

**STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITES BOARD**

IN RE: ARC 4506C, CHAPTER 10, INTRASTATE GAS AND UNDERGROUND GAS STORAGE RULES (IAC 199-10)	DOCKET NO. RMU-2016-0004 COMMENTS ON DRAFT FINAL RULE
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The Iowa Farm Bureau Federation (“Farm Bureau”), pursuant to the “Order Requesting Stakeholder Comment on Draft Adopted and Filed Notice” filed in this docket by the Iowa Utilities Board (“Board”) on October 15, 2019, hereby submits the following comments.

1. We appreciate the changes made by the Board that were responsive to our comments on the notice rule, but we respectfully request the Board to reconsider its decision to narrow the definition of “affected person” or in the alternative specifically review each provision to include farm tenants’ rights to afford them appropriate constitutional protections.

2. As the Board considers the treatment of leaseholders in this rule, the Board may find the information helpful from the release of the USDA’s National Agriculture Statistics Service 2017 Census of Agriculture.¹ Overall, there are over 143,000 producers in the state of Iowa farming over 30.5 million acres of land that is or could be impacted in the future by an intrastate pipeline. As supplemental to the previously provided Iowa State University Land Tenure Report and Rural Life Survey, the Census confirms that a significant amount of farmland

¹ 2017 Census of Agriculture, State Level Data for Iowa, USDA National Agricultural Statistics Service, Tables 9, 52, and 77. The information may be found at: https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_State_Level/Iowa/. (Last visited November 13, 2019).

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in Iowa is leased from others. The Census reports that 35,786 farm operations lease 15.6 million acres from other persons, over half of the Iowa farmland. Similarly, a significant number of producers do not live on the land that they farm. The Census reports that 46,730 farmers do not live on the land that they farm. These farmers would not be included in the rule provisions wherever the rule includes residents without also including leaseholders. Intrastate pipelines affect the land that farmers farm and their property interests, regardless of whether they own or lease the land; therefore, landowners and leaseholders' rights and interests must be considered.

3. Additionally, Iowa cases interpreting our eminent domain law in the Iowa Constitution and in the Iowa Code includes consideration of the property rights of leaseholders. "It is well settled a lessee is entitled to an award of just compensation for the public taking of his leasehold interest absent terms to the contrary on the lease agreement."² Iowa's eminent domain law includes tenants or leaseholders as persons eligible to receive just compensation for the taking. Iowa's Supreme Court has recognized both oral and written leases as a property right with constitutional protections from takings for a public use without just compensation.³ As previously commented in this docket, Iowa State University estimates through its Rural Life Survey that 39% of all farm leases are oral leases.⁴ The Iowa Supreme Court has interpreted Iowa's eminent domain law to protect the property rights of both landowners and leaseholders. Therefore, we encourage the Board to ensure the final rule sufficiently protects the procedural due process rights of both landowners and leaseholders.

² Twin-State Eng'g & Chem. Co. v. Iowa State Highway Comm'n, 197 N.W.2d 575, 577 (Iowa 1972) (additional citations omitted).

³ City of Des Moines v. Geller Glass & Upholstery, Inc., 319 N.W.2d 239 (Iowa 1982); Fritz v. Iowa State Highway Comm'n, 270 N.W.2d 835, 839 (Iowa 1978).

⁴ 2018 Iowa Farm and Rural Life Poll at 5. The summary report may be found at: <https://store.extension.iastate.edu/product/Iowa-Farm-and-Rural-Life-Poll-2018-Summary-Report>.

Rule 199-10.1(3), Affected Person Definition

4. The proposed definition of “affected person” in rule 199-10.1(3) and its use in the draft final rule is narrower and thus more problematic than the noticed rule. The revised definition restricts those persons affected to only those persons with “recorded” interests. The Board made this change at the request of the Joint Utilities.⁵ The Joint Utilities comment primarily concerned the amount and cost of research required to identify the persons required to receive the information meeting notices.⁶ Their stated concern was addressed by the change in language in the revised rule at 10.2(5)“b” which no longer uses the term “affected person” and instead uses the statutory language. The revision in the definition of “affected person” is not necessary to address their concern and it has major implications for other provisions in the rule.

5. Therefore, we renew our request that if the Board is going to define “affected person,” the Board should broaden the definition to specifically include all landowners and leaseholders and persons with possession of the property. To address our concerns, we would recommend the following changes to the revised definition:

“Affected person” means any person with a ~~recorded~~ legal right or ~~recorded~~ interest in the property, including but not limited to a landowner, contract purchaser of record, a tenant ~~occupying~~ possessing the property under a ~~recorded~~ lease, a record lienholder, and a record encumbrancer of the property.

6. As an overall comment, Iowa Code ch. 479 uses the terms “persons who may be affected” or “person... whose rights or interests may be affected...” The draft final rule also uses both the term “affected person,” “persons who may be affected” and “person... whose rights or

⁵ Iowa Utilities Board Order requesting Stakeholder Comment on Draft Adopted and Filed Notice, October 15, 2019, at pages 9-10.

⁶ See Joint Utilities Comments, filed July 9, 2019 on page 2; Board Order, page 9.

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interests may be affected...” It is unclear whether the Board is intending to define the phrases “persons who may be affected” or “person whose rights or interests may be affected” with the term “affected person.” We are concerned with the narrowness of the revised definition if the Board is intending to use the revised defined term “affected person” to clarify these statutory phrases. We believe that the legislative intent of these phrases is much broader than the revised definition. We ask the Board to clarify in its rule preamble or adoption order that the revised definition of “affected person” is not defining the phrases “persons who may be affected” or “person... whose rights or interests may be affected” as found in the statute or the rule if the Board chooses not to amend the “affected person” definition prior to final rule adoption.

