

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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IN RE:  CORNING MUNICIPAL UTILITIES	DOCKET NO. P-866
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**PROPOSED DECISION AND ORDER GRANTING PERMIT**

(Issued September 14, 2006)

**APPEARANCES:**

MR. PAUL E. HORVATH, Attorney at Law, Dickinson, Mackaman, Tyler & Hagen, P.C., 699 Walnut Street, Suite 1600, Des Moines, Iowa 50309-3986, 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 July 3, 2006, Corning Municipal Utilities (Corning) filed a petition and exhibits with the Utilities Board (Board) for a permit to construct, operate, and maintain a 6<sup>5</sup>/<sub>8</sub>-inch outside diameter steel pipeline approximately 13.7 miles long for the transportation of natural gas in Adams County, Iowa. (petition for permit; testimony of Mr. Lee; O'Neal report.) Corning amended its petition on July 21, 2006. (petition for permit.) The proposed pipeline will transport natural gas from a Natural Gas Company of America transmission pipeline to the gas distribution system in the

city of Corning and to a new ethanol plant in Adams County, Iowa. (petition for permit; O'Neal report; testimony of Mr. Lee.)

Certain sections of the proposed pipeline will replace an existing transmission pipeline that does not have the capacity to supply natural gas to both the city of Corning distribution system and the new ethanol plant. (petition for permit; testimony of Mr. Lee; O'Neal report; Docket No. P-489 file.)

Corning has contracted with the Montana-Dakota Utilities Company (Montana-Dakota) to assist Corning with planning, right-of-way acquisition, permitting, engineering, and construction of the natural gas pipeline at issue in this case. (Testimony of Mr. Lee.)

On August 9, 2006, the Board assigned this case to the undersigned administrative law judge, who issued an order establishing a procedural schedule, proposing to take official notice, and providing notice of the hearing on August 9, 2006. In that order, the undersigned set September 8, 2006, as the date for the hearing on the petition, and proposed to take official notice of a report concerning the proposed pipeline dated July 25, 2006, prepared by Mr. Jeffrey L. O'Neal, utility regulatory engineer for the Board.

The hearing was held on September 8, 2006, in the Corning Public Library downstairs meeting room, 603 9<sup>th</sup> Street, Corning, Iowa. Corning was represented by its attorney, Mr. Paul Horvath. Mr. Douglas M. Lee, Dakota Heartland Region and Great Plains Region Gas Superintendent for Montana-Dakota, testified on behalf of

Corning. Mr. O'Neal testified as the engineer selected by the Board to examine the proposed route and permit application pursuant to Iowa Code § 479.11 (2005). The Consumer Advocate Division of the Department of Justice (Consumer Advocate) was represented by its attorney, Mr. John F. Dwyer. Several members of the public observed the hearing and some asked questions of the witnesses. However, none of the persons present objected to the proposed pipeline.

At the hearing, Corning's witness Mr. Lee testified that Corning had not yet obtained any of the 31 voluntary easements needed for the proposed pipeline.<sup>1</sup> He testified that many of the land survey markers along the route were missing, which meant it took Corning much longer than anticipated to obtain correct legal descriptions of property boundaries along the proposed route needed for the easement documents. Mr. Lee testified that Corning had obtained verbal agreements to provide voluntary easements from landowners along the route and he is confident Corning can obtain the easements. He testified that if Corning cannot obtain a necessary voluntary easement from a landowner, it would try to modify the route to avoid the landowner's property.<sup>2</sup>

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<sup>1</sup> Corning complied with the requirement in 199 IAC 10.4(3) that states notice of hearing must be served on affected landowners if eminent domain is not requested but all required interests in private property have not yet been obtained prior to the hearing. (Letter with attachments filed by Corning September 1, 2006.)

<sup>2</sup> If there is a deviation from the proposed route, Corning must follow the requirements of Board rule 199 IAC 10.2(1)"a," which states that construction deviation of 660 feet (one-eighth mile) from proposed routing is permitted, but if it becomes apparent that a deviation of greater than 660 feet in some area is needed, construction of the line in that area shall be suspended and Corning must file the documents listed in the rule and follow the procedures required when a petition is filed.

