

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: MOULTON MUNICIPAL GAS COMPANY, CITY OF MOULTON	DOCKET NO. P-853
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PROPOSED DECISION AND ORDER GRANTING PERMIT

(Issued January 21, 2004)

APPEARANCES:

MR. THOMAS L. ANDERS, Attorney at Law, 508 Drake Avenue, Centerville, Iowa 52544, appearing on behalf of Moulton Municipal Gas Company, City of Moulton.

MR. CRAIG GRAZIANO, Attorney at Law, 310 Maple Street, Des Moines, Iowa 50319, appearing on behalf of the Iowa Department of Justice, Office of Consumer Advocate.

STATEMENT OF THE CASE

In 1973, the Moulton Municipal Gas Company, City of Moulton (Moulton) constructed the pipeline at issue in this case. Since the pipeline was operated at less than 150 psig, a permit was not required. In 1975, Moulton proposed to increase the operating pressure of the pipeline to 600 psig, and applied for a permit. On September 26, 1975, in Docket No. P-740, Pipeline Permit No. 869 was issued by the Iowa State Commerce Commission (predecessor agency to the Utilities Board) to Moulton for the pipeline for the transportation of natural gas at a maximum operating

pressure of 600 psi. (O'Neal report; Decision and Order Granting a Permit, Docket No. P-740 (September 26, 1975)).

Pipeline Permit No. 869 expired on September 26, 2000. (O'Neal report). Board staff discovered that the permit had expired through a review of permit records, and notified Moulton by letter dated February 3, 2003. (O'Neal report).

On March 19, 2003, Moulton filed a petition and exhibits for a permit for the existing pipeline. (testimony of Mr. William Buss; petition for permit; O'Neal report). The petition is for a 2.375-inch diameter steel pipeline 5.3 miles long in Appanoose County, Iowa, with a maximum allowable operating pressure (MAOP) of 600 psig. (petition for permit; testimony of Mr. Buss; O'Neal report). The pipeline is a lateral that connects the distribution facilities of the City of Moulton with the gas transmission pipeline of the ANR Pipeline Company and supplies natural gas to 275 residential and commercial customers of Moulton. (testimony of Mr. Buss; petition for permit). Moulton amended its petition on August 15 and October 7, 2003. (petition for permit).

On November 21, 2003, the Utilities Board (Board) assigned this case to a presiding officer. A procedural schedule was established by an order issued on November 26, 2003. In that order, the undersigned presiding officer set January 14, 2004, as the date for the hearing on the petition, and proposed to take official notice of an October 31, 2003, report concerning the pipeline prepared by Mr. Jeffrey O'Neal, a utility regulatory engineer for the Board's Safety and Engineering Section.

Moulton filed prepared direct testimony of Mr. William Buss and Exhibits 1 through 13 on December 17, 2003.

Moulton caused notice of the hearing to be published in Appanoose County in the Ad-Express and Daily Iowegian and Citizen, a newspaper of general circulation in the county, on December 13 and 20, 2003. (proof of publication).

On January 7, 2004, the Consumer Advocate filed a pre-hearing brief.

The hearing was held on January 14, 2004. Mr. Anders and Mr. Buss were connected to the hearing by telephone conference call. Mr. Buss, engineer and project manager with Hall Engineering Company, testified on behalf of Moulton. Mr. Roger Houser, superintendent for the Moulton gas company, was present at the hearing but did not testify. Mr. O'Neal testified on behalf of the Board. The parties did not object to the taking of official notice of Mr. O' Neal's report. Moulton Exhibits 1 through 13 were admitted.

DISCUSSION REGARDING ASSESSMENT OF CIVIL PENALTY

At the hearing, Moulton and the Consumer Advocate jointly proposed a compromise of the civil penalty issue, under which the Board would assess a civil penalty of \$375 to be paid by Moulton. The parties agreed that assessment of a civil penalty is superior to not assessing a penalty because assessment will keep all utilities on notice that permit requirements must be followed. The parties stated the proposed amount of \$375 was a compromise figure negotiated at arms length, that compromise is specifically authorized by statute, and that compromise of the amount

of the penalty is superior to litigation because it saves the parties, who are both public bodies, the expense of litigation. The parties agreed that the proposal was reasonable in light of the whole record, consistent with law, and in the public interest.

199 IAC 7.2(11) provides that parties may propose to settle part or all of a contested case and that the Board will not approve a settlement unless it is "reasonable in light of the whole record, consistent with law, and in the public interest." Although this rule does not technically apply to pipeline permit cases, it is reasonable to use the listed principles in evaluating whether to approve the parties' proposed settlement of the civil penalty issue. 199 IAC 7.1(1).

