

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CORNING MUNICIPAL UTILITIES	DOCKET NO. P-489
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PROPOSED DECISION AND ORDER GRANTING PERMIT AMENDMENT

(Issued June 12, 2006)

APPEARANCES:

MS. VICTORIA J. PLACE, Attorney at Law, 309 Court Avenue, Suite 210, Des Moines, Iowa 50309, appearing on behalf of Corning Municipal Utilities.

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, Corning Municipal Utilities (Corning) filed a petition and exhibits for an amendment to pipeline Permit No. 412 for an existing 3.5-inch diameter natural gas pipeline approximately 2.9 miles long in Adams County, Iowa. (petition for permit; testimony of Mr. Cline; O'Neal and Helm reports.)

In 1961, the predecessor agency of the Utilities Board (Board) issued Permit No. 412 to the city of Corning for a 4-inch diameter transmission pipeline 9.5 miles long with a maximum allowable operating pressure (MAOP) of 500 pounds per square inch gauge (psig) for the transportation of natural gas in Adams County, Iowa,

known as the Corning Lateral. (O'Neal report; petition for permit; testimony of Mr. Cline.)

In 1974, Corning constructed a 2.9-mile, 3.5-inch diameter steel pipeline as an extension of the existing Corning Lateral. (petition for permit; testimony of Mr. Cline; O'Neal report.) The pipeline extension operated at a pressure below 150 psig. (petition for permit; testimony of Mr. Cline.) The pipeline extension transports natural gas from the end of the Corning Lateral 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 County Industrial Development Park. (petition for permit; testimony of Mr. Cline; O'Neal report.) Corning did not obtain a permit amendment for this extension in 1974. (testimony of Mr. Cline; petition for permit; O'Neal report.) There are no records or employees who worked for Corning in 1974 who can explain why Corning did not seek a permit amendment. (testimony of Mr. Cline.) Corning's witness Mr. Robert Cline speculates that the operators did not believe a permit was necessary because the pipeline operates at less than 150 psig and it may have been unclear the extension was considered a transmission line. (testimony of Mr. Cline.)

On September 23, 1986, the Board issued renewal permit R1042 for the Corning Lateral. (O'Neal report.) The renewal permit was issued with a maximum operating pressure of 150 psig, instead of 500 psig, because the pipeline had never

operated at more than 150 psig. (O'Neal report.) The 3.5-inch diameter extension was not mentioned in the renewal file. (O'Neal report.)

The 3.5-inch diameter pipeline extension at issue in this case has a maximum allowable operating pressure of 150 psig. (petition for permit; testimony of Mr. Cline; O'Neal report.) The pipeline requires a permit because it meets the definition of a transmission line. (petition for permit; testimony of Mr. Cline; O'Neal report.)
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. (petition for permit; testimony of Mr. Cline; O'Neal report.)

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. On March 22, 2006, the undersigned issued an order establishing a procedural schedule, proposing to take official notice, and providing notice of the hearing. The order set May 19, 2006, as the date for the hearing on the petition and proposed to take official notice of two reports concerning the pipeline: one dated March 9, 2006, prepared by Mr. Jeffrey O'Neal, utility regulatory engineer for the Board; and another dated June 9, 2004, prepared by Mr. Reed Helm, utility regulatory inspector for the Board.

On April 19, 2006, Corning filed prepared direct testimony of Mr. Robert Cline and a prehearing brief. On April 26, 2006, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a prehearing brief.

The hearing was held on May 19, 2006, in Board Conference Room 3, 350 Maple Street, Des Moines, Iowa. Corning was represented by its attorney, Ms. Victoria J. Place. Mr. Robert Cline, manager of Corning Municipal Utilities, testified on behalf of Corning. Mr. O'Neal and Mr. Helm testified as the engineer and the inspector 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. The statute provides that 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. 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).

Corning's Position

Corning argues that imposition of a civil penalty is not appropriate in this case. It argues that the facts in this case are nearly identical to those in In re: City of Lorimor, Docket No. P-852, "Proposed Decision and Order Granting Permit" (issued June 21, 2004), a case in which no penalty was imposed.

