

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CORNING MUNICIPAL UTILITIES	DOCKET NO. P-489
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE AND PROPOSING TO
TAKE OFFICIAL NOTICE AND NOTICE OF HEARING**

(Issued March 22, 2006)

On September 15, 2003, Corning Municipal Utilities (Corning) filed a petition and exhibits for a pipeline permit for an existing 3.5-inch diameter natural gas pipeline approximately 2.9 miles long in Adams County, Iowa. Corning constructed the pipeline in 1974. The pipeline transports natural gas from the end of a 4-inch diameter transmission pipeline at the town border station on the north side of the city of Corning to a regulator station on the southwest side of the city of Corning that feeds a distribution system supplying natural gas to the Adams Community Industrial Development Park. The pipeline has a maximum allowable operating pressure of 150 psig. The pipeline requires a permit because it meets the definition of a transmission line. 199 IAC 10.16; 49 CFR 192.3. Corning filed amendments to its petition and exhibits and provided additional information on April 21, 2004, June 16, 2005, and March 1, 2006.

On March 17, 2006, 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 7.3.

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 and 479.18 (2005).

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. The petitioner must also satisfy the financial requirements of Iowa Code § 479.26.

The conduct of this case is governed by Iowa Code chapters 17A and 479, and by Board rules at 199 IAC 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, and issues raised by objectors or any other party. This pipeline was constructed without a permit, and the issues include whether a permit was required at the time of

construction, when a permit was required, whether a civil penalty should be imposed and, if so, the amount of the penalty.

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.

Corning must submit prepared testimony and exhibits prior to the hearing. At a minimum, Corning's prepared testimony must address the issues listed above. In prepared testimony or an affidavit of a corporate officer, Corning must verify that at least \$250,000 worth of the property shown in petition Exhibit D, other than pipelines, is located in Iowa and subject to execution. Iowa Code § 479.26. In its prepared testimony, Corning must disclose the number of employees at the Brown Bear company and whether Brown Bear has enough employees to create a Class 3 location. Corning must also address whether the pipeline contains any high consequence areas and, if so, whether Corning has an integrity management program covering the pipeline. In either prepared testimony or a prehearing brief, Corning must state its position regarding whether the Board should impose a civil penalty pursuant to Iowa Code § 479.31 because Corning did not obtain a permit prior to construction of the pipeline. Corning should address whether a permit was required at the time of construction, when a permit was required, and the factors in § 479.31 when discussing whether a civil penalty is appropriate.

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.

Parties other than Corning 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. Similarly, if the Consumer Advocate takes the position that a civil penalty should or should not be imposed in this case, it must file prepared testimony or a prehearing brief in support of its position according to the procedural schedule.

PARTY STATUS

Corning and the Consumer Advocate are currently the only parties to this proceeding. Iowa Code §§ 17A.2(8) and 475A.2(2). No one has filed an objection to the petition as of the date of this order. Corning does not request the right of eminent domain for this pipeline.

Anyone who has filed or will file an objection pursuant to Iowa Code §§ 479.9 and 479.10 and 199 IAC 10.5 will also be presumed to be a party to this case. However, no objector is entitled to party status merely because that person has written a letter of objection. In order to qualify as a party, the objector must be able to demonstrate some right or interest that may be affected by the granting of the permit.

Iowa Code § 479.9. An objector's status as a party may be challenged at the hearing, and an objector who cannot demonstrate a right or interest that may be affected by the granting of the permit will no longer be considered a party. Therefore, at a minimum, objectors should be prepared to give evidence that will explain the nature of their specific rights or interests they believe should be protected and 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 will be presumed to be parties up to the time of the hearing, an objector will receive copies of all documents that are filed in this docket after the letter of objection has been filed with the Board. If a person files an objection after some or all of the prepared testimony and exhibits have been filed with the Board by other parties, the objector should make direct contact with the parties who have already filed prepared testimony and exhibits in order 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.

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) must 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 the facts 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 the facts 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 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 website at www.state.ia.us/iub.

