STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: ATMOS ENERGY CORPORATION	DOCKET NO. P-856

PROPOSED DECISION AND ORDER IMPOSING CIVIL PENALTY AND GRANTING PERMIT

(Issued October 6, 2005)

APPEARANCES:

MR. ROBERT F. HOLZ, JR., Attorney at Law, DAVIS, BROWN, KOEHN, SHORS & ROBERTS, P.C., The Financial Center, 666 Walnut Street, Suite 2500, Des Moines, Iowa 50309, appearing on behalf of Atmos Energy Corporation.

MR. JOHN F. DWYER, 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

On September 15, 2003, Atmos Energy Corporation (Atmos) filed a petition and exhibits for a pipeline permit for an existing natural gas pipeline in Lee County, Iowa. (petition for permit; O'Neal report; Tr. 20.) The pipeline has a maximum allowable operating pressure of 975 pounds per square inch gauge (psig). (petition for permit; O'Neal report; Tr. 21-23.) The pipeline requires a permit because it is a transmission line and because it operates at a pressure greater than 150 psig. 199 IAC 10.16; 49 CFR § 192.3.

On April 13, 1978, renewal Permit No. R-886 was issued to Keokuk Gas Service Company (Keokuk Gas) in Docket No. P-746 for the section of the pipeline called the Keokuk Main Line.[1] (O'Neal Report.) On the same date, renewal Permit No. R-885 was issued to Keokuk Gas in Docket No. P-520 for the section of the pipeline called the Montrose Lateral.[2] (O'Neal Report.) Both of these renewal permits expired on July 10, 2000. (permits; O'Neal report; Tr. 16, 26, 28.) Although the Board originally issued two separate permits for the separate sections of the pipeline, the Board now considers the separate sections as one pipeline that should be issued a single permit. Docket No. P-856 "Order Assigning to Presiding Officer" (August 2, 2005).

The pipeline transports natural gas from a connection with an ANR Pipeline Company pipeline in Ft. Madison to regulator stations in and near the cities of Montrose and Keokuk, where the gas pressure is reduced for delivery through gas distribution mains to customers. (petition for permit; O'Neal report; Tr. 20.) The section of the pipeline originally constructed in 1962 (the Montrose Lateral) consists of .366 miles of 4-inch diameter natural gas pipeline. (petition for permit; O'Neal report.) The section of the pipeline constructed in 1949-50 and 1957 (the Keokuk Main Line) consists of two parallel pipelines running between Ft. Madison and

[1] Keokuk Gas was acquired by United Cities Gas Company, and United Cities Gas Company was acquired by Atmos in 1997. (Tr. 22.) The Keokuk Main Line was originally constructed and permitted in 1949-50. (O'Neal Report; Tr. 30.) In 1957, the permit was amended to allow construction of an additional loop of the pipeline. (O'Neal Report.)
[2] The Montrose Lateral was originally permitted in 1962. (O'Neal Report.)

Keokuk that include 12.1 miles of 4-inch and 6-inch diameter pipeline and 12.2 miles of 6-inch and 8-inch diameter pipeline. (petition for permit; O'Neal report; Tr. 20.)

Atmos filed amendments to its petition and exhibits and provided additional information on April 7 and September 28, 2004, and June 6, 2005. (petition for permit; O'Neal report; Tr. 20.) On August 2, 2005, the Utilities Board (Board) assigned this proceeding to the undersigned administrative law judge to establish a procedural schedule and exercise the authority provided in 199 IAC 7.1(4).

On August 11, 2005, the undersigned issued an order establishing a procedural schedule, proposing to take official notice, and providing notice of the hearing. In that order, the undersigned set September 20, 2005, as the date for the hearing on the petition, and proposed to take official notice of a report concerning the pipeline prepared by Mr. Jeffrey O'Neal, utility regulatory engineer for the Board dated July 22, 2005.

The hearing was held on September 20, 2005, in Board Conference Room 3, 350 Maple Street, Des Moines, Iowa. Atmos was represented by its attorney, Mr. Robert F. Holz. Mr. Ernie Napier, manager of engineering services for the Mid-States division of Atmos Energy, testified on behalf of Atmos. Mr. O'Neal testified as the engineer selected by the Board to examine the proposed route and permit petition pursuant to Iowa Code § 479.11. The Consumer Advocate Division of the Department of Justice (Consumer Advocate) was represented by its attorney, Mr. John F. Dwyer.

