

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: WATERLOO GAS TRANSPORT, LLC	DOCKET NO. P-867
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PROPOSED DECISION AND ORDER GRANTING PERMIT

(Issued January 12, 2007)

APPEARANCES:

MR. IVAN T. WEBBER, Attorney at Law, Ahlers & Cooney, P.C., 100 Court Avenue, Suite 600, Des Moines, Iowa 50309, appearing on behalf of Waterloo Gas Transport, LLC.

MR. JOHN DWYER, Attorney at Law, 310 Maple Street, Des Moines, Iowa 50319, appearing on behalf of the Consumer Advocate Division of the Department of Justice.

STATEMENT OF THE CASE

On September 28, 2006, Waterloo Gas Transport, LLC (WGT) filed a petition and exhibits for a pipeline permit to allow it to construct, operate, and maintain a gas pipeline in Black Hawk County, Iowa. (petition for permit; O'Neal report; testimony of Mr. Sprangers.) WGT filed amendments to its petition on November 13 and 16, 2006. (petition for permit.) The petition seeks a permit for approximately 6000 feet (1.135 miles) of 4-inch diameter pipeline with a maximum allowable operating pressure (MAOP) of 53.3 psig. (petition for permit; O'Neal report; testimony of Mr. Sprangers, Mr. Swan.) The proposed pipeline will transport flammable digester gas from the City of Waterloo digester to the Tyson Foods Plant in Waterloo, Iowa.

(petition for permit; O'Neal report; testimony of Mr. Sprangers, Mr. Swan, Mr. Eide.)

The digester gas will be used as boiler fuel at the Tyson Foods Plant. (petition for permit; O'Neal report; testimony of Mr. Sprangers, Mr. Swan, Mr. Eide; Exhibit JS-5.)

The entire pipeline will be located within the city of Waterloo. (petition for permit; O'Neal report; testimony of Mr. Sprangers.)

On December 5, 2006, the Utilities Board (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 December 7, 2006. In that order, the undersigned set January 11, 2007, as the date for the hearing on the petition, and proposed to take official notice of a report concerning the proposed pipeline dated November 17, 2006, prepared by Mr. Jeffrey L. O'Neal, utility regulatory engineer for the Board's Safety and Engineering Section.

Mr. Ivan T. Webber filed an appearance on behalf of WGT on December 6, 2006. WGT filed prepared direct testimony and exhibits of Mr. John Sprangers, Mr. Mychael L. Swan, and Mr. Michael Eugene Grothe on December 22, 2006. WGT filed a request to substitute witness Mr. Matthew Eide for witness Mr. Grothe on January 9, 2007.

Mr. John F. Dwyer filed an appearance on behalf of the Consumer Advocate Division of the Department of Justice (Consumer Advocate) on January 5, 2007.

The hearing was held on January 11, 2007, in Board Conference Room 3, 350 Maple Street, Des Moines, Iowa. WGT was represented by its attorney, Mr. Ivan

T. Webber. WGT's request to substitute a witness was granted. Witnesses Mr. John Sprangers, Mr. Mychael L. Swan, and Mr. Matthew Eide testified on behalf of WGT. WGT Exhibits JS-1 through JS-10 and MLS-1 were admitted. The Consumer Advocate was represented by its attorney, Mr. John F. Dwyer. Mr. Jeffrey O'Neal testified as the engineer selected by the Board to examine the proposed route pursuant to Iowa Code § 479.11 (2005). At the hearing, WGT agreed to file a copy of the documents showing the agreement WGT has with Michels Pipeline Construction within 10 days of the date of the hearing, and to file updated versions once they are executed. WGT also agreed to file a copy of its operations manual with the Board within 10 days of the date of the hearing for review and acceptance. WGT agreed to notify the Board at least 30 days prior to any significant changes to its agreements with Swan Engineering and Michels Pipeline Construction. Finally, WGT agreed to file a surety bond to satisfy the requirement of Iowa Code § 479.26.

FINDINGS OF FACT

1. WGT is a pipeline company within the meaning of Iowa Code § 479.2. (petition for permit; testimony of Mr. Sprangers.)
2. On September 28, 2006, WGT filed a petition and exhibits for a pipeline permit to allow it to construct, operate, and maintain a gas pipeline in Black Hawk County, Iowa. (petition for permit; O'Neal report; testimony of Mr. Sprangers.) WGT filed amendments to its petition on November 13 and 16, 2006. (petition for permit.) The petition seeks a permit for approximately 6000 feet (1.135 miles) of 4-inch

diameter plastic pipeline with an MAOP of 53.3 psig. (petition for permit; O'Neal report; testimony of Mr. Sprangers, Mr. Swan.)