PROPOSAL TO TAKE OFFICIAL NOTICE

Mr. Jeffrey L. O'Neal, utility regulatory engineer for the Board, has prepared a report in the form of a memo dated March 9, 2006, concerning Corning's petition. A copy of the report is attached to this order. Mr. Reed Helm, utility regulatory inspector for the Board, has also prepared a report dated June 9, 2004, concerning the pipeline. Pursuant to Iowa Code § 17A.14(4), the undersigned administrative law judge proposes to take official notice of the reports 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 reports must file such objection as soon as possible, and no later than five days prior to the hearing. The parties will have the opportunity to contest any information contained in the reports in prepared testimony and at the hearing. Mr. O'Neal and Mr. Helm will be present at the hearing and available for cross-examination regarding their reports.

IT IS THEREFORE ORDERED:

1. Each person who files a letter of objection to Corning's petition in this docket will be presumed to be a party in the proceeding unless it is established at hearing that the objector has no right or interest that may be affected by the pipeline.

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 April 12, 2006, Corning must file prepared direct testimony relating to its petition for a permit for its natural gas pipeline, as discussed in this order. If Corning wishes to file a prehearing brief, it must do so on or before April 12, 2006.

b. If the Consumer Advocate or any objector chooses to file prepared responsive testimony or a prehearing brief, it must do so on or before April 26, 2006.

c. A public hearing for the presentation of evidence and the cross-examination of witnesses concerning the issues identified in this notice of hearing will be held beginning at 10 a.m. on Friday, May 19, 2006, in Board

Conference Room 3, 350 Maple Street, Des Moines, Iowa. Each party must provide a copy of its prepared testimony and exhibits to the court reporter at the hearing. If any party wishes to be connected to the hearing by telephone conference call or have a witness connected by telephone conference call, the party must notify the Board as soon as possible, and no later than Friday, May 5, 2006, so that appropriate arrangements may be made. 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 five business days prior to the hearing to request that appropriate arrangements be made.

d. 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)"a."

4. The undersigned administrative law judge proposes to take official notice of Mr. O'Neal's report dated March 9, 2006, and Mr. Helm's report dated June 9, 2004, which are attached to this order, and of the facts contained therein. Any party objecting to the taking of official notice of the reports should file such objection as soon as possible, and must file such objection no later than five 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 Corning, and will be delivered to the

Consumer Advocate. No persons have filed objections to the petition as of the date of this order.

6. Corning must work with Board staff regarding publication of notice pursuant to Iowa Code § 479.7 and 199 IAC 10.4, and must file proof of publication prior to or at the hearing.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Margaret Munson
Executive Secretary, Deputy

Dated at Des Moines, Iowa, this 22nd day of March, 2006.

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

TO: Docket No. P-489

FROM: Jeffrey L. O'Neal

DATE: March 9, 2006

**SUBJ: Staff Review of Corning Municipal Utilities Petition for
Amendment to Pipeline Permit for 3.5 miles of 3-inch Diameter
Natural Gas Pipeline in Adams County, Iowa.**

On September 15, 2003, Corning Municipal Utilities (Corning) filed a petition for pipeline permit for an existing 3.5 miles of 3-inch diameter natural gas pipeline in Adams County, Iowa, that had not been previously permitted with the Utilities Board (Board). This pipeline requires a permit under 199 IAC 10.16 because it meets the definition of a transmission line.

An informational meeting was not held for this pipeline. An informational meeting is not required because the pipeline is less than 5 miles long. (See 199 IAC 10.3.)

Permit Requirement

In 2003, a staff discussion regarding the possible filing of an amendment by Corning to uprate the current operating pressure for their 9.5-mile, 4-inch diameter pipeline under Permit No. R1042 from 150 psig to 500 psig raised the issue that a 3.5-mile, 3-inch diameter extension to the Corning Lateral does not have a permit. On June 10, 2003, staff sent a letter to Corning notifying it that it needed to obtain a pipeline permit for this pipeline. On June 20, 2003, Corning filed a response requesting an extension of time on filing a petition for permit for this pipeline. On August 8, 2003, staff sent a letter to Corning stating the Iowa Code does not provide for an extension of time. On August 22, 2003, Corning filed a letter stating it had obtained legal and engineering assistance in preparing a petition for permit. On September 15, 2003, Corning filed a petition for pipeline permit for the 3-inch pipeline.