DISCUSSION REGARDING ASSESSMENT OF CIVIL PENALTY

Iowa Code § 479.31 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. 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. In this case, Atmos violated the statute by failing to timely renew the permits for the Keokuk Main Line and the Montrose Lateral. The only contested issue in this case is whether a civil penalty should be assessed, and if it should, the amount of the penalty.

The Consumer Advocate's Position

The Consumer Advocate argues that a civil penalty in this case is appropriate for a number of reasons. It argues the violation is of a reasonably serious nature in that the permit is the basic mechanism the state has created through which it regulates the construction and operation of gas pipelines. It states that the statute provides for an initial review of all aspects of the construction of the line and then creates a procedure for re-review no less than every 25 years. It states the periodic review of the permit gives the company and the Board an opportunity for a full-scale re-examination of the pipeline, including its purpose, characteristics, safety issues, and any other pertinent matters that may need attention. The Consumer Advocate argues if a permit is allowed to expire, the periodic overall review is not performed within the time limits of the permit.

The Consumer Advocate argues additional factors supporting a penalty include that the permits in this case were allowed to expire and 2.5 years passed before the fact was discovered and Board staff discovered the expiration rather than the company. The Consumer Advocate argues there is no reason to believe the company would have discovered the expiration without notification by Board staff.

The Consumer Advocate further argues the violation was recent and several probable safety violations were noted as a result of the Board inspection, including failure to adequately document maximum allowable operating pressure. It argues the company is of substantial size. It argues the company has only recently undertaken a major effort to organize its record keeping and regulatory compliance system in a comprehensive manner. Although the company's effort to create a workable system is to be commended, the Consumer Advocate argues the system should have been in place years earlier. It argues the previous inadequate system likely contributed to the violation. The Consumer Advocate argues a penalty would give further impetus to successful implementation of the new system and confirm its importance in the eyes of the officers and employees of the company.

The Consumer Advocate argues that several mitigating factors exist. These include that the company could argue it was misled by the fact that the initial terms of the permit were for less than the 25-year maximum allowed by statute. The Consumer Advocate notes Board rule 10.7 provides that permits normally expire 25 years from the date they are issued. However, the Consumer Advocate argues, the Board has the authority to set permit length and its decision must be respected.

Furthermore, the Consumer Advocate argues, there is no indication the company was relying on the assumption the permit terms were 25 years. It also argues there is no indication the company was preparing a permit renewal application when it was informed of the possible expiration. The Consumer Advocate argues it appears the company did not know when the permits were to expire.

Another mitigating factor cited by the Consumer Advocate is that the violation is not of the same gravity as a failure to obtain a permit. It states the pipeline inspection program does not rely exclusively on permit renewal applications being timely submitted. It also notes the time period the permits were expired was not especially long in relation to the time period the permits were in effect and the 25-year period set by statute and noted in the rule. The Consumer Advocate also notes that Atmos cooperated with Board staff when notified of the problem and pursued the permit application diligently. It states that the safety issues noted by Board staff have been acceptably resolved for the most part. Finally, the Consumer Advocate notes, this is Atmos' first violation of the permit requirements.

Therefore, the Consumer Advocate argues that the Board may wish to consider a moderate civil penalty as an appropriate response to the violation.

Atmos's Position

Atmos' witness Mr. Napier testified that the terms of the permits for the pipelines at issue in this case came up while the company was working on a nearby pipeline project. (Tr. 25.) He testified that by letter dated February 3, 2003, Board staff notified Atmos the permits would expire on April 13, 2003. (Tr. 25.) He testified

that permits are usually issued for 25 years and these had been issued on April 13, 1978. (Tr. 25.) Therefore, he testified, Atmos filed petitions for permit renewal on April 7, 2003. (Tr. 25, 36.) However, he testified, the permits actually expired on July 10, 2000. (Tr. 26.) By letter dated June 3, 2003, Board staff notified Atmos that because the permits had expired before the renewal petitions were filed, Atmos would need to withdraw the renewal petitions and file a petition for a new permit. (Tr. 26.) Mr. Napier testified Atmos then filed a petition for a pipeline permit on September 15, 2003, consolidating both pipelines into one petition. (Tr. 26, 36.)

Mr. Napier testified that Atmos searched its records in Keokuk to look for records related to the pipelines at issue in this case. (Tr. 36.) Atmos found some documentation of the permitting process in a box in the attic of the company's office in Keokuk. (Tr. 36.) Mr. Napier did not know if the company actually had the permits themselves in the files. (Tr. 36-37.)