The identified sections below are sections where the revised definition of “affected person” does not fulfill a pragmatic implementation of the statute or conform to the constitutional and statutory requirements. Should the Board and pipeline company choose voluntarily to not go farther than the provisions in revised rules, the Board’s decisions may run into constitutional or statutory violations of leaseholders’ rights in some instances described below and may also impact the ability to complete the pipeline project in a timely manner.

Rule 199-10.2(5)“a”(8), Contents of the Mailed Notice for Information Meeting

7. This sentence identifies, as a component of the mailed notice for the informational meeting, who has a right to be present at the informational meeting and who has the right to object. With the revised definition of “affected person,” only the landowner, persons with recorded interests and persons residing on the property have a right to attend the informational meeting and to file objections. The Board has historically made the informational meeting open to the public in general, not just persons who have a recorded interest or reside on the property.

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Practically, the farm tenant is the person who is going to attend the information meeting especially where the landowner resides out-of-state, out-of-county or is infirm.

8. Iowa Code § 479.9 allows written objections from “any person, corporation, company or city whose right or interest may be affected by said pipeline or lines or gas storage facilities...”⁷ Because the project will impede the ability to use the property as anticipated under a lease, whether oral, written, recorded or unrecorded, the leaseholder has the right to object under Iowa Code § 479.9. To be consistent about who has the right to file an objection, we recommend either using “landowner and any person whose right or interest may be affected” or add the phrase “persons in possession of the property” as used in other provisions within the rule.

Rule 199-10.2(6), Information Provided at the Public Information Meeting

9. This subrule describes the information that pipeline personnel are required to present at the public information meeting. Paragraphs “e” and “h” discuss negotiations for easements and other damages. Leaseholders with written, oral, recorded or unrecorded leases should also be included with this information. Having different procedures or damage schedules at the outset for recorded, written leases as compared to all other types of leases would be unfair and likely infringe on the leaseholders’ constitutional rights. The use of the revised term “affected person” in this context is not appropriate. We strongly suggest that the Board either revise the definition of “affected person” or include “and persons in possession of the property” after the term “affected person.”

⁷ See also, Iowa Admin. Code r. 199-10.5 and the same section in the revised rule.

Rule 199-10.2(7), Provision of County Inspector Name

10. The last sentence of this rule describes to whom the pipeline company must provide the name and contact information of the county inspector, if known. The revision of the definition of “affected person” unreasonably limits the provision of the county inspector information. Practically, leaseholders will be present at times during construction to monitor compliance with the land restoration standards, rather than or in addition to the landowner. While the information may be available from the county, it not unreasonable to require the information to also be provided to the “persons in possession of the property” who attend the information meeting. Alternatively, the definition of “affected person” should be modified as recommended.

Rule 199-10.3(1)“k”(1) and (2), Exhibit K to the Petition for a Permit

11. Another impact of the revised definition of “affected person” is the affidavit the company must file attesting that it reviewed the land records to determine “all affected persons with a legal interest in the property” and an identification of whether all “affected persons associated with property have been notified.” Because leaseholders potentially have a compensable interest in the property under Iowa law, the pipeline company should also make a good faith effort to identify all leaseholders of the property, regardless of whether the lease is recorded, prior to submitting their petition. Otherwise, the Board may be in the position of violating a leaseholder’s constitutional and legal rights.

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Rule 199-10.3(3) “b”, Statement of Damage Claims

12. The required statement of the procedure that will be used to determine installation damages by the county compensation commission is limited in the rule to an “affected person.” Iowa Code § 479.46 includes the procedures for either the landowner or the pipeline company to file an application with the chief judge in the judicial district. Subsection 7 of § 479.46 specifically defines landowner as including a “farm tenant.” The statute does not limit “farm tenant” to only those tenants with “recorded leases;” therefore, the required statement of damage claims will be inconsistent with state law if it only includes “affected persons” and not all “farm tenants.” Therefore, we recommend that if the term “affected person” is not further revised by the Board prior to final adoption, this paragraph needs to include the phrase “and farm tenant” after “affected person” to accurately represent and conform to the statute.

Rule 199-10.4, Notice of Hearing

13. This rule in large part complies with Iowa Code §479.7 by requiring the notice of hearing to be served on the owners of record and persons in possession of the property. A “person in possession” does not require the person to reside on the property and includes farm tenants. However, one minor change needs to occur to be consistent with the statute. The last phrase of subrule (4) needs to include an “and” rather than an “or” so that it reads as follows: “and an affidavit that all affected persons as defined in subrule 10.1(3) ~~or~~ **and** any persons in possession of the property were served. The statute requires both to be served and not served in the alternative.

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Conclusion

14. We appreciate the opportunity to comment on these revisions to the draft final chapter 10 rules. We encourage the Board to broaden the definition of “affected person” to include persons with unrecorded leasehold interests or alternatively make changes or additions to sections as indicated in this comment to include persons with leasehold interest within the individual rule provisions.

Respectfully submitted,

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PROOF OF SERVICE:

I hereby certify that the foregoing document was automatically served electronically on all parties registered with the Electronic Filing System on: November 14, 2019.

Signature: /s/ Christina L. Gruenhagen