

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: HOMELAND ENERGY SOLUTIONS, LLC	DOCKET NO. P-879
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE,
PROPOSING TO TAKE OFFICIAL NOTICE, AND NOTICE OF HEARING**

(Issued November 5, 2008)

On August 27, 2008, Homeland Energy Solutions, LLC (Homeland) filed a petition and exhibits with the Utilities Board (Board) for a pipeline permit. Homeland proposes to construct, operate, and maintain approximately 8 miles of 6⁵/₈-inch diameter steel pipeline in Chickasaw County, Iowa. Homeland filed amendments to its petition and exhibits and provided additional information on October 24, 2008.

The proposed pipeline would transport natural gas from a connection with a Northern Natural Gas Company (Northern) transmission pipeline west of New Hampton, Iowa, to the Homeland Energy Solutions Ethanol Plant currently under construction east of New Hampton. In its petition, Homeland requests a maximum allowable operating pressure (MAOP) of 960 pounds per square inch gauge (psig).

The proposed pipeline must have a permit from the Board because it will be operated at a pressure over 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 November 3, 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.

Homeland must file prepared testimony and exhibits prior to the hearing in accordance with the procedural schedule set forth in this order. At a minimum, Homeland's prepared testimony must address the issues listed above. In addition, Homeland must file corrected documents and address the issues raised by Mr. Jeffrey L. O'Neal in his staff report dated October 28, 2008. Once Homeland has obtained required road crossing permissions or consents, it must file them with the Board. Once Homeland has obtained any required permissions, approvals, or permits from other agencies or local governments for the proposed pipeline, it must file them with the Board. In its prepared testimony, Homeland must address what permissions, approvals, consents, or permits were required for the proposed pipeline from agencies other than the Board and from local governments and the status of obtaining them. In its prepared testimony, Homeland must state the number of easements required for the proposed pipeline, the number of voluntary easements it has obtained, and the status of negotiations regarding voluntary easements not yet obtained.

Homeland 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 Homeland 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

Homeland 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, the only written objection to the proposed pipeline has been withdrawn. Homeland does not request the right of eminent domain for the proposed pipeline.

Any person who files an objection (other than the objection that was withdrawn) 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, although the objectors who withdrew their objection will not receive any documents. 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. Since the proposed pipeline is more than five miles long and Homeland requests an operating pressure exceeding 150 psig, the hearing must be held in New Hampton, Iowa. Iowa Code § 479.8.

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 October 28, 2008, concerning Homeland'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 ten 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 Homeland's petition in this docket, and who has not withdrawn the objection, 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 November 21, 2008, Homeland must file prepared direct testimony and exhibits regarding its petition for a permit as discussed in this order. If Homeland chooses to file a prehearing brief, it must be filed by November 21, 2008. Homeland must file the documents discussed on page four of this order with its prepared testimony or as soon as it obtains them.

b. There is no telephone conferencing available in the hearing room. Therefore, parties and witnesses must appear at the hearing in person.

c. If the Consumer Advocate or any objector chooses to file prepared responsive testimony or a brief, it must do so on or before December 3, 2008.

d. Homeland has waived the right to file prepared rebuttal testimony.

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 1:00 p.m. on Tuesday, December 9, 2008, in the City Council Chambers, New Hampton Community Center, 112 East Spring Street, New Hampton, Iowa 50659. 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 October 28, 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 Homeland and will be delivered to the Consumer Advocate. The one written objection that was filed with the Board has been withdrawn, so there are no objectors to be served.

6. Board staff will provide Homeland with a notice to be published and Homeland must publish the notice pursuant to Iowa Code § 479.7 and 199 IAC 10.4. The statute and rule require Homeland to file proof of publication prior to or at the beginning of the hearing. Since the hearing must be held in New Hampton, Homeland must file proof of publication at least seven days prior to the hearing date. Failure to publish notice and file proof of publication as required will result in delay of the hearing.

7. Homeland 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 5th day of November, 2008.

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

TO: Docket No. P-879

FROM: Jeffrey L. O'Neal

DATE: October 28, 2008

SUBJ: Staff Review of Homeland Energy Solutions LLC Petition for Pipeline Permit for Approximately 8 Miles of 6 5/8 inch Diameter Natural Gas Pipeline in Chickasaw County, Iowa

On August 27, 2008, Homeland Energy Solutions LLC (Homeland) filed a Petition for Pipeline Permit with the Utilities Board (Board). On October 24, 2008, Homeland filed revisions to its petition. In its petition, Homeland proposes to construct approximately 8 miles of 6 5/8 inch diameter steel pipeline. The pipeline would transport natural gas from a connection with a Northern Natural Gas Company, (Northern) pipeline west of New Hampton, Iowa, to a Homeland ethanol plant east of New Hampton. Petition Exhibit C shows the proposed pipeline would be designed and tested for a maximum allowable operating pressure (MAOP) of 960 psig. Exhibit C explains the Northern pipeline that would supply the proposed Homeland pipeline has an MAOP of 800 psig, so the maximum actual operating pressure of the proposed Homeland pipeline would be 800 psig.