Mr. Napier testified there was nothing in place to alert the company that the permits were going to expire. (Tr. 37.) He testified that Atmos did not discover the permits in this case had expired or file a timely petition for renewal because Atmos had no formal information database available or procedures in place prior to 2001 to track state-issued permits or other similar records. (Tr. 26.) Mr. Napier testified that some of Atmos's utility divisions tracked certain of their property and permit information in various database or spreadsheet formats. (Tr. 26.) He further testified that Atmos's Mid-States division had no comprehensive system that housed information on anything other than easement and right-of-way instruments. (Tr. 27.)

He testified that Atmos had a very fragmented system of maintaining its property records. (Tr. 33.)

In the spring of 2001, Atmos began to develop a system to house information regarding its tens of thousands of property, franchise, and permit records related to its natural gas pipeline and distribution systems across the 12 states in which it operates. (Tr. 26.) Mr. Napier testified that Atmos has created a new system, known as the Atmos Real Estate System (ARES), to house all its utility division records and manage them in a comprehensive manner. (Tr. 27, 33, 37.) The system is capable of tracking information pertinent to Board-issued permits, including permit expiration dates. (Tr. 27.) Mr. Napier testified that Atmos would input data pertinent to its Board permits into the system for both accessibility and tracking expiration. (Tr. 27.) At the hearing, Mr. Napier committed to complete input of this data prior to the end of October 2005. (Tr. 42.)[3] In order to ensure effectiveness, Atmos' Mid-States division right-of-way management will run permit reports and distribute them to division engineering not less than annually as part of the division's internal pipeline and right-of-way reporting procedures in an effort to ensure that permits do not lapse or expire in the future. (Tr. 27.) The engineering department will have the responsibility to check the system. (Tr. 37.)

[3] On September 29, 2005, Atmos filed a letter stating that the Roquette pipeline permit data was entered into the ARES database on September 1, 2005.

Mr. Napier testified that Atmos has only one other permit issued by the Board, and it was issued on May 15, 2003 in Docket No. P-851. (Tr. 26, 42-43.) He testified that other states in which Atmos operates do not have a permitting process for pipelines. (Tr. 33, 39.)

Mr. Napier testified that, although Atmos is the largest natural gas only distribution company in the United States, its presence in Iowa and resulting income is relatively small. (Tr. 28.) Atmos serves approximately 3.2 million customers nationally and approximately 5,000 customers in Iowa. (Tr. 28, 44.)

Atmos argues that the Board should not assess a civil penalty in this case because these pipelines had been permitted by a predecessor company and were operational without incident. (Tr. 28, 48.) It argues that, although the permit expired on its face in 2000, the 25-year period from issuance of the permit did not end until after the renewal application was filed. (Tr. 28.) Mr. Napier testified that even the staff letter referenced the April 2003 date. (Tr. 28.) Atmos argues there was confusion about the question of when the permit was to be renewed.

Atmos further argues that it did not intentionally violate the permit requirements. (Tr. 28.) It argues it filed for renewals before the April 13, 2003, date given in the staff letter, and once it was notified the permits had actually expired, it promptly made all filings required by staff in order to obtain a new permit and bring Atmos into compliance with Iowa statutory and regulatory requirements. It argues it has implemented appropriate procedures to ensure compliance with permit renewal requirements in the future.

Atmos argues that mitigating circumstances in this case include that the company does not have experience with permits with a renewal requirement. It argues no purpose would be served by imposition of a penalty. Atmos argues it cooperated with Board staff in pursuing the new permit. It argues the company now has a system in place to take care of their entire system, and it will input the information about this permit including the expiration date into the system. Therefore, it argues, imposition of a civil penalty would not incent the company to do anything and a penalty is not warranted under the circumstances.

IUB Staff testimony

The Board ordinarily grants pipeline permits for a 25-year period. (Tr. 14.) Mr. Jeffrey O'Neal testified there is nothing in the files to indicate why the Board issued the prior permits in this case for periods of less than 25 years. (Tr. 14-15.) However, it is his understanding that Board past practice was to specify the expiration date of a renewal permit as 25 years after the expiration date of the previous permit, if the previous permit had expired before the renewal permit was issued. (Tr. 15.) Mr. O'Neal testified that the pipeline permit for the Keokuk Main Line was originally issued on July 10, 1950, and expired on July 10, 1975. (Tr. 13, 15.) He further testified that the renewal permit for the line was issued on April 13, 1978, and specified an expiration date of 25 years after the date the previous permit had expired. (Tr. 15.) He also testified that the permit for the Montrose lateral had not expired at the time it was renewed in 1978, but he assumed the Board made the expiration dates the same for both pipelines. (Tr. 15-16.)

