraph, or to file revised pages or a complete copy of the revised land restoration plan if appropriate.*

Absolute Energy's "Legal Descriptions of Crossings", filed as an attachment to Exhibit C, states the pipeline will cross Otter Creek in the Northeast ¼ of Section 11, Township 100 North, Range 18 West of the 5th P.M., Mitchell County, Iowa. According to Exhibit A, the pipeline will not enter the Northeast ¼ of Section 11, but will run along the northerly edge of the Southeast ¼ of Section 11. In addition, this attachment to Exhibit C states the pipeline will cross an Alliant Energy pipeline in the Northeast ¼ of Section 13, Township 100 North, Range 17 West of the 5th P.M., Mitchell County, Iowa. The same location is listed for the crossing of the Alliance Pipeline and for the crossing of the Dome Pipeline. It appears that for all three pipelines, the crossing location should be in Range 18 West, instead of Range 17 West. *It is recommended that Absolute Energy be asked to address these items in testimony at the hearing, or to file a revised "Legal Descriptions of Crossings" attachment if appropriate.*

Absolute Energy has not requested the right of eminent domain for this project. In his direct testimony, Mr. Hingtgen states it is anticipated all easements will be secured by September 1, 2007.

I examined the route of the proposed pipeline on June 15, 2007. The route begins at an existing Alliance Pipeline valve station approximately 2 miles east of Mona, and runs generally west and north to the Absolute Energy ethanol plant approximately 1 mile north and ½ mile west of Mona. The ethanol plant property is bordered on the north by a road that runs along the Iowa/Minnesota state line. The town of Lyle, Minnesota, is located just north of the state line on Highway 218. The ethanol plant was under construction at the time of my inspection. The proposed pipeline route runs mostly through fairly flat terrain. Approximately half of the pipeline route is located in county road right of way, along 500th Street and Foothill Avenue, which are rural gravel roads. This portion of the route crosses between the road and a pair of livestock confinement buildings on Foothill Avenue, and it passes along the opposite side of the road from a house on Foothill Avenue. Otherwise this portion of the route is bordered by agricultural land. Most of the other half of the route is on agricultural land that was planted in row crops at the time of the inspection. The route crosses Otter Creek, one gravel county road, one U.S. highway, and two railroads. The route includes three crossings of other pipelines, all near the easternmost end of the route. The route crosses U.S. Highway 218 near some buildings located on the west side of the highway. It appeared these buildings may be part of an agricultural supply business. It did not appear that these buildings would likely be occupied by more

than 20 people on a regular basis, so it did not appear this would create a class 3 location. At the time of my inspection, an office building was under construction on the ethanol plant property near the pipeline route. According to a cover letter included with Absolute Energy's petition revisions filed June 26, 2007, the occupancy of this office building will fall below the threshold required to create a class 3 location. 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 93 feet. A petition attachment to Exhibit C states the Absolute Energy ethanol plant does not contain an HCA or an identified site as defined in 49 CFR § 192.903. I did not note any apparent identified sites at any other location along the route during my inspection. Absolute Energy 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 the attachment to 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. This report identifies, in *italic type*, items it is recommended Absolute Energy be asked to address in its hearing testimony or by filing revised exhibits.