Iowa Code § 479.31 (2003) provides that a person who violates Chapter 479 or a Board rule issued pursuant to the chapter is subject to a civil penalty not to exceed \$10,000 for each violation. The statute further provides that each day the violation continues constitutes a separate offense, but the maximum civil penalty is \$500,000 for any related series of violations. Iowa Code § 479.31. The statute provides that in determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the company, the gravity of the violation, and the good faith of the company in attempting to achieve compliance after notification of a violation, shall be considered. Iowa Code § 479.31.

The Board has recently interpreted the civil penalty statutes in electric franchise and pipeline permit cases in In re: Corn Belt Power Cooperative, Docket No. E-21519, "Order Canceling Hearing, Accepting Compromise, and Assessing Civil

Penalty" (August 28, 2003) (Corn Belt I), In re: Corn Belt Power Cooperative, Docket No. E-21570, "Order Canceling Hearing, Accepting Compromise, and Assessing Civil Penalty" (February 1, 2002) (Corn Belt II), and In re: Interstate Power and Light Company, Docket No. P-850, "Order Affirming Proposed Decision and Order Granting Permit and Waiver" (November 17, 2003) (Interstate Power). The Corn Belt cases involved failure to seek an electric franchise prior to construction rather than failure to seek a pipeline permit prior to construction. Although there are differences in the amounts and types of penalties that may be imposed for violations of the electric franchise and pipeline permit statutes, the factors to be considered in compromising or determining the amount of the penalty are the same. Iowa Code §§ 478.24, 478.29, and 479.31. Therefore, the Corn Belt cases are sufficiently analogous so it is valid to consider them as guidance regarding the appropriate penalty in pipeline permit cases. The Interstate Power case involved a failure to obtain a permit for a pipeline constructed in 1980 and 1982. Although the Corn Belt I and Interstate Power cases involved a failure to obtain a required franchise or permit, and the Corn Belt II case involved a failure to amend a franchise, rather than a failure to timely renew a permit, the cases are sufficiently analogous so it is valid to consider them as guidance when determining whether a civil penalty should be assessed in this case, and if so, the amount of the penalty to be assessed.

In Corn Belt I, Corn Belt filed a petition for a franchise to construct an electric line in December 2001, but began construction of the line prior to receiving the

franchise. Board staff discovered the violation and notified Corn Belt that construction must cease immediately and not resume until a franchise was obtained from the Board. Corn Belt immediately ceased construction activities after this notification, accepted full responsibility for the violation, and by motion and affidavit, asked the Board to impose the appropriate penalty without hearing. In imposing a civil penalty of \$600, the Board stated: "While the Board finds the violation to be serious, Corn Belt's actions are mitigated by the fact it immediately ceased construction after notification from Board's staff. Corn Belt has also accepted responsibility for the violation and taken corrective action so similar violations will not occur in the future." The Board also stated: "Since this is the first time this has happened, there is no reason to assess the maximum fine." Corn Belt I Decision, pp. 5-6.

In Corn Belt II, Corn Belt converted a segment of single circuit transmission line to double circuit without first filing a petition for amendment of its electric franchise in February 2003. Corn Belt became aware of the violation in May 2003 and immediately notified Board staff. The Board stated it did not view the violation to be as serious as that in Corn Belt I. Although Corn Belt promptly reported the violation and began corrective action, took steps to prevent additional violations in the future, and the violation was inadvertent, the Board imposed a civil penalty of \$300 because it was the second violation by Corn Belt in less than two years. In the Corn Belt II Decision, the Board stated the following: "By bringing this action and

assessing this fine, the Board puts all companies on notice that franchise requirements must be followed. However, the Board recognizes that there are some violations that may have occurred many years ago that have only recently been detected. The Board encourages companies to report any such violations immediately and to cooperate with the Board's staff in remedying such violations. Any penalties that may be imposed would likely be mitigated if the violations are self-reported and not discovered by the Board's staff. The companies should also examine their processes, like Corn Belt has, to see if additional personnel or training are needed to ensure future compliance with the Iowa statutes and Board rules."

Corn Belt II Decision, p. 5.