Board staff sent a letter to Atmos on February 3, 2003, in which it stated the permits would expire on April 13, 2003. (Exhibit 2; Tr. 16.) This date is a mistake. (Tr. 16.) As stated on the face of the permits, renewal permits R-885 and R-886 expired on July 10, 2000. (Tr. 16.)

Analysis

Iowa Code § 479.31 provides that in determining the amount of a penalty, 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. Each case is fact sensitive and is to be judged on its own merits. 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 I).

In the past few years, the Board and the undersigned administrative law judge have considered assessment of civil penalties in eight prior electric franchise and pipeline permit cases: In re: Corn Belt Power Cooperative, Docket No. E-21570, "Order Canceling Hearing, Accepting Compromise, and Assessing Civil Penalty," (February 1, 2002) (Corn Belt I); In re: Corn Belt Power Cooperative, Docket No. E-21519, "Order Canceling Hearing, Accepting Compromise, and Assessing Civil Penalty," (August 28, 2003) (Corn Belt II); Interstate Power I; In re: Moulton Municipal Gas Company, Docket No. P-853, "Proposed Decision and Order Granting Permit," (January 21, 2004) (Moulton); In re: City of Lorimor, Docket No. P-852, "Proposed Decision and Order Granting Permit," (June 21, 2004) (Lorimor); In re:

Interstate Power and Light Company, Docket No. E-21686, "Order Canceling Hearing, Accepting Compromise, and Assessing Civil Penalty," (September 15, 2004) (Interstate Power II); In re: MidAmerican Energy Company, Docket No. P-857, "Proposed Decision and Order Granting Permit," (May 12, 2005) (MidAmerican); and In Re: Emmetsburg Municipal Utilities, Docket No. P-854, "Proposed Decision and Order Imposing Civil Penalty and Granting Permit," (July 22, 2005) (Emmetsburg).

Although several of these cases involved the failure to seek an electric franchise or a pipeline permit, rather than a failure to renew a permit that had already been obtained, 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. The Corn Belt and Interstate Power II cases involved failure to seek an electric franchise prior to construction rather than failure to seek or renew a pipeline permit. 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 and Interstate Power II cases may also be considered as guidance when deciding whether to assess a civil penalty and the appropriate amount to assess.

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 an 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, 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 II, Interstate Power and Light Company (IPL) received a franchise from the Board for a segment of electric transmission line in 2003. Other parts of the line were to be constructed inside the city limits of Iowa Falls, so no franchise was required. Iowa Code § 478.1. However, IPL moved the line location to outside the city limits (thereby triggering the franchise requirement), and began construction without first obtaining a franchise. Once the problem was identified, IPL ceased construction on the segment and filed a petition for a franchise. The Board imposed a civil penalty of $1,000. In imposing the penalty, the Board stated the violation's seriousness was in between the two Corn Belt cases, but was not a self-reported violation like Corn Belt II, because IPL did not discover the error until after Board staff had made inquiries unrelated to the possible franchise violation. The Board also stated IPL immediately ceased construction activities, accepted full responsibility for the violation, requested the Board to impose an appropriate penalty without hearing, and identified specific steps it was taking to avoid future violations. The Board stated IPL did not adequately examine its processes after the warning the

Board issued to all companies in Corn Belt II. The Board further stated it is serious about obtaining compliance with the requirements and again issued a warning to all companies to examine their processes. It stated that all companies "are put on notice that future violations that are not self-reported could result in significantly higher penalties." Interstate Power II, p. 6.

The Interstate Power I case involved a failure to obtain a permit for a pipeline constructed in 1980 and 1982 when a permit was clearly required as of 1982. Interstate Power did not discover it had failed to obtain the required permit until August 2002. In reaching a decision not to impose a penalty, the undersigned and the Board considered that the company discovered the violation, immediately contacted the Board upon discovery, promptly filed a petition for a permit, 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. Also considered were the facts that the violation was committed by prior staff who no longer worked for the company and current staff exhibited exemplary behavior once the violation was discovered. Therefore, the proposed and final decisions held that imposition of a civil penalty would not serve a valid punitive or deterrent purpose. In its decision affirming the proposed decision and 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 I, p. 5.