In its petition, Corning states that no one now associated with Corning knows why a permit was not requested at the time the 3-inch pipeline was constructed.

At the time the 3-inch pipeline was built, the Iowa Code may have been interpreted to not require a permit for this pipeline, because its operating pressure was not greater than 150 psi.

This pipeline needs a pipeline permit because it meets the definition of a transmission line under 49 CFR § 192.3. This requirement applies regardless of the operating pressure of the pipeline. (See 199 IAC 10.16.) If this pipeline was not a transmission line, it would not require a permit under current Board rules, because it does not operate at more than 150 psig. However, staff believes this pipeline is best described as an extension of the transmission line that supplies it, with the distribution center beginning at the regulator station at the downstream end of this pipeline, and is therefore a transmission line.

History

On May 3, 1961, Permit No. 412 was issued by the Iowa State Commerce Commission (predecessor to the Board) to the City of Corning, to construct, operate and maintain a natural gas pipeline at a maximum actual operating pressure of 500 psi. This permit was for a 4-inch diameter steel pipeline 9.5 miles long, from a tap on Natural Pipeline Company of America's pipeline north of Corning, to a town border station on the north side of the City of Corning. In 1974, Corning constructed a 3.5-mile, 3-inch diameter steel pipeline extension from the end of the 4-inch pipeline at the town border station on the north side of Corning to a regulator station on the southwest side of Corning, to supply natural gas to an industrial development. On September 23, 1986, renewal permit R1042 was issued for the 9.5-mile, 4-inch diameter Corning Lateral, specifying a maximum operating pressure of 150 psi. The renewal permit was issued with a maximum operating pressure of 150 psi, instead of 500 psi, because the pipeline had never operated at more than 150 psi. The 3-inch pipeline was not mentioned in the renewal file.

Route and Safety

On October 17, 2003, Mr. Reed Helm of Board staff conducted a field examination of the pipeline route. He filed a report regarding the route inspection on June 9, 2004. On April 1 and 2, 2004, Mr. Helm inspected the pipeline for compliance with federal pipeline safety standards adopted by the Board. He filed a report regarding this inspection on April 12, 2004. The inspections found no problems with the route of the pipeline, and no conflicts with pipeline safety standards related to the 3-inch pipeline in this docket. The inspection did find two probable violations of pipeline safety standards at other locations in Corning. Those probable violations have now been corrected.

Since the April 12, 2004, inspection report, additional pipeline safety rules have gone into effect, requiring integrity management programs for transmission lines that contain high consequence areas as defined in the rules. *Corning should be asked to address in testimony whether the 3-inch pipeline contains any high consequence areas, and if so, whether Corning has an integrity management program covering this pipeline.*

The original 4-inch diameter pipeline currently covered by permit no. R1042 carries natural gas from a connection with a Natural Gas Pipeline Company of America pipeline to a town border station on the north side of Corning. The permit specifies a maximum operating pressure of 150 psi. At the town border station, the gas pressure is reduced for delivery through gas distribution mains to customers in Corning. The 3.5-mile, 3-inch diameter pipeline that is the subject of this amendment connects to the 4-inch pipeline at the town border station, and carries natural gas to a regulator station that feeds a distribution system supplying gas to an industrial development on the southwest side of Corning. Exhibit C and a supporting attachment show the 3-inch pipeline has a maximum allowable operation pressure (MAOP) of 150 psig. Gas is delivered from the 4-inch pipeline to the 3-inch pipeline without a reduction in pressure.