In Interstate Power, the company failed to request or obtain a permit for a pipeline that was constructed in 1980 and 1982. The evidence was not conclusive that a permit was required in 1980, but was conclusive that one was required in 1982. Interstate Power did not discover it had failed to obtain the required permit until August 2002. In reaching the decisions, the undersigned and the Board considered that the company discovered the violation and upon discovery, company staff immediately contacted Board staff and filed a petition for permit in October 2002, took steps to prevent future violations, did not have any other known violations of this nature, constructed, operated, and maintained the pipeline in conformance with all other Board rules, and there was no safety issue associated with the pipeline. The decisions also considered that the violation was committed by prior staff who no

longer worked for the company, current staff exhibited exemplary behavior once the violation was discovered and, therefore, imposition of a civil penalty would not serve a valid punitive or deterrent purpose. In its decision imposing no penalty, the Board stated: "The evidence supports the ALJ's findings that IPL's actions fully mitigated imposition of a civil penalty. This is consistent with the Board's decision in Corn Belt regarding self-reported violations that occurred many years ago." Interstate Power Decision, p. 5.

In this case, the failure to seek and obtain a renewal of the pipeline permit before it expired is a relatively recent violation, and the violation was discovered by Board staff rather than Moulton's staff. (O'Neal report; testimony of Mr. Buss; petition for permit). This is significantly different than a case in which a violation occurred years ago and was self-discovered¹. Mr. Buss testified that Moulton recognized the seriousness of not timely filing for permit renewal, although he characterized the violation as "an administrative error." (testimony of Mr. Buss). While Moulton's failure to timely file for permit renewal may have been inadvertent, it is a serious violation. It is inaccurate to characterize a failure to timely renew a permit as an administrative error.

¹ Mr. Buss testified as a matter of information that in other cases involving other companies, Board staff had issued a notice that the pipeline permit was about to expire and described the procedures for permit renewal. Mr. Buss stated this assistance was helpful. While this notice certainly would be helpful, it is the responsibility of a permit holder, not Board staff, to be aware of the permit's expiration date and timely file a petition for an extension. Iowa Code §§ 479.19, 479.23.

Other important factors to be considered in assessing the proposed compromise include the following. The city of Moulton is a very small town with a population of approximately 600. (testimony of Mr. Buss). The Moulton gas company serves approximately 275 residential and commercial customers. (testimony of Mr. Buss). The Moulton gas company has one full-time operator and a city clerk who does part-time work on behalf of the gas company. (testimony of Mr. Buss). Upon notification of the violation, Moulton cooperated with Board staff to remedy the situation and promptly filed a petition for a permit within a month and a half of notification of the violation. (testimony of Mr. Buss; petition for permit; O'Neal report). Board staff is not aware of any other cases in which Moulton failed to timely renew a pipeline permit or failed to comply with other pipeline statutes or regulations. (testimony of Mr. O'Neal; O'Neal report). The pipeline has been operated and maintained in conformance with all requirements other than the failure to timely renew the permit. (testimony of Mr. Buss, Mr. O'Neal; O'Neal report; Exhibits 1 through 13). There is no safety issue with respect to the pipeline. (testimony of Mr. O'Neal, Mr. Buss; petition for permit; O'Neal report). Finally, Moulton has implemented a procedure to ensure that its pipeline permit is timely renewed in the future. (testimony of Mr. Buss).

Based on all the facts and circumstances of this case, the parties' proposed compromise regarding the civil penalty is reasonable in light of the whole record, consistent with law, and in the public interest. Iowa Code §§ 479.3, 479.19, 479.23,

479.31; 199 IAC 7.2(11); Corn Belt I, Corn Belt II, Interstate Power. It therefore should be approved.

FINDINGS OF FACT

1. Moulton is a pipeline company within the meaning of Iowa Code § 479.2 (2003). (testimony of Mr. Buss; petition for pipeline).
2. The pipeline at issue in this docket was originally constructed in 1973. (O'Neal report; testimony of Mr. Buss). A permit was not required at that time because it was operated at less than 150 psig. (O'Neal report; Decision and Order Granting A Permit, Docket No. P-740 (September 26, 1975)).
3. In 1975, Moulton proposed to increase the operating pressure of the pipeline to 600 psig, and applied for a permit. (O'Neal report). On September 26, 1975, in Docket No. P-740, Pipeline Permit No. 869 was issued by the Iowa State Commerce Commission (predecessor agency to the Utilities Board). to Moulton for the pipeline for the transportation of natural gas at a maximum operating pressure of 600 psi. (O'Neal report; Decision and Order Granting a Permit, Docket No. P-740 (September 26, 1975)).
4. Pipeline Permit No. 869 expired on September 26, 2000. (O'Neal report). Moulton failed to timely file a petition for an extension of the permit. (O'Neal report; testimony of Mr. Buss, Mr. O'Neal; petition for permit). Board staff discovered through a review of permit records that the permit had expired, and by letter dated February 3, 2003, notified Moulton. (O'Neal report).