The Moulton case, like this case, involved the failure to timely renew a pipeline permit, rather than the failure to obtain a permit when one was required. At the hearing in the Moulton case, the parties proposed a compromise of the civil penalty issue, in which Moulton agreed to pay a civil penalty of $375. Moulton, p. 3. Important factors considered in approving the compromised penalty amount included that the failure to renew the permit was a relatively recent violation and Board staff, rather than Moulton's staff, discovered the violation. Other important factors included that Moulton was a very small town with limited staff, Moulton cooperated with Board staff upon discovery of the violation and promptly filed a petition for a permit, there were no other known violations, the pipeline had been operated and maintained in compliance with all requirements other than the failure to renew, there was no safety issue with respect to the pipeline, and Moulton implemented a procedure to ensure its permit would be timely renewed in the future.

The Lorimor case involved a transmission pipeline with a maximum allowable operating pressure (MAOP) of 150 psig that had been constructed in 1971 without a permit. There were a number of factors considered important in the decision not to impose a penalty. A permit was not required when the pipeline was constructed in 1971 because it had an MAOP of 150 psig. A permit was required when the statute changed in 1988. The decision stated that failure to seek a permit when the law changed is different than failure to seek a permit when a company takes some

affirmative action such as construction of a pipeline. It stated when a pipeline company plans to construct a pipeline, it must do so in conformance with applicable law, and it therefore must learn what the law requires. There was no triggering action on the part of Lorimor that would have caused it to know the statute changed, and the decision noted the statutory change was subtle and was contained in a bill that primarily dealt with regulation of interstate pipelines. However, the decision stated that pipeline owners continue to have an affirmative duty to know what is in the law and comply with it, even if the law changes.

Other important factors included that Lorimor was a very small town with a limited number of customers, one full-time employee, and one part-time employee. The Lorimor pipeline had been inspected by Board staff for many years, and when citations were issued as a result of the inspections, Lorimor timely corrected the matters. There were no major violations of applicable requirements. It was not known why a permit was not obtained prior to construction, although an engineer testified that to the best of his knowledge, the consultants hired to design and construct the pipeline assumed no permit was required because the pipeline would be operated at 150 psig or less. Board staff discovered the line had no permit, notified the city a permit was required, and as soon as the city learned of the permit requirement, it promptly applied for one. Lorimor was cooperative with Board staff in seeking to obtain a permit once it learned one was required, and worked with Board staff to amend its petition as needed. The Lorimor pipeline conformed to all pipeline safety standards and there were no safety issues with respect to the pipeline. The

city took steps to ensure the pipeline would be operated in conformance with all applicable requirements and the city owned no other pipelines.

The MidAmerican case involved a petition for an existing transmission pipeline with an MAOP of 125 psig that was constructed in 1970. Several factors were considered in the decision not to assess a penalty. It was unclear whether a permit was required when the line was constructed. From January 1 through July 1, 1970, a permit would have been required, but as of July 1, 1970, when the statute was amended, it apparently no longer required a permit since the line had an MAOP of less than 150 psig. Between 1971 and 1988, there was confusion regarding whether pipelines that operated at less than 150 psig were required to obtain a permit, and board decisions interpreting the statute as it existed from July 1, 1970, to July 1, 1988, were not consistent. The first time it was clear that a permit was required was in 1988 when the statute was changed, and the considerations discussed above with respect to this statutory change and civil penalty assessment in the Lorimor decision were applicable to the MidAmerican case as well.

In MidAmerican, Board staff discovered the pipeline did not have a permit and notified the company. MidAmerican immediately researched whether there was a permit, and once it learned there was not, it promptly filed a petition for a permit with the Board. MidAmerican was cooperative with Board staff in working on obtaining a permit for the pipeline. Other important factors included that Board staff had regularly inspected the pipeline, there were only four minor safety violations that were promptly corrected, and there were no other safety issues regarding the pipeline.

MidAmerican had no prior violations of the requirement to obtain a permit, it put procedures in place to ensure there would be no future violations, and it stated it consults with Board staff when there is any question whether a permit is required.

In Emmetsburg, the municipal utility constructed a pipeline in 1996 without seeking a permit from the Board. The undersigned imposed a civil penalty of $300 for the violation. The law clearly required Emmetsburg to obtain a pipeline permit before it began construction. Unlike in MidAmerican and Lorimor, the Emmetsburg violation did not arise from a subtle change in the law without new construction by the pipeline owner. The fact that Emmetsburg did not discover the violation itself and report it to the Board was important to the decision to impose a civil penalty.

