

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: SOUTHWEST IOWA RENEWABLE ENERGY, LLC	DOCKET NO. P-880
---	------------------

**ORDER ESTABLISHING PROCEDURAL SCHEDULE,
PROPOSING TO TAKE OFFICIAL NOTICE, AND NOTICE OF HEARING**

(Issued August 15, 2008)

On June 16, 2008, Southwest Iowa Renewable Energy, LLC (SIRE) filed a petition and exhibits with the Utilities Board (Board) for a pipeline permit. SIRE proposes to construct, operate, and maintain approximately 0.65 miles of 4½-inch diameter steel pipeline in Pottawattamie County, Iowa. SIRE filed amendments to its petition and exhibits and provided additional information on July 7 and 22, 2008.

The proposed pipeline would transport natural gas from a connection with a Northern Natural Gas Company (Northern) transmission pipeline southeast of Council Bluffs, Iowa, to the SIRE ethanol plant under construction southeast of Council Bluffs. In its petition, SIRE 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 will operate at a pressure greater than 150 psig and 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 natural gas from a

transmission line 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). 49 CFR § 192.3.

On August 12, 2008, 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 comply with the land restoration plan requirements of Iowa Code § 479.29.

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, 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, land restoration plan issues, 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.

SIRE must file prepared testimony and exhibits prior to the hearing in accordance with the procedural schedule set forth in this order. At a minimum, SIRE's prepared testimony must address the issues listed above. In addition, SIRE must address the issues raised by Mr. Jeffrey L. O'Neal in his July 24, 2008, staff report.

SIRE 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 SIRE who choose not to file prepared testimony and exhibits before the hearing will not be precluded from participating in the proceedings. If an objector, for example, does not intend to present evidence going substantially beyond the information contained in the letter of objection, it is unnecessary for the objector to file prepared testimony. However, when a party has a substantial amount of information to present to the Board about the petition, if the information has not been previously disclosed to the Board, it should be presented in

the form of prepared testimony and exhibits according to the procedural schedule established below.

PARTY STATUS

SIRE 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. SIRE 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. Therefore, 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, and copies of documents may be obtained for a small fee. 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 Web site 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 July 24, 2008, concerning SIRE'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 SIRE'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 September 5, 2008, SIRE must file prepared direct testimony and exhibits regarding its petition for a permit as discussed in this order. If SIRE chooses to file a prehearing brief, it must be filed by September 5, 2008.

b. If any party wishes to be connected to the hearing by telephone conference call, or wishes to have a witness connected by telephone, the party must notify the Board on or before September 19, 2008, so that appropriate arrangements may be made.

c. If the Consumer Advocate or any objector chooses to file prepared responsive testimony or a brief, it must do so on or before September 19, 2008.

d. If SIRE chooses to file prepared rebuttal testimony, it must do so on or before September 26, 2008.

e. 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 Wednesday, October 1, 2008, in Board Conference Room 3, Iowa Utilities Board offices, 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. 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 ten days prior to the hearing to request that appropriate arrangements be made.

f. 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).

4. The undersigned administrative law judge proposes to take official notice of Mr. O'Neal's report dated July 24, 2008, 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 SIRE 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 SIRE with a notice to be published and SIRE must publish the notice pursuant to Iowa Code § 479.7 and 199 IAC 10.4. The statute and rule require SIRE to file proof of publication prior to or at the beginning of the hearing. It would be helpful if SIRE filed proof of publication prior to the hearing date. Failure to publish notice and file proof of publication as required will result in delay of the hearing.

7. SIRE must comply with the additional service of notice and filing requirements contained in 199 IAC 10.4(3) if all required interests in private property have not been obtained.

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 15th day of August, 2008.

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

TO: Docket No. P-880

FROM: Jeffrey L. O'Neal

DATE: July 24, 2008

SUBJ: Staff Review of Southwest Iowa Renewable Energy, LLC Petition for Pipeline Permit for Approximately 0.65 Miles of 4 ½ inch Diameter Natural Gas Pipeline in Pottawattamie County, Iowa

On June 16, 2008, Southwest Iowa Renewable Energy, LLC (SIRE) filed a Petition for Pipeline Permit with the Utilities Board (Board). By letters dated June 19, 2008, and July 11, 2008, I advised SIRE of petition deficiencies requiring correction, and requested additional information. On July 7, 2008, and July 22, 2008, SIRE filed revisions to its petition and exhibits and provided additional information.