Corning argues that the pipeline at issue in this case was constructed in 1974 when there was confusion as to whether pipelines operating at less than 150 psig were required to obtain a permit. It acknowledges that utilities have an affirmative duty to know what is in the law, but argues there was no triggering action to make Corning aware that the law had changed in 1988.

Corning also argues the pipeline has been inspected since it was installed and there have been no reports of route problems or violations of safety regulations. Corning argues that as soon as it was notified of the violation, it filed a petition and has worked with staff on necessary amendments. Corning argues it has had no prior violations. It argues that it has accepted responsibility for the violation and has taken steps to make sure this situation does not happen again. Mr. Cline and Corning's gas superintendent attend seminars and meetings to learn of changes in pipeline requirements and Corning is a member of the Iowa Association of Municipal Utilities, which helps alert Corning to changes in the law. (testimony of Mr. Cline.)

Finally, Corning argues that it has been extremely cooperative and compliant with everything Board staff has asked. Therefore, Corning argues, like the situation in Lorimor, it is not appropriate to impose a civil penalty pursuant to Iowa Code § 479.31.

The Consumer Advocate's position

The Consumer Advocate does not oppose the grant of a permit, but argues the Board should consider imposing a civil penalty. It argues that failure to apply for and maintain a required permit for a natural gas pipeline is a serious violation of state law. The Consumer Advocate notes there does not appear to be any dispute that the pipeline meets the definition of a transmission line. The Consumer Advocate acknowledges that prior to 1988, Iowa law was not clear that a permit was required for a line that did not operate at greater than 150 psig. However, the Consumer Advocate argues, in 1988 the law was changed and made it clear that all transmission lines, including the line at issue in this case, are required to be permitted. The Consumer Advocate argues that a moderate penalty should be imposed for Corning's failure to file a petition for a permit amendment until Board staff advised it to do so in June 2003.

The Consumer Advocate argues that this case is different from Lorimor because Corning is not a small town with minimal resources. Rather, it is a county seat with a population of approximately 1,700. The Consumer Advocate argues that Corning Municipal Utilities is a corporation serving close to 1,000 people with total

assets of over \$10,000,000 and seven full-time employees. The Consumer Advocate argues there are municipal associations and municipal utility associations that track law changes and advise their members of them and who have experienced staff who can answer questions.

The Consumer Advocate argues that one of the primary duties of utilities is to monitor changes in applicable statutes and regulations. The Consumer Advocate argues that imposition of a moderate civil penalty will serve to confirm the serious nature of the violation and reinforce Corning's commitment to creating a system that will minimize the risks of future mistakes. Further, it argues, a penalty will provide an incentive for all utilities to support and maintain effective legal compliance systems.

Analysis

Iowa Code Chapter 479 and Board rule 199 IAC 10.16 currently in effect clearly require that the pipeline at issue in this case be permitted because it is a transmission line. Iowa Code §§ 479.2(2); 479.3, 479.5; 199 IAC 10.16. However, the statute and Board rules in effect in 1974 when this pipeline was constructed were different than those in effect today. In 1974, the statute was somewhat unclear and did not clearly require Corning to file a petition for an amendment to its permit because the pipeline operated at 150 psig or less.

In 1988, the legislature amended the pipeline statute and it became clear that a permit was required for this pipeline. 1988 Iowa Acts, Chapter 1074. The chapter was approved April 12, 1988, and was therefore effective July 1, 1988. The change

was published in the 1989 Iowa Code. However, the change in the statute that clarified that a permit was required was subtle and was contained in an act primarily directed at interstate pipelines. 1988 Iowa Acts, Chapter 1074, Section 29.

Therefore, as of July 1, 1988, Corning should have applied for a permit amendment to maintain and operate the pipeline extension at issue in this case. Whether a civil penalty should be assessed for the failure to apply for a permit amendment when the statute changed is the only contested issue in this case.