In determining the amount of the civil penalty, the following factors were considered. The violation was serious. However, once notified, Emmetsburg staff began preparing a petition and promptly filed it. Emmetsburg staff was professional and cooperative with Board staff in getting the pipeline permitted and current Emmetsburg staff was not involved in the decision that a permit was not required. Emmetsburg is a relatively small town with limited utility staff. Board staff had inspected the pipeline every other year and the only probable violation had been corrected. There were no safety or route problems with the pipeline and Emmetsburg had no other violations. Emmetsburg accepted responsibility for the violation and took affirmative steps to ensure there would be no future violations.

In this case, Atmos failed to timely renew its pipeline permits. This is a serious violation, although not as serious as the failure to obtain a permit in the first place.

The violation is relatively recent. Atmos did not discover that its pipeline permits had expired. Rather, Board staff discovered this and notified Atmos. Although there was confusion even by Board staff as to the date the permits expired, it is the responsibility of the permit holder, not Board staff, to be aware of its permits' expiration dates and to timely file petitions for renewal. Iowa Code § 479.19, 479.23; 199 IAC 10.8. The cases show that self-discovery and self-reporting of a violation by the owner is a very important mitigating factor in the decision whether to impose a civil penalty and in lowering the amount of any penalty if one is assessed. In this case, the law clearly required Atmos to timely renew its permits, it did not do so, and it did not self-discover and self-report its failure to do so. Therefore, it is appropriate to assess a civil penalty in this case.

Atmos' arguments regarding any confusion over the permits' expiration date are not persuasive with respect to whether a civil penalty should be assessed. The only confusion came about after Board staff erroneously notified Atmos that its permits would expire in April 2003. Prior to staff notification, the evidence in the record shows that Atmos was not aware its permits had expired and was not in the process of preparing petitions for renewal. Even if there had not been confusion regarding the permit expiration date, Atmos would still have failed to timely file an application for renewal.

Other important factors to be considered in determining the amount of the penalty include the following. Atmos is a large company with operations in 12 states and serves approximately 3.2 million customers. Although it only serves about 5,000

Iowa customers, Iowa Code § 479.31 does not state that the size of the business is limited to a company's Iowa operations. Upon notification by Board staff that its permits would expire on April 13, 2003, Atmos promptly filed for renewal prior to the expiration date given. However, Atmos did not self-report that the permits actually expired on July 10, 2000, even after notification of the wrong date by Board staff. Mr. Napier testified that, although the company was able to find some permitting records, he did not know if the company actually had the permits themselves. (Tr. 36-37.) Once Board staff discovered the permits had already expired and told Atmos it would have to file a petition for a new permit, Atmos promptly filed its petition and cooperated with Board staff to get the pipeline permitted. (Tr. 12-13, 25-26.)

Board staff has inspected the pipeline since at least 1977. (Tr. 12.) Mr. O'Neal inspected the pipeline in March 2005. (O'Neal Report.) This inspection revealed several probable violations of the Minimum Federal Safety Standards in 49 CFR Part 192. (O'Neal Report.) Mr. O'Neal also listed several advisories in his inspection report. (O'Neal Report.) Atmos has corrected the probable violations and sufficiently addressed each of the advisories. (Tr. 11-12, 21-23; O'Neal Report.) Mr. O'Neal also reviewed the most recent previous inspection of the pipeline done in 2003, and that inspection found no probable violations. (Tr. 12.)

Mr. O'Neal found no evidence of operational or maintenance problems with the pipeline that would prevent it from continuing to operate. (O'Neal Report.) The pipeline appears to be in good condition and capable of continuing in operation as it

has been operated. (O'Neal Report.) There are no problems with the route of the pipeline. (O'Neal Report.)

Since Atmos took over operation of the pipeline, there are no other instances in which Atmos failed to timely file for permit renewal. (Tr. 13.) Atmos only operates one other pipeline in Iowa, and that pipeline was recently permitted. (Tr. 26.) Finally, Atmos has implemented a system to keep track of its property records, including its Iowa pipeline permits with their associated expiration dates, and will generate reports to ensure that its permits are timely renewed in the future. (Tr. 26-27.)

Considering all of the above factors, and considering the penalties imposed in prior cases, it does not appear that imposition of a large civil penalty is necessary or appropriate. Therefore, the undersigned will impose a civil penalty in the amount of $500 to be paid within 30 days of the date of this order.