5. On March 19, 2003, Moulton filed a petition and exhibits for a permit for the existing pipeline. (testimony of Mr. William Buss; petition for permit). Moulton amended its petition on August 15 and October 7, 2003. (petition for permit). The petition is for a 2.375-inch diameter steel pipeline 5.3 miles long in Appanoose County, Iowa, with a maximum allowable operating pressure (MAOP) of 600 psig. (petition for permit; testimony of Mr. Buss; O'Neal report). The pipeline is a lateral that connects the distribution facilities of the City of Moulton with the gas transmission pipeline of the ANR pipeline company and supplies natural gas to 275 residential and commercial customers of Moulton. (testimony of Mr. Buss; petition for permit; O'Neal report).

6. Moulton caused notice of the hearing to be published in Appanoose County in the Ad-Express and Daily Iowegian and Citizen, a newspaper of general circulation in the county, on December 13 and 20, 2003. (proof of publication).

7. Continued operation of this pipeline is necessary to provide natural gas service to the city of Moulton, Iowa. (petition for permit; testimony of Mr. Buss). The pipeline provides natural gas for 275 residential and commercial customers and provides an energy source for heating, cooking, and hot water. (testimony of Mr. Buss). Therefore, the service promotes the public convenience and necessity. (petition for permit; testimony of Mr. Buss).

8. The pipeline continues to comply with the design, construction, and safety requirements of Iowa Code Chapter 479, 199 IAC § 10.12, and 49 C.F.R.

Part 192. (petition for permit; testimony of Mr. Buss; O'Neal report). No further safety-related terms, conditions, or restrictions need to be imposed pursuant to Iowa Code § 479.12. (petition for permit; testimony of Mr. Buss; O'Neal report).

9. The location and route of the pipeline are reasonable and no further terms, conditions, or restrictions regarding them need to be imposed pursuant to Iowa Code § 479.12. (petition for permit; O'Neal report; testimony of Mr. Buss).

10. Moulton has property subject to execution within this state, other than pipelines, of a value in excess of \$250,000, as required by Iowa Code § 479.26 and 199 IAC § 10.2(1)(d). (petition Exhibit D).

11. No written objections to the petition for permit renewal were filed, and no objectors appeared at the hearing. (testimony of Mr. O'Neal; Docket P-853 file).

12. Moulton has all required easements and permits it needs for the pipeline. (testimony of Mr. Buss; Exhibits 1 through 13).

13. As discussed in the body of this decision, at the hearing, Moulton and the Consumer Advocate jointly proposed a compromise of the civil penalty issue, under which the Board would assess a civil penalty of \$375 to be paid by Moulton.

CONCLUSIONS OF LAW

1. The Board has the authority to grant, amend, and renew permits for the construction, operation, and maintenance of pipelines for the intrastate transportation of natural gas. Iowa Code §§ 479.1, 479.4, 479.12, and 479.18; 199 IAC Chapter 10.

2. The Board has jurisdiction over Moulton, and over the petition for permit it has filed. Iowa Code §§ 479.2, 479.5, 479.6, 479.12, and 479.18.

3. The petition of Moulton for a pipeline permit in Docket No. P-853 should be granted. Iowa Code §§ 479.11, 479.12, and 479.26; 199 IAC Chapter 10.

4. The provisions of Iowa Code § 476.29 do not apply to this permit, because the pipeline was constructed prior to June 1, 1999. Iowa Code § 479.29(12).

5. As discussed in the body of this decision, the parties' proposed compromise regarding the civil penalty is reasonable in light of the whole record, consistent with law, and in the public interest. Iowa Code §§ 479.3, 479.19, 479.23, 479.31; 199 IAC 7.2(11); Corn Belt I, Corn Belt II, Interstate Power. It therefore should be approved.

IT IS THERE ORDERED:

1. Official notice is taken of the report dated October 31, 2003, filed in this docket by Mr. Jeffrey L. O'Neal, utility regulatory engineer for the Board.

2. The petition for a pipeline permit filed by Moulton in this docket is granted. A permit will be issued if this proposed decision and order becomes the final order of the Board.

3. The Board retains jurisdiction of the subject matter in this docket.

4. The proposed compromise regarding the civil penalty is approved. Moulton must pay a civil penalty in the amount of \$375.

5. This proposed decision will become the final decision of the Board unless, within 15 days of its issuance, the Board moves to review the decision or a party files an appeal of the decision with the Board. Iowa Code § 17A.15(3); 199 IAC 7.8(2).

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 21st day of January, 2004.