In the past few years, the Board and the undersigned administrative law judge have considered assessment of civil penalties in eleven 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); 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 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); In re: Emmetsburg Municipal Utilities, Docket No. P-854, "Proposed Decision and Order Imposing Civil Penalty and Granting Permit," (July 22, 2005) (Emmetsburg); In re: Atmos Energy Corporation, Docket No. P-856, "Proposed Decision and Order Imposing Civil Penalty and Granting Permit," (October 6, 2005) (Atmos); In re: Interstate Power and Light Company, Docket No. P-860, "Proposed Decision and Order Imposing Civil Penalty and Granting Permit," (March 2, 2006) (Interstate Power III); and In re: Iowa Electric Light and Power Company n/k/a Interstate Power and Light Company, Docket No. P-517, "Proposed Decision and Order Imposing Civil Penalty and Granting Permit," (May 18, 2006) (Interstate Power IV).

Several of these cases involved the failure to renew a permit that had already been obtained. Several involved the failure to seek an electric franchise or a pipeline permit in the first place. 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, 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. IPL 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, and constructed, operated, and maintained the pipeline in conformance with all other Board rules. Also considered were the facts that there was no safety issue

associated with the pipeline, 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 issued on November 17, 2003, 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 Board also stated: "Cases of this nature are very fact-sensitive. Minor changes in the facts and circumstances may make significant changes in the outcome. Even in this case, the Board is concerned that it took IPL 20 years to discover this violation. However, that concern is at least partially alleviated by the ALJ's finding that, as of the date of the hearing, IPL had established a centralized process for review of gas pipeline permits and, based on that review, IPL had not identified any other situation in which IPL constructed a pipeline without first obtaining a permit. (Proposed Decision, Findings of Fact Nos. 18 and 20.) Any future cases will be judged on their own merits." Interstate Power I, p. 6.

The Moulton 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 that when a pipeline company plans to construct a pipeline, it must do so in conformance with applicable law and must learn what the law requires. However, the decision stated, there was no triggering action on the part of Lorimor that would have caused it to know the

statute changed. In addition, 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, 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 and a civil penalty of \$300 was imposed 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 the Atmos case, Atmos failed to timely renew two pipeline permits that had expired in 2000. In deciding to impose a civil penalty of \$500, the undersigned

considered a number of factors to be important. The violation was serious, although not as serious as the failure to obtain a permit in the first place. The violation was relatively recent. Atmos did not discover that its pipeline permits had expired. Rather, Board staff discovered this and notified Atmos. The law clearly required Atmos to timely renew its permits. Atmos is a large company with operations in 12 states and it serves approximately 3.2 million customers. Once Board staff discovered the permits had 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. Board staff had inspected the pipeline since at least 1977. The most recent inspection revealed several probable violations of the Minimum Federal Safety Standards in 49 CFR Part 192, which Atmos corrected. There were no operational or maintenance problems with the pipeline that would prevent it from continuing to operate. The pipeline appeared to be in good condition and capable of continuing in operation as it had been operated, and there were no problems with the route of the pipeline. There were no other instances in which Atmos failed to timely file for permit renewal, although Atmos only operates one other pipeline in Iowa, and that pipeline was recently permitted. Atmos implemented a system to keep track of its property records and to ensure that its permits are timely renewed in the future.

The following factors were considered in imposing a civil penalty of \$1,000 in the Interstate Power III case. The violation was serious because failure to obtain a permit prior to construction meant the statutory system for Board oversight of design

and construction of the pipeline through the permitting process could not be followed. The violation was relatively recent and the law was clear that a permit was required at the time construction occurred in 1998. The company was a relatively large utility. This was not the company's first violation of the requirement to obtain a permit prior to construction.

Mitigating factors included that Interstate Power staff discovered the violation, promptly reported it to the Board, and promptly filed a petition for a permit. The company was cooperative with Board staff in seeking to obtain a permit once it knew one was required. It developed processes to avoid future violations. There were no safety, operational, or route problems with the pipeline.