FINDINGS OF FACT

1. Atmos is a pipeline company within the meaning of Iowa Code § 479.2. (Tr. 19-20; petition for permit; O'Neal Report.)

2. On September 15, 2003, Atmos filed a petition and exhibits for a pipeline permit for an existing natural gas transmission pipeline in Lee County, Iowa with a maximum allowable operating pressure of 975 psig. (petition for permit; O'Neal report; Tr. 20-23.) Atmos filed amendments to its petition and exhibits and provided additional information on April 7 and September 28, 2004, and June 6, 2005. (petition for permit; O'Neal Report; Tr. 20.) The petition is for an existing pipeline built in 1949-50, 1957, and 1962. (petition for permit; O’Neal report; Tr. 30,

45.) It transports natural gas from a connection with an ANR Pipeline Company pipeline in Ft. Madison to regulator stations in and near the cities of Montrose and Keokuk. (petition for permit; O'Neal report; Tr. 20.)

3. On April 13, 1978, renewal Permit No. R-886 was issued to Keokuk Gas Service Company (Keokuk Gas) in Docket No. P-746 for the section of the pipeline called the Keokuk Main Line. (O'Neal Report.) On the same date, renewal Permit No. R-885 was issued to Keokuk Gas in Docket No. P-520 for the section of the pipeline called the Montrose Lateral. (O'Neal Report.) Both of these renewal permits expired on July 10, 2000. (permits; O'Neal report; Tr. 16, 26, 28.) Although the Board originally issued two separate permits for the separate sections of the pipeline, the Board now considers the separate sections as one pipeline that should be issued a single permit. Docket No. P-856 "Order Assigning to Presiding Officer" (August 2, 2005).

4. Atmos caused notice of the hearing to be published in Lee County in The Daily Gate City, a newspaper of general circulation in the county, for two successive weeks. The second publication was on September 6, 2005. (proof of publication.)

5. The pipeline follows a route described in Exhibit A and shown on Exhibit B attached to the petition for a permit (as amended). (petition Exhibits A and B; O'Neal Report.) The section of the pipeline originally constructed in 1962 (the Montrose Lateral) consists of .366 miles of 4-inch diameter natural gas pipeline. (petition for permit; O'Neal report.) The section of the pipeline constructed in 1949-

50 and 1957 (the Keokuk Main Line) consists of two parallel pipelines running between Ft. Madison and Keokuk that include 12.1 miles of 4-inch and 6-inch diameter pipeline and 12.2 miles of 6-inch and 8-inch diameter pipeline. (petition for permit; O'Neal report; Tr. 20.) There are no problems with the location and route of the pipeline 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; Tr. 24-25.)

6. The two sections of the pipeline are the only feeds for the distribution systems within the cities of Montrose and Keokuk. (Tr. 20; petition for permit; O'Neal Report.) Without this pipeline, natural gas service to the two cities would be impossible absent the construction of new or additional pipelines and other facilities. (Tr. 20; petition for permit; O'Neal Report.) The parallel pipelines of the Keokuk Main Line allow sections of either transmission line to be taken out of service or operating pressure lowered for operation, maintenance, repair, or replacement activities without interruption of service to customers in Montrose and Keokuk. (Tr. 20; petition for permit; O'Neal Report.) Therefore, the pipeline promotes the public convenience and necessity. (Tr. 20; petition for permit; O'Neal Report.)

7. Board staff has inspected the pipeline since at least 1977. (Tr. 12.) Mr. O'Neal inspected the pipeline in March 2005. (O'Neal Report.) This inspection revealed several probable violations of the Minimum Federal Safety Standards in 49 CFR Part 192. (O'Neal Report.) Mr. O'Neal also listed several advisories in his inspection report. (O'Neal Report.) Atmos has corrected the probable violations and

sufficiently addressed each of the advisories. (Tr. 11-12, 21-23; O'Neal Report.) Mr. O'Neal also reviewed the most recent previous inspection of the pipeline done in 2003, and that inspection found no probable violations. (Tr. 12.) Mr. O'Neal found no evidence of operational or maintenance problems with the pipeline that would prevent it from continuing to operate. (O'Neal Report.) The pipeline appears to be in good condition and capable of continuing in operation as it has been operated. (O'Neal Report.) The pipeline complies 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; O'Neal report; Tr. 11-12, 21-23.) No further safety-related terms, conditions, or restrictions need to be imposed pursuant to Iowa Code § 479.12. (petition for permit; O'Neal report; Tr. 11-12, 21-23.)

