

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CORNING MUNICIPAL UTILITIES	DOCKET NO. P-866
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE AND PROPOSING TO
TAKE OFFICIAL NOTICE AND NOTICE OF HEARING**

(Issued August 9, 2006)

On July 3, 2006, Corning Municipal Utilities (Corning) filed a petition and exhibits with the Utilities Board (Board) for a pipeline permit to allow Corning to construct, maintain, and operate a natural gas pipeline approximately 13.7 miles long in Adams County, Iowa. The proposed 6⁵/₈-inch outside diameter steel pipeline will transport natural gas from an existing delivery and metering station (town border station or TBS) on a Natural Gas Company of America pipeline to two regulator stations that will supply natural gas to the distribution system in the city of Corning, Iowa, and to a new ethanol plant being built southwest of Corning, all in Adams County, Iowa. The proposed pipeline will have a maximum allowable operating pressure (MAOP) of 720 pounds per square inch gauge (psig). The proposed pipeline requires a permit because it will operate at a pressure higher than 150 psig and it will meet the definition of a transmission line as defined in 49 CFR Part 192.199 IAC 10.16; 49 CFR 192.3. Corning filed amendments to its petition, exhibits, and additional information on July 21, 2006.

On August 7, 2006, the 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.

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 file prepared testimony and exhibits prior to the hearing. At a minimum, Corning's prepared testimony must address the issues listed above.

In its prepared testimony, Corning must also address whether there is a high consequence area (HCA) at the Corning Municipal Airport property and, if so, whether Corning has an integrity management program covering the pipeline. Specifically, Corning must address whether the hangar at the airport would be within the potential impact radius (PIR) and create an HCA as set forth in 49 CFR Part 192, Subpart O, and if it would not, explain why not. The undersigned notes that Corning stated there are no HCAs crossed by the proposed pipeline in its petition Exhibit F filed July 21, 2006, but Corning must provide additional evidence to support this statement with respect to the hangar at the airport.

In addition, in petition Exhibit C, Corning states that: "Consultations with the U.S. Army Corps of Engineers and Iowa DNR are currently in progress regarding stream crossing and other environmental permits." In its prepared testimony, Corning must provide evidence regarding what is required by these two agencies and the status of the consultations, and whether Corning has obtained all required approvals and permits.

In his staff report filed July 25, 2006, Mr. Jeffrey O'Neal stated that: "The purpose of the project as stated in Exhibit F is to replace a portion of the Corning Municipal Utilities existing natural gas pipeline infrastructure, and to provide natural gas to the Pinnacle Ethanol Plant, which is currently under construction

approximately 4 miles west of Corning. *It is recommended Corning be asked to expand on this in its prefiled testimony to clarify whether its existing transmission pipeline has the capability to deliver the amount of gas needed by the new ethanol plant, and to address its plans for its existing transmission pipeline after the proposed pipeline is placed in service.*" Corning must also address this issue in its prefiled testimony.

Corning has the burden to prove that its proposed pipeline meets all of the statutory and regulatory requirements discussed above. Failure to file adequate prepared testimony and exhibits to support the petition for a pipeline permit may result in delays of these proceedings or in denial of the requested permit.

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.

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 the proposed pipeline.

Anyone who has filed or will file an objection pursuant to Iowa Code §§ 479.9, 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 July 25, 2006, concerning Corning's petition. A

copy of the report is attached to this order. Pursuant to Iowa Code § 17A.14(4), the undersigned administrative law judge proposes to take official notice of the report 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 report 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 report in prepared testimony and at the hearing. Mr. O'Neal will be present at the hearing and available for cross-examination regarding his report.

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 August 23, 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 August 23, 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 September 1, 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, September 8, 2006, in the Corning Public Library downstairs meeting room, 603 9th Street, Corning, Iowa 50841. Each party must provide a copy of its prepared testimony and exhibits to the court reporter at the hearing. 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 July 25, 2006, which is attached to this order, and of the facts contained therein. Any party objecting to the taking of official notice of the report 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/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 9th day of August, 2006.