In Interstate Power IV, the company failed to obtain a permit amendment prior to constructing an extension of an existing pipeline in 2004. The parties stipulated that assessment of a \$1,000 civil penalty was reasonable, and the penalty was assessed.

This case is remarkably similar to the Lorimor and MidAmerican cases, in which no civil penalty was imposed.

Corning has fewer than 1,000 customers. (testimony of Mr. Cline.) It has five full-time utility employees, two full-time office employees, and one part-time office employee. (testimony of Mr. Cline.) Although the Consumer Advocate is correct that Corning is larger than Lorimor with more resources available to it, it is still a relatively small utility. In addition, no penalty was imposed on MidAmerican, a large utility,

under similar circumstances to this case in MidAmerican. In any case, the decision of whether or not to impose a penalty must be based on a consideration of the entire circumstances of the case, not just one factor.

Once Corning learned of the requirement to obtain a permit, it was cooperative and professional in working with Board staff to obtain a permit. (testimony of Mr. O'Neal, Mr. Helm.) There are no problems with the route of the pipeline. (testimony of Mr. O'Neal; O'Neal and Helm reports.) The pipeline is in conformance with pipeline safety standards. (testimony of Mr. O'Neal, Mr. Cline; petition for permit; O'Neal and Helm reports.) When an inspection by Mr. Helm conducted in 2004 revealed two probable violations of pipeline safety standards at other locations in Corning, the probable violations were corrected. (O'Neal report.)

Corning's failure to obtain a permit amendment when one was required is a serious violation of Iowa law. However, the pipeline permitting law was not clear in 1974 and a permit was not clearly required at the time the pipeline extension was constructed in 1974. It became clear that a permit for this pipeline extension was required because the statute was changed in 1988. However, the change to the statute was subtle and was contained in an act primarily directed at interstate pipelines. 1988 Iowa Acts, Chapter 1074, Section 29.

Failure to seek a permit because the law changed, particularly when the change was a subtle one, is different than failure to seek a permit when a pipeline company takes some affirmative action such as construction of a pipeline. 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. In this case, there was no triggering action on the part of Corning that would have caused it to know the statute changed.

Utilities should be on notice that this is a factor to be considered only in evaluating whether a penalty is appropriate. Cities and utilities that own pipelines continue to have an affirmative duty to know what is in the law and to comply with it, even when the law changes. As the Consumer Advocate pointed out, municipal utilities have the Iowa municipal utility association available to help them keep abreast of changes in the law. It appears that Corning's current staff reviews letters from the Board and participates in seminars and meetings to learn of applicable requirements and changes to them. (testimony of Mr. Cline.)

Although it is somewhat troubling that Corning did not learn that a permit amendment was required beginning in 1988 and obtain a permit amendment at that time, all other factors weigh against imposition of a penalty in this case. As the Board has stated in prior decisions, these cases are very fact-sensitive and each case will be judged on its own merits. Interstate Power I. Considering the entire circumstances of this case, it would not be appropriate to impose a civil penalty. (testimony of Mr. Cline, Mr. O'Neal, Mr. Helm; petition for permit; O'Neal and Helm reports.) Iowa Code §§ 479.5, 479.31 (2005); Iowa Code § 490.5 (1973); Corn Belt I;

Corn Belt II; Interstate Power I; Moulton; Lorimor; Interstate Power II; MidAmerican; Emmetsburg; Atmos; Interstate Power III; and Interstate Power IV.