An informational meeting was held for this proposed pipeline on June 12, 2008, in Chickasaw County, as required by 199 IAC 10.3. Documentation regarding the informational meetings is included in petition Exhibit G, which includes a copy of the notice of informational meeting that was mailed to affected parties and published in newspapers as required by 199 IAC 10.3(4).

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 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.)

Petition Exhibits E, F and I state that approximately 0.7 miles of the pipeline route will be within the right-of-way of Kenwood Avenue, a Chickasaw County Road. As explained in Exhibit A, except for this public road right-of-way, and public road crossings and water body crossings, the route is on private property.

Homeland has not requested the right of eminent domain for this project.

The proposed route includes agricultural land. Homeland filed a land restoration plan as Exhibit I. The Land Restoration Plan appears to comply with the applicable provisions of 199 IAC Chapter 9. However, on the first page, in the second paragraph, Exhibit I refers to the pipeline as an approximately 8.5-mile long pipeline. The current petition and Exhibit C state the pipeline will be approximately 8 miles long. *It is recommended Homeland be asked to file a revision to Exhibit I in which the length matches the length listed in the petition and Exhibit C, or to explain the discrepancy in its prefiled testimony.*

The Stream Crossing Table attachment to Exhibit C includes as its first entry an Unnamed Creek in the SE $\frac{1}{4}$ of Section 2, T-95N, R-13W. The current proposed route does not pass through the SE $\frac{1}{4}$ of Section 2. The last entry on the Stream Crossing Table is for an Unnamed Creek in the SW $\frac{1}{4}$ of Section 1, T-95N, R-12W. The current proposed route does not cross the Unnamed Creek shown in this quarter section on Exhibit B. *Homeland should be asked to file a revised Stream Crossing Table attachment to Exhibit C or to explain these discrepancies in its prefiled testimony.*

Petition Exhibit D includes an affidavit signed by the President of Homeland, and documents titled "Closing Statement Regarding Sale of Real Estate" for two properties in Section 6, T-95N, R-11W, in Chickasaw County, one of which shows a total selling price of more than \$2,000,000. Exhibit D also includes a document titled "Homeland Energy Solutions Chart." It was not apparent what this document shows. *It is recommended Homeland be asked to explain in its prefiled testimony what the Exhibit D document labeled "Homeland Energy Solutions Chart" represents.*

Petition Exhibit E states a portion of the route will be within the right-of-way of Kenwood Avenue, a Chickasaw County road. The exhibit states the road crossings on the pipeline route will be made at an approximate right angle. Exhibit E states the route crosses an abandoned railroad, and a representative of the railroad has informed Homeland no permit will be required to cross the abandoned railroad. The route does not cross or run within the right-of-way of any active railroads. Pipeline routes that include longitudinal occupancy of highway right-of-way cannot be constructed until a showing of consent of the highway authority has been filed with the Board. See 199 IAC 10.2(1)e and 10.14(2). Kenwood Avenue is considered to be a "highway" for the purpose of these rules. As of the date of this report, Homeland has not filed any showings of consent from any highway authorities. Therefore, although a pipeline permit can be issued prior to Homeland's filing of the permit or license with the Board, construction of the pipeline cannot begin until a showing of consent by the appropriate highway authority for the portion of the route that will run longitudinally on road right-of-way has been filed with the Board.

I examined the route of the proposed pipeline on October 15, 2008. The route begins at a proposed connection to a Northern pipeline west of New

Hampton, and runs generally north and east to the Homeland ethanol plant east of New Hampton, Iowa. The route crosses U.S. Highway 18, U.S. Highway 63 (a four-lane divided highway) and several county roads. It crosses an abandoned railroad, but it does not cross any active railroads. The route crosses the East Fork Wapsipinicon River, Plum Creek and several smaller streams. It also crosses two foreign pipelines.