3. The proposed pipeline will follow 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.) The route begins at an existing City of Waterloo digester located on the south side of Martin Luther King Jr. Drive, enters the right-of-way of Martin Luther King Jr. Drive and runs in a generally easterly and southeasterly direction along the south side of Martin Luther King Jr. Drive within the street right-of-way. (petition Exhibits A and B; O'Neal report; testimony of Mr. Sprangers.) South of the Tyson Foods Plant, the route crosses the street and runs north and east on Tyson Foods property to its endpoint at the existing Tyson Foods plant, all in the city of Waterloo, Iowa. (petition Exhibits A and B; O'Neal report; testimony of Mr. Sprangers.)

4. The proposed pipeline will transport flammable digester gas from the City of Waterloo digester to the Tyson Foods plant in Waterloo, Iowa. (petition for permit; O'Neal report; testimony of Mr. Sprangers, Mr. Swan, Mr. Eide.) The digester gas will be used as boiler fuel at the Tyson Foods Plant. (petition for permit; O'Neal report; testimony of Mr. Sprangers, Mr. Swan, Mr. Eide; Exhibit JS-5.)

5. WGT caused notice of the hearing to be published in Black Hawk County in the Waterloo-Cedar Falls Courier, a newspaper of general circulation in the county, on December 20 and 27, 2006. (proof of publication.) A minor error in the

publication was not misleading and the published notice was sufficient to meet the requirement of Iowa Code § 479.7 (2005). (proof of publication.)

6. The proposed pipeline is necessary to transport digester gas from the City of Waterloo digester to the Tyson Foods Plant, where it will be used as boiler fuel. (petition for permit; O'Neal report; testimony of Mr. Sprangers, Mr. Swan, Mr. Eide; Exhibit JS-5.) The City of Waterloo is currently flaring the digester gas that will be transported by the proposed pipeline, thus wasting its thermal energy and causing the emission of sulfur into the atmosphere. (testimony of Mr. Sprangers, Mr. Swan, Mr. Eide; petition for permit.) Tyson Foods is currently using natural gas to fuel its boilers. (testimony of Mr. Eide.) The proposed pipeline will assure the beneficial use of the digester gas, provide a revenue stream to the City of Waterloo, allow Tyson Foods to reduce its fuel costs, and improve air quality in the area. (testimony of Mr. Sprangers, Mr. Swan, Mr. Eide; petition for permit.) Therefore, the proposed pipeline will promote the public convenience and necessity. (petition for permit; testimony of Mr. Sprangers, Mr. Swan, Mr. Eide; Exhibits JS-2, JS-3, JS-5.)

7. WGT has retained Swan Engineering to design the proposed pipeline, manage its construction and testing, and oversee its operations and maintenance. (petition for permit; testimony of Mr. Sprangers, Mr. Swan; Exhibit JS-6.) WGT has executed an agreement with Swan Engineering. (testimony of Mr. Sprangers, Mr. Swan; Exhibit JS-10.) Mr. Swan is the president of Swan Engineering and has significant experience in the design, construction, and operation of pipelines.

(petition for permit; testimony of Mr. Sprangers, Mr. Swan; Exhibit MSL-1.) WGT has retained Michels Pipeline Construction (Michels) to install the proposed pipeline under the supervision of Swan Engineering. (testimony of Mr. Sprangers, Mr. Swan; petition for permit.) Michels has extensive experience in plastic pipeline installation and directional boring. (testimony of Mr. Sprangers, Mr. Swan; petition for permit; Exhibit JS-7.)

8. Given the agreements WGT has with Swan Engineering and Michels, and if the agreements are followed, it appears that the proposed pipeline will comply with the design, construction, and safety requirements of Iowa Code Chapter 479, 199 IAC § 10.12, and 49 C.F.R. Part 192. (petition for permit; O'Neal report; testimony of Mr. Sprangers, Mr. Swan, Mr. O'Neal; Exhibit JS-10.) Without these agreements, there is no evidence in the record that WGT has the knowledge and experience to construct, operate and maintain the proposed pipeline in compliance with these requirements. (testimony of Mr. Sprangers, Mr. Swan, Mr. O'Neal; petition for permit; Exhibit JS-1; O'Neal report.) Therefore, in order to be assured that the proposed pipeline will comply with these requirements, if WGT does not continue its contractual relationships with Swan Engineering and Michels, or significantly modifies one or both of them, WGT must notify the Board at least