FINDINGS OF FACT

1. Corning is a pipeline company within the meaning of Iowa Code § 479.2. (testimony of Mr. Cline; petition for permit; O'Neal report.)
2. On September 15, 2003, Corning filed a petition and exhibits for an amendment to pipeline Permit No. 412 for an existing 3.5-inch diameter natural gas transmission pipeline approximately 2.9 miles long in Adams County, Iowa with a maximum allowable operating pressure of 150 psig. (petition for permit; O'Neal report; testimony of Mr. Cline.) Corning filed amendments to its petition and exhibits and provided additional information on April 21, 2004, June 16, 2005, and March 1, 2006. (petition for permit; O'Neal report; testimony of Mr. Cline.)
3. In 1961, the predecessor agency of the Board issued Permit No. 412 to the city of Corning for a 4-inch diameter transmission pipeline 9.5 miles long with an MAOP of 500 pounds psig for the transportation of natural gas in Adams County, Iowa, known as the Corning Lateral. (O'Neal report; petition for permit; testimony of Mr. Cline.)
4. In 1974, Corning constructed a 2.9-mile, 3.5-inch diameter steel pipeline as an extension of the existing Corning Lateral. (petition for permit; testimony of Mr. Cline; O'Neal report.) The pipeline extension operated at a pressure below 150 psig. (petition for permit; testimony of Mr. Cline.) Corning did not obtain a

permit amendment for this extension in 1974. (testimony of Mr. Cline; petition for permit; O'Neal report.) There are no records or employees who worked for Corning in 1974 who can explain why Corning did not seek a permit amendment. (testimony of Mr. Cline.) Corning's witness Mr. Cline speculates that the operators did not believe a permit was necessary because the pipeline operated at less than 150 psig and it may have been unclear the extension was considered a transmission line. (testimony of Mr. Cline.)

5. On September 23, 1986, the Board issued renewal permit R1042 for the Corning Lateral. (O'Neal report.) The renewal permit was issued with a maximum operating pressure of 150 psig, instead of 500 psig, because the pipeline had never operated at more than 150 psig. (O'Neal report.) The 3.5-inch diameter pipeline extension at issue in this case was not mentioned in the renewal file. (O'Neal report.)

6. The pipeline extension transports natural gas from the end of the Corning Lateral 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 County Industrial Development Park. (petition for permit; testimony of Mr. Cline; O'Neal and Helm reports.)

7. Corning caused notice of the hearing to be published in Adams County in The Adams County Free Press, a newspaper of general circulation in the county,

once each week for two consecutive weeks, on April 27 and May 4, 2006. (proof of publication.)

8. 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 and Helm reports; testimony of Mr. Cline.) 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 and Helm reports; testimony of Mr. O'Neal, Mr. Helm, Mr. Cline.)

9. The pipeline supplies natural gas to the Adams County Industrial Development Park. (petition for permit; testimony of Mr. Cline; O'Neal report.) Therefore, the pipeline promotes the public convenience and necessity. (testimony of Mr. Cline; petition for permit; O'Neal report.)

10. In October 2003, Board staff conducted a field examination of the pipeline extension route. (O'Neal and Helm reports; testimony of Mr. O'Neal, Mr. Helm.) In April 2004, Board staff inspected the pipeline for compliance with federal pipeline safety standards. (O'Neal and Helm reports; testimony of Mr. O'Neal, Mr. Helm.) These inspections found no safety compliance issues or maintenance needs with respect to the pipeline. (O'Neal and Helm reports; testimony of Mr. O'Neal, Mr. Helm, Mr. Cline.) The 2004 inspection found two probable violations of the minimum federal safety standards in 49 CFR Part 192 in other locations in Corning, not involving the pipeline at issue in this case. (O'Neal and Helm reports.) Corning has

corrected the probable violations. (O'Neal report.) There are no outstanding operational or safety issues with the pipeline. (O'Neal and Helm reports; testimony of Mr. O'Neal, Mr. Helm, Mr. Cline; petition for permit.) 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. (O'Neal and Helm reports; testimony of Mr. O'Neal, Mr. Helm, Mr. Cline; petition for permit.) No further safety-related terms, conditions, or restrictions need to be imposed pursuant to Iowa Code § 479.12. (O'Neal and Helm reports; testimony of Mr. O'Neal, Mr. Helm, Mr. Cline; petition for permit.)

11. Corning 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; affidavit of Mr. Cline.)

12. No written objections to the petition for a permit were filed and no objectors appeared at the hearing. (testimony of Mr. O'Neal; Docket No. P-489 file.)