The route of the pipeline that is the subject of this amendment is on public right-of way along U.S. Highway 34, at the airport and at road crossings. The remainder of the route is on private property. The majority of the route is in a Class 1 location as defined by Federal Minimum Safety Standards in 49 CFR Part 192. Class 1 is a low population density classification. At least one portion of the route is in a Class 3 location. Class 3 is a high population density classification. Exhibit C shows that the only Class 3 location on this pipeline's route begins at the TBS and continues 300 feet to the west. *In his June 9, 2004, report, Mr. Helm describes the Class 3 location near the TBS, and he states that an area at the DRS in Blue Grass Park might also be a Class 3 location, depending on the number of employees at Brown Bear. Corning should be asked to determine the number of employees at Brown Bear, and address in testimony whether Brown Bear has enough employees to make this a Class 3 location. (See § 192.5 for definitions of class locations.)*

Corning's natural gas system, including this pipeline, has been periodically inspected by Board staff for compliance with safety standards, presumably since it was installed.

Petition

By letters dated October 6, 2003, February 8, 2005, and September 23, 2005, Board staff advised Corning of petition deficiencies requiring correction, and requested additional information on certain items. On April 21, 2004, June 16,

2005, and March 1, 2006, Corning filed revisions to the petition and exhibits and provided additional information.

Iowa Code § 479.12 requires a finding that “the services proposed to be rendered will promote the public convenience and necessity” before a permit can be granted. Exhibit F states the purpose of the pipeline is to provide additional gas to the Adams Community Industrial Development Corporations Industrial Park.

Conclusions/Summary

I have reviewed the petition and exhibits in this docket. It appears from the information presented that the pipeline complies with all design, construction, and testing requirements of the Board. Recent inspections by Board staff found no problems with the route of the pipeline, and there are no outstanding conflicts with pipeline safety standards. The filing appears in sufficient order that the petition can be set for hearing.

It is recommended that Corning be asked to determine the number of employees at Brown Bear, and address in testimony whether Brown Bear has enough employees to create a Class 3 location on the pipeline near Brown Bear.

It is recommended Corning be asked to address in testimony whether the 3-inch pipeline contains any high consequence areas, and if so, whether Corning has an integrity management program covering this pipeline.

**IOWA DEPARTMENT OF COMMERCE
UTILITIES DIVISION
SAFETY AND ENGINEERING SECTION**

TO: The File

Date: June 9, 2004

FROM: Reed Helm

FILE: P-489

SUBJECT: Petition to amend Pipeline Permit No. 412, for a Natural Gas Pipeline extension in Adams County for Corning Municipal Utilities.

The route of the above mentioned natural gas pipeline extension was inspected on October 17, 2003. Exhibit A, a route map and information received for Jerry Fastenau, Gas Superintendent, were used as a guide. The pipeline is approximately 2.9 miles of 3.5 inch outside diameter, 0.216 inch wall thickness, X-Tru coated steel pipe with a Specified Minimum Yield Strength (SMYS) of 24000 psi. The Maximum Allowable Operating Pressure (MAOP) of the pipeline is 150 psig.

The pipeline begins at the Town Border Station (TBS) on the east side of Grove Avenue in Corning and proceeds west parallel to Grand Street approximately 50 feet north of Grand to a point approximately 1400 feet west of Joshua Tree Avenue. Then it turns south at a 90 degree angle for approximately 1 mile crossing County Highway H34 and proceeds south to the south side of 220th Street, then west 0.4 mile, then south approximately 0.7 mile to the south side of US Highway 34, then west 0.2 mile to Blue Grass Park, an industrial park, then south 50 feet to a District Regulator Station (DRS).

The route is in rolling pasture and hay ground, with a small timber between the TBS and Joshua Tree Avenue. The pipeline is in a Class 1 location, except for areas at the TBS that are in a Class 3 location. The area at the DRS in Blue Grass Park could be in a Class 3 location depending on the number of employees at the Brown Bear manufacturing facility. The pipeline route crosses two secondary county gravel road and two paved highways, County Highway H34, and US Highway 34. The pipeline crosses a rural water pipeline on the east side of Joshua Tree Avenue and lays within 50 feet of a resident on 220th Street.

The examination of the route found no safety code compliance issues, maintenance needs, or other matters that need to be addressed in this docket.