8. Atmos has filed satisfactory proof of its solvency and ability to pay damages as required by Iowa Code § 479.26 and 199 IAC 10.2(1)"d". (petition Exhibit D; Tr. 25, 32.)

9. No written objections to the petition for a permit were filed and no objectors appeared at the hearing. (Tr. 16; Docket No. P-856 file.)

10. By letter dated February 3, 2003, Board staff mistakenly notified Atmos that the pipeline permits would expire on April 13, 2003. (Tr. 25; Exhibit 2; O'Neal Report.) Atmos filed petitions for permit renewal on April 7, 2003. (Tr. 25, 36.) The permits actually expired on July 10, 2000. (permits; O'Neal Report; Tr. 16, 26, 28.) By letter dated June 3, 2003, Board staff notified Atmos that because the permits had expired before the renewal petitions were filed, Atmos would need to withdraw the

renewal petitions and file a petition for a new permit. (Tr. 26.) Atmos then filed its petition September 15, 2003. (petition; O'Neal Report; Tr. 26, 36.) Atmos did not discover the permits in this case had expired or file a timely petition for renewal because Atmos had no formal information database available or procedures in place prior to 2001 to track state-issued permits or other similar records. (Tr. 26.)

11. Atmos' failure to discover its permits had expired and timely file for permit renewal is a serious violation. The violation is relatively recent. Atmos is a large multi-state company. (Tr. 28, 43-44.) However, once Board staff told Atmos it would have to file a petition for a new permit, Atmos promptly filed its petition and cooperated with Board staff to get the pipeline permitted. (Tr. 12-13, 25-26.) Atmos has implemented a system to prevent future violations. (Tr. 26-27.) There are no safety issues regarding the pipeline. (Tr. 11-12, 21-23; O'Neal Report.) Atmos has no prior violations of state pipeline permitting renewal requirements. (Tr. 13, 26.)

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 10.

2. The Board has jurisdiction over Atmos and over the petition for a natural gas pipeline permit it has filed. Iowa Code §§ 479.2, 479.3, 479.5, 479.6, 479.12, and 479.18.

3. The petition of Atmos for issuance of a permit for the natural gas pipeline in this docket should be granted. Iowa Code §§ 479.11, 479.12, and 479.26; 199 IAC 10.

4. Since the pipeline was constructed in 1949-50, 1957, and 1962, and Atmos will not disturb any agricultural land, Atmos is not required to file a land restoration plan. Iowa Code § 479.29; 199 IAC 9.

5. Iowa Code § 479.31 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. 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. In determining the amount of the penalty, 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.

6. Self-discovery of a violation by the owner and prompt reporting of the violation to the Board is a very important mitigating factor in the decision whether to impose a civil penalty and in lowering the amount of any penalty if one is assessed. Corn Belt I; Corn Belt II; Interstate Power I; Moulton; Lorimor; Interstate Power II; MidAmerican; and Emmetsburg. In this case, Atmos did not discover the violation itself.

7. As discussed in the body of this decision, considering the entire circumstances and prior decisions, it is appropriate to impose a civil penalty in this

case, although it is not necessary or appropriate to impose a large civil penalty. Iowa Code §§ 479.5, 479.23, 479.31 (2005); 199 IAC 10.7, 10.8; Corn Belt I; Corn Belt II; Interstate Power I; Moulton; Lorimor; Interstate Power II; MidAmerican; and Emmetsburg.

IT IS THEREFORE ORDERED:

1. Official notice is taken of the report dated July 22, 2005, and amended at the hearing, filed in this docket by Mr. Jeffrey O'Neal, regulatory engineer for the Board.

2. Pursuant to Iowa Code Chapter 479, the petition for a pipeline permit filed by Atmos in this docket is granted. A permit will be issued if this proposed decision and order becomes the final order of the Board.

3. Pursuant to Iowa Code § 479.31, Atmos is assessed a civil penalty in the amount of $500. Payment in the form of a check made payable to the Iowa Utilities Board shall be forwarded to the Executive Secretary of the Iowa Utilities Board at 350 Maple Street, Des Moines, Iowa 50319-0069. Payment is due within 30 days of the date of this order. The docket number listed on this order shall be listed on the check or in the accompanying correspondence.

4. Arguments made by the parties not addressed specifically in this order are rejected, either as not supported by the evidence or as not being of sufficient persuasiveness to warrant comment.

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

6. This proposed decision will become the final decision of the Board unless appealed to the Board within 15 days of its issuance or the Board votes to review the decision on its own motion. 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 6th day of October, 2005.