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

TO: Docket No. P-866

FROM: Jeffrey L. O'Neal

DATE: July 25, 2006

SUBJ: Staff Review of Corning Municipal Utilities Petition for Pipeline Permit for Approximately 13.7 Miles of 6 5/8-inch Diameter Natural Gas Pipeline in Adams County, Iowa

On May 31, 2006, Corning Municipal Utilities (Corning) held an informational meeting, as required by Iowa Code § 479.5 and 199 IAC 10.3, in Corning, Iowa, for a proposed natural gas transmission pipeline in Adams County, Iowa. On July 3, 2006, Corning filed a Petition for Pipeline Permit for this project with the Utilities Board (Board). On July 7, 2006, I conducted a field examination of the proposed route. By letter dated July 12, 2006, I advised Corning of petition deficiencies requiring correction, and requested additional information on certain items. On July 21, 2006, Corning filed revised exhibits and provided additional information.

The petition is for construction of approximately 13.7 miles of 6 5/8-inch outside diameter steel pipeline. Corning plans to design and test the proposed pipeline for a maximum allowable operating pressure (MAOP) of 720 psig. The proposed pipeline would deliver natural gas from an existing delivery and metering station (town border station or TBS) on a Natural Gas Pipeline Company of America (NGPL) pipeline to two regulator stations that will supply natural gas to the distribution system in the city of Corning, Iowa, and to a new ethanol plant being built southwest of Corning. Corning has an existing 4 1/2-inch and 3 1/2-inch diameter transmission pipeline that is currently used to supply natural gas to customers in the city of Corning. Corning's existing transmission line operates under renewal pipeline Permit No. R1042, issued September 23, 1986, and amended July 24, 2006, in Docket No. P-489.

The proposed pipeline requires a pipeline permit because it will operate at a pressure higher than 150 psig, and because it will meet the definition of a transmission line under 49 CFR Part 192. (See 199 IAC 10.16.) It will meet the definition of a transmission line because it will transport gas from another transmission line (and ultimately from gathering lines and/or storage facilities) to a distribution center and to a large volume customer that is not downstream of a distribution center, and because at the proposed MAOP it would operate at a hoop stress of more than 20 percent of specified minimum yield strength (SMYS). (See 49 CFR § 192.3.)

Route Inspection

I examined the route of the proposed pipeline on July 7, 2006. The route maps filed as Exhibit B were used as a guide. The proposed route begins at an existing NGPL TBS located on the north side of 125th Street, just west of Iowa Highway 148, in Adams County. The existing Corning transmission pipeline that currently supplies natural gas to the town of Corning also begins at this TBS, and much of the northern portion of the proposed route parallels the existing Corning transmission pipeline. After leaving the TBS, the proposed route runs generally south near Highway 148, but on private property. About ¼ mile south of the TBS, the proposed route crosses from the west side of Highway 148 to the east side, avoiding homes and a large grain elevator on the west side of the road. It continues south on the east side of the highway for about 4.5 miles. In Section 34, T-73N, R-34W, the route temporarily jogs further to the east to go behind a house and outbuildings near the highway. Just north of Lake Icaria County Recreation Area, the route crosses back to the west side of Highway 148, avoiding the park, and continues south along the west side of the highway for about 2 miles until the highway turns to the east. Most of the northern portion of the route paralleling Highway 148 is planted in row crops, with some pasture. Most of the route south of this point runs through open county, and is mostly in pasture, but also includes land in row crops. The route passes through the Corning Municipal Airport, where it is within the city limits of Corning, but the route runs west of the heavily developed areas of Corning. When the proposed route reaches U.S. Highway 34, it runs west along the north side of the highway (on private property), avoiding the Blue Grass Park industrial area on the south side of the highway. The route crosses Highway 34 and continues south and west, ending at the site of the Pinnacle Ethanol Plant, which was under construction at the time of the inspection.

Much of the route runs through hilly terrain; some of it is gently rolling to flat, for example near the Middle Nodaway River. The route is on private property, except where it runs through the Corning Municipal Airport property, and road and river crossings. The route crosses U.S. Highway 34, Iowa Highway 148 (twice), and county or city roads that include 3 paved roads, and several gravel or dirt roads.