In its petition, SIRE proposes to construct approximately 0.65 miles of 4 ½ inch diameter steel pipeline. The pipeline would transport natural gas from a connection with a Northern Natural Gas Company, (Northern) pipeline southeast of Council Bluffs, Iowa, to the SIRE ethanol plant under construction southeast of Council Bluffs. Petition Exhibit C shows the proposed pipeline would be designed, constructed and tested for a maximum allowable operating pressure (MAOP) of 720 pounds per square inch gage (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 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, and because it will operate at a pressure greater than 150 psig. (See 199 IAC 10.16.) It will meet the definition of a transmission line because it will transport gas from a 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.)

I examined the route of the proposed pipeline on July 7, 2008. The route map filed as petition Exhibit B was used as a guide. The route begins at a proposed Northern Natural Gas Company (NNG) delivery station just west of the BNSF Railroad southeast of Council Bluffs, Iowa, and runs westerly approximately 0.65

miles to the SIRE Ethanol Plant, which was under construction at the time of the inspection. The proposed route is on private right-of-way, except where it crosses public roads. Beginning from the proposed NNG station, the route crosses an agricultural field (planted in row crops at the time of the inspection), running near and parallel to what appears to be a private lane, which runs east from 192nd Street and ends at the railroad, then near and parallel to 192nd Street, a public gravel road. The route then crosses 192nd Street, Interstate Highway I-29, and another gravel road, then enters the SIRE Ethanol Plant property. The SIRE ethanol plant was under construction at the time of the inspection. There is one house in the vicinity of the route, on 192nd Street across the lane from the proposed route. An electric transmission line runs parallel to most of the proposed route, running between the private lane and the proposed route, then crossing 192nd Street and running parallel to 192nd Street along opposite side of the road from the proposed route. The route crosses two hazardous liquids transmission pipelines. The proposed route runs through flat terrain. 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, unless the ethanol plant would create a Class 3 location. 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.

The proposed route includes agricultural land. SIRE filed a land restoration plan as Exhibit I. SIRE's Land Restoration Plan appears to comply with the applicable provisions of 199 IAC Chapter 9.

Petition Exhibit D consists of an affidavit signed by the President of SIRE, plus a 2008 real estate assessment roll for property in Pottawattamie County.

Petition Exhibit E states the road crossings will be made at an approximate right angle.

Petition Exhibit F states the purpose of the proposed pipeline is to provide the required natural gas to the SIRE ethanol plant, which is currently being constructed near Council Bluffs, Iowa.

SIRE is not requesting the right of eminent domain for this project.

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 SIRE shows the proposed pipeline will be designed, constructed and tested in compliance with these standards. SIRE 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 included with SIRE's July 7, 2008, filing, signed by Douglas M. Lee, P.E., of InfraSource, Mr. Lee states that InfraSource is the design/build contractor for this pipeline, and InfraSource will ensure compliance with 49 CFR Part 192 as it applies to the design and construction of

the pipeline. InfraSource has previously constructed transmission pipelines in Iowa. Mr. Lee's letter explains SIRE intends to obtain competitive bids for the operation and maintenance of the pipeline from qualified operators, and as part of the bid process, operators will use their existing qualified plans and procedures. *It is recommended SIRE 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, Public Awareness Program, Operator Qualification Program, Integrity Management Program (if required for this pipeline), and Anti-Drug and Alcohol Misuse Plan. SIRE 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.*

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 74 feet. The only potential identified site that I observed along the route would be the SIRE ethanol plant to be served by this pipeline. SIRE 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 include any HCAs, and most of the requirements under Subpart O will not apply to this pipeline.

In 2007, the federal Department of Transportation adopted a new rule, 49 CFR § 192.476, regarding design and construction features to reduce the risk of internal corrosion. In the cover letters with its July 7, 2008, and July 22, 2008, filings, SIRE described how it plans to comply with the requirements of § 192.476. The design appears to comply with the requirements of § 192.476.

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 SIRE be asked to address in a revised petition filing or in its prefiled testimony. As described earlier in this report, the issue of who will operate and maintain the pipeline after it has been constructed has not yet been resolved.