The Northern delivery station is planned to be located on the east side of Kenwood Avenue. After leaving the Northern delivery station, the route runs north within the road right of way on the east side of Kenwood Avenue for approximately 0.7 miles, crossing U.S. Highway 18. There are two houses and a business on the same side of Kenwood Avenue as the pipeline route, and two houses on the opposite side of the road. It appeared that the business, Croell Redi-Mix corporate offices, might create a Class 3 location here.¹ Homeland has designated this area as a Class 3 location on Exhibit B. The route then turns northeast, and continues across private property on agricultural land. The route crosses U.S. Highway 63 and continues generally north and east to Lasalle Avenue. On the west side of Lasalle Avenue, the route runs on agricultural land just north of the Five Star Co-op. Approximately ½ mile of the route west of Lasalle Avenue runs parallel to an electric transmission line, and the route runs near an electric substation approximately ¼ mile west of Lasalle Avenue. The route crosses Lasalle Avenue and runs between two businesses on the east side of the road: Superior Lumber to the north and Warren's Grain Dryers to the south. There are other businesses farther north and south of the pipeline route on the east side of Lasalle Avenue. The route continues east across agricultural land to Mission Avenue. A number of houses on Mission Avenue and several businesses on Lasalle Avenue are close enough to the route that together they create a Class 2 location in this area. Exhibit B designates this portion of the route as a Class 2 location. The route continues generally easterly across mostly agricultural land, crossing three more county roads, two foreign pipelines, and an electric transmission line before it enters the Homeland ethanol plant property east of Quinlan Avenue. The Homeland ethanol plant was under construction at the time of the inspection. The route runs through flat to gently rolling terrain. No problems were noted with the proposed route. No conflicts with safety standards or significant impediments to pipeline construction were found.

Except for the Class 3 location and the Class 2 location described above, the route appears to be in a Class 1 location. The information provided in petition Exhibit C shows the entire pipeline will meet the design and testing requirements to qualify the pipeline for the proposed MAOP in a Class 3 location.

¹ The federal pipeline safety standards at 49 CFR § 192.5 define a "class location" system that ranks pipelines based on the number of buildings intended for human occupancy near the pipeline, and proximity to buildings or areas where groups of people gather. Pipelines are ranked as either Class 1, 2, 3, or 4, and the higher classifications are subject to more stringent safety standards.

A portion of the proposed route in the NE $\frac{1}{4}$ of Section 1, T-95N, R-13W, runs parallel to an electric transmission line, and the pipeline route crosses another electric transmission line east of Panora Avenue in Section 3, T-95N, R-12W. A fault on an electric line could ground one of the conductors. Also, electric lines have a shield wire that acts as a lightning rod to intercept and ground lightning strikes. The current from a grounded fault or lightning can be picked up by a metal pipeline, which can create a hazard or cause damage to the pipeline. For this reason the federal pipeline safety standards in 49 CFR § 192.467(f) require a pipeline be protected from such damage where located in close proximity to electric transmission towers. *It is recommended Homeland be asked to address the following in its prefiled testimony: Will the pipeline be located in close proximity to any electrical transmission tower footings or grounding systems? If so, what protection will be provided against damage due to fault currents or lightning? What minimum distance will be maintained between the pipeline and electric transmission tower footings and grounding systems?* In addition, electrical fields from electric transmission lines running parallel to a pipeline can induce currents or charges that can cause construction problems (welding) and hazard for workers. After construction such fields can interfere with cathodic protection. *It is recommended Homeland be asked to explain in its prefiled testimony whether any mitigative measures will be needed on this project to address such problems.*

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 Notice of Public Informational Meetings filed as part of petition Exhibit G states Montana-Dakota Utilities Co. (Montana-Dakota) has been retained by Homeland to construct this pipeline, but the filing does not address who will operate and maintain the pipeline. Homeland has not previously operated a pipeline in the state of Iowa that is subject to the safety rules adopted by the Board. *It is recommended Homeland 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. Homeland should also 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 MAOP specified in the filing, the PIR for this pipeline would be 128 feet. The only potential identified sites that

I observed along the route were the Homeland ethanol plant to be served by this pipeline, two businesses on Lasalle Avenue near the route, and a business on the east side of Kenwood Avenue. Depending on the exact placement of the pipeline, and on the number of people that occupy those locations, it is possible none of these locations will create an HCA. Homeland will need to conduct a review of the route to look for HCAs after construction as required by the rules, and if the pipeline does contain any HCAs, Homeland will need to develop and implement an Integrity Management Program. If the pipeline does not include any HCAs, 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. *It is recommended Homeland be asked to address in its prefiled testimony how it plans to comply with the requirements of 49 CFR § 192.476.*

On July 9, 2008, Aaron and Janet Blatti filed an objection to this proposed pipeline, which runs through their property in Section 6, T-95N, R-12W, Chickasaw County, Iowa. On October 27, 2008, Homeland filed a "Withdrawal of Iowa Utilities Board Objection" signed by Aaron and Janet Blatti, in which the Blattis state they have signed an easement for the pipeline to cross their property, and they wish to formally withdraw their objection to this project. As of the date of this report, there are no remaining objections in this docket.

I have reviewed the petition and exhibits in this docket. Subject to clarification of items described above in *italic type*, 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 Homeland be asked to address in its prefiled testimony or in revised petition exhibits.