Exhibit C lists a total of 19 stream crossings on the route of the pipeline. Most of these are very minor drainages, and most of them were dry at the time of the inspection. The largest river or stream noted during the inspection was the Middle Nodaway River in the NW ¼ of Section 27, T73N, R34W. Two other streams were noted that contained water at the time of the inspection: Kemp Creek in SE ¼ of Section 9, T72N, R34W, (fed by outlet of Lake Icaria, which is on the opposite side of Highway 148 from the pipeline here), and another small creek in the SE ¼ of Section 9, T72N, R34W, that is a tributary of Kemp Creek.

Exhibit C states that all rivers or streams with flowing water at the time of construction will be directionally drilled.

Portions of the route run parallel to electric transmission lines that appear to be either 34.5 kV or 69 kV lines. In a letter filed July 21, 2006, Corning explained how it plans to address the potential issues that can result from proximity to electric transmission lines. It appears Corning plans to take appropriate actions to monitor and mitigate these potential issues.

The entire route appears to be in a Class 1 location as defined by Federal Minimum Safety Standards in 49 CFR Part 192, as is stated in Exhibit C of the petition filing. Class 1 is a low population density classification.

Subpart O of 49 CFR Part 192 requires pipeline operators to develop and implement an Integrity Management Program for gas transmission pipelines in high consequence areas (HCAs) as defined by the rules. An HCA is an area within the potential impact radius (PIR) for the pipeline that contains an identified site as defined in the rules, or that contains 20 or more buildings intended for human occupancy. Based on the pipe diameter and maximum allowable operating pressure specified in the filing, the PIR for this pipeline would be 111 feet. I observed no apparent identified sites within the PIR for the pipeline. The proposed route passes through the Corning Municipal Airport property, and depending on the exact routing of the pipeline, it appears the hangar at the airport could potentially be within the PIR, but based on the size of this airport it does not appear there would be enough people at this location often enough to create an identified site. Depending on the exact routing of the pipeline, it appears there may be no houses within the PIR over the entire route; there are certainly nowhere near the 20 or more houses within the PIR at one location that would be required to create an HCA. Corning states in Exhibit F that no HCAs are crossed by the project. Corning will need to conduct a review of the route to check for HCAs after construction as required by the rules, but it appears the pipeline will most likely not require an integrity management program under Subpart O of 49 CFR Part 192, and most of the requirements under Subpart O will not apply to this pipeline.

No problems were noted with the proposed route. No conflicts with safety standards or significant impediments to pipeline construction were found.

Petition

Natural gas pipelines must comply with the federal pipeline safety standards of 49 CFR Part 192, which have been adopted by the Board in 199 IAC 10.12(1)*b*. The information filed by Corning shows the pipeline will be designed, constructed and tested in compliance with these standards. The filing would support specifying a maximum operating pressure of 720 psig in a pipeline permit

for this pipeline. Corning plans to use PSL 2 pipe, which is more resistant to rupture than the alternative PSL 1 pipe. (Both PSL 1 pipe PSL 2 pipe comply with the safety standards.)

The purpose of the project as stated in Exhibit F is to replace a portion of the Corning Municipal Utilities existing natural gas pipeline infrastructure, and to provide natural gas to the Pinnacle Ethanol Plant, which is currently under construction approximately 4 miles west of Corning. *It is recommended Corning be asked to expand on this in its prefiled testimony to clarify whether its existing transmission pipeline has the capability to deliver the amount of gas needed by the new ethanol plant, and to address its plans for its existing transmission pipeline after the proposed pipeline is placed in service.*

The proposed route includes agricultural land. Corning filed a land restoration plan as Exhibit I. Corning's Land Restoration Plan appears to comply with the applicable provisions of I99 IAC Chapter 9.

Corning has not requested eminent domain for this project.

Iowa Code § 479.8 requires that where the pipeline would operate under pressure exceeding one hundred fifty pounds per square inch and exceed five miles in length, the hearing shall be held in the county seat of the county located at the midpoint of the proposed line. This pipeline is more than 5 miles in length, and operates at a pressure greater than 150 psig. The entire route of the proposed pipeline is in Adams County. Therefore the hearing must be held in Corning, Iowa.

Summary and Conclusions

I have reviewed the petition and exhibits in this docket. The information presented shows the proposed pipeline would comply with all design, construction, and testing requirements set forth by the Board. The filing appears in sufficient order to set a date for hearing. This report identifies, in *italic type*, an item it is recommended Corning be asked to address in its prefiled testimony.