13. Corning will not be constructing additional pipeline and will not disturb any agricultural land. (petition for permit.)

14. When the pipeline extension at issue in this case was constructed in 1974, the pipeline permitting law was not clear and a permit was not clearly required. (petition for permit.) It became clear that a permit for this pipeline extension was required because the statute was changed in 1988. Corning was not aware that a

permit was required until Board staff told Corning of the requirement in June 2003.

(testimony of Mr. Cline.)

15. Once Corning learned of the requirement to obtain a permit from Board staff, it was cooperative and professional in working with Board staff to obtain a permit. (testimony of Mr. O'Neal, Mr. Helm.) Corning obtained engineering and legal assistance by August 2003 and filed its petition on September 15, 2003. (petition for permit; testimony of Mr. Cline.)

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 Corning and over the petition for an amendment to pipeline Permit No. 412 it has filed. Iowa Code §§ 479.2, 479.3, 479.5, 479.6, 479.12, and 479.18.

3. The pipeline at issue in this case requires a permit because it is a transmission line. Iowa Code § 479.5; 199 IAC 10.16; 49 CFR 192.3. Iowa Code Chapter 479 and Board rule 199 IAC 10.16 currently in effect clearly require that the pipeline at issue in this case be permitted because it is a transmission line. Iowa Code §§ 479.2(2); 479.3, 479.5; 199 IAC 10.16. This is true regardless of the MAOP of the pipeline. 199 IAC 10.16.

4. However, the statute and Board rules in effect in 1974 when this pipeline was constructed were different than those in effect today. In 1974, the statute was somewhat unclear and did not clearly require Corning to file a petition for an amendment to its permit because the pipeline operated at 150 psig or less.

5. In 1988, the legislature amended the pipeline statute and it became clear that a permit was required for this pipeline. 1988 Iowa Acts, Chapter 1074, Section 29. However, the change was subtle and was contained in an act primarily directed at changes regarding interstate pipelines. 1988 Iowa Acts, Chapter 1074. The chapter was approved April 12, 1988, and was therefore effective July 1, 1988. The change was published in the 1989 Iowa Code. Therefore, as of July 1, 1988, Corning should have applied for a permit amendment to maintain and operate the pipeline extension at issue in this case.

6. Since Corning will not construct additional pipeline and will not disturb any agricultural land, it is not required to file a land restoration plan. Iowa Code § 479.29; 199 IAC 9.

7. Corning's petition for an amendment to pipeline Permit No. 412 in this docket should be granted. Iowa Code §§ 479.11, 479.12, and 479.26; 199 IAC 10.

8. 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.

9. As discussed in the body of this decision, considering the entire circumstances, statutory penalty provisions, and prior decisions, it would not be appropriate to impose a civil penalty in this case. (testimony of Mr. Cline, Mr. O'Neal, Mr. Helm; petition for permit; O'Neal and Helm reports.) Iowa Code §§ 479.5, 479.31 (2005); Iowa Code § 490.5 (1973); Corn Belt I; Corn Belt II; Interstate Power I; Moulton; Lorimor; Interstate Power II; MidAmerican; Emmetsburg; Atmos; Interstate Power III; and Interstate Power IV.

IT IS THEREFORE ORDERED:

1. Official notice is taken of the report dated March 9, 2006, filed in this docket by Mr. Jeffrey O'Neal, utility regulatory engineer for the Board. Official notice is also taken of the report dated June 9, 2004, filed in this docket by Mr. Reed Helm, utility regulatory inspector for the Board.

2. Pursuant to Iowa Code chapter 479, the petition for an amendment to pipeline Permit No. 412 filed by Corning Municipal Utilities in this docket is granted. A permit will be issued if this proposed decision and order becomes the final order of the Board.

3. No civil penalty is imposed.

4. The Board retains jurisdiction of the subject matter in this docket.
5. 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 § 7.26.

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 12th day of June, 2006.