Corning does not request the right of eminent domain for the proposed pipeline and none is being granted by this decision or by the issuance of the pipeline permit. Iowa Code chapter 479 and 199 IAC 10 do not specifically state that Corning must obtain all voluntary easements prior to obtaining a permit or beginning construction of the pipeline. However, Corning must have obtained legal authority to enter onto an individual landowner's property, either through voluntary easement or eminent domain, prior to constructing the pipeline across the landowner's property. The only limited exception to this is contained in Iowa Code § 479.30, which allows a pipeline company to enter onto private property for the purpose of surveying and examining it to determine the direction or depth of a pipeline after the informational meeting or filing of the petition (if no informational meeting is required) by giving ten days' written notice to the landowner by restricted certified mail. Therefore, a pipeline company that begins construction of a pipeline prior to obtaining all needed voluntary easements risks possible delays and additional notice and permitting requirements if it cannot obtain all necessary voluntary easements. However, the fact that Corning did not obtain the needed voluntary easements prior to the hearing does not mean that the Board cannot or should not issue the requested pipeline permit, particularly since it appears there was a good reason for the delay and Corning has obtained verbal agreements from the affected landowners that they will grant the needed voluntary easements.

At the hearing, Corning agreed to file a statement with the Board once it has obtained the necessary voluntary easements from landowners. At the hearing, Corning also agreed to file a revised summary map in petition Exhibit B, proof of payment of costs of publication, and approvals or other showing of right that it obtains from the Iowa Department of Transportation, Adams County, and the Iowa Department of Natural Resources. See 199 IAC 10.2(1)"e" and 10.14. As of the date of this order, Corning has not filed any of these documents with the Board.

At the conclusion of the hearing, Corning requested that the appeal period be shortened from 15 days to 5 days. The Consumer Advocate did not object to this request, and it is granted pursuant to 199 IAC 7.26(2).

### **FINDINGS OF FACT**

1. Corning is a pipeline company within the meaning of Iowa Code § 479.2 (2005). (testimony of Mr. Lee; petition for permit; O'Neal report.)
2. On July 3, 2006, Corning filed a petition and exhibits for a permit to construct, operate, and maintain approximately 13.7 miles of 6<sup>5</sup>/<sub>8</sub>-inch outside diameter steel pipeline for the transportation of natural gas in Adams County, Iowa. (petition for permit; testimony of Mr. Lee; O'Neal report.) Corning filed an amendment to its petition on July 21, 2006. (petition for permit; O'Neal report.) Corning requests a maximum allowable operating pressure (MAOP) of 720 psig. (petition for permit; O'Neal report.)

3. 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, on August 17 and 24, 2006. (proof of publication.)

4. The proposed pipeline will follow a route described in Exhibit A and shown on Exhibit B attached to the petition for a permit. (petition Exhibits A and B; O'Neal report.) There are no problems with the location and route of the proposed pipeline and no further terms, conditions, or restrictions regarding them need to be imposed pursuant to Iowa Code § 479.12. (petition for permit; O'Neal report; testimony of Mr. Lee.)

5. The proposed pipeline will transport natural gas from an existing delivery and metering station on a Natural Gas Company of America transmission pipeline to two regulator stations that will supply natural gas to the city of Corning distribution system and to a new ethanol plant under construction southwest of the city of Corning, all in Adams County, Iowa. (petition for permit; O'Neal report; testimony of Mr. Lee.) Certain sections of the proposed pipeline will replace an existing transmission pipeline currently operating under renewal pipeline Permit No. R1042, issued September 23, 1986, and amended July 24, 2006, in Docket No. P-489. (petition for permit; testimony of Mr. Lee; O'Neal report; Docket No. P-489 file.) The existing pipeline does not have the capacity to supply both the city of Corning distribution system and the new ethanol plant. (testimony of Mr. Lee; petition for permit.) The proposed pipeline is necessary to allow Corning to expand the

capacity and service of its natural gas distribution system and to provide natural gas service to the new ethanol plant. (petition for permit; O'Neal report; testimony of Mr. Lee.) In addition, the ethanol plant will produce approximately 60 million gallons of ethanol per year, will create approximately 40 jobs, and construction of the plant will have a significant positive impact on the local economy. (testimony of Mr. Lee.) Therefore, the proposed pipeline promotes the public convenience and necessity. (petition for permit; testimony of Mr. Lee; O'Neal report.)

6. The petition supports an MAOP of 720 psig for the pipeline. (petition for permit; O'Neal report.) There are no high consequence areas as defined by 49 C.F.R. Part 192 crossed by the proposed pipeline. (testimony of Mr. Lee; petition for permit; O'Neal report.) The proposed pipeline will comply with the construction, safety, and design requirements of Iowa Code chapter 479, 199 IAC 10.12, and 49 C.F.R. Part 192. (testimony of Mr. Lee; petition for permit; O'Neal report.) It will be operated and maintained according to applicable requirements. (testimony of Mr. Lee.) No further safety-related terms, conditions, or restrictions need to be imposed pursuant to Iowa Code § 479.12. (petition for permit; testimony of Mr. Lee; O'Neal report.)

7. Corning owns property subject to execution within this state, other than pipelines, of a value in excess of \$250,000, and thus meets the requirements of Iowa Code § 479.26 and 199 IAC 10.2(1)"d." (testimony of Mr. Lee; petition exhibit D.)

8. 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-866 file.)

9. Corning has not obtained the 31 voluntary easements it needs for the proposed pipeline. (petition for permit; testimony of Mr. Lee.) Many land survey markers were missing in the area along the pipeline route so it has taken Corning an unusual length of time to obtain legal descriptions of property boundaries needed for easement documents. (testimony of Mr. Lee.) Corning has obtained verbal agreements to provide voluntary easements from the landowners along the route and is confident it can obtain the required voluntary easements. (testimony of Mr. Lee.)

10. The land restoration plan filed by Corning adequately addresses all applicable requirements in Iowa Code § 479.29 and 199 IAC 9. (petition Exhibit I; O'Neal report; testimony of Mr. Lee.)

### **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, 479.3, 479.4, 479.12, and 479.18; 199 IAC 9, 10.

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

3. The petition of Corning for issuance of a permit for the natural gas pipeline in this docket should be granted. Iowa Code §§ 479.11, 479.12, and 479.26; 199 IAC 9, 10. Corning did not request the right of eminent domain and none is granted by the issuance of this decision or by the issuance of the pipeline permit.

**IT IS THEREFORE ORDERED:**

1. Official notice is taken of the report dated July 25, 2006, filed in this docket by Mr. Jeffrey L. O'Neal, utility regulatory engineer for the Board.

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

3. Corning must provide timely notice to the Board before beginning construction of the pipeline, and must also file weekly progress reports with the Board during construction of the pipeline.

4. After Corning completes construction of the new pipeline, it must file a construction completion report with the Board. This report must include information regarding any unusual construction problems or occurrences and a copy of the pressure test procedures used and the results obtained.

5. Within 180 days after completion of the construction of the new pipeline, Corning must file a map that accurately shows the location of the pipeline route as constructed. The map will be a part of the record in this case and will represent the final route as authorized by the permit.

6. Corning shall file a statement with the Board once it has obtained the necessary voluntary easements from landowners.

7. Corning shall file a revised summary map in petition Exhibit B and proof of payment of costs of publication with the Board within seven days of the date of this proposed decision.

8. Once it receives them, Corning shall file copies of the approvals or other showing of right that it obtains from the Iowa Department of Transportation, Adams County, and the Iowa Department of Natural Resources as testified to by Mr. Lee.

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

10. This proposed decision will become the final decision of the Board unless appealed to the Board within 5 days of its issuance or the Board votes to review the proposed decision on its own motion. Iowa Code § 17A.15(3); 199 IAC 7.26(2).

**UTILITIES BOARD**

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

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 14<sup>th</sup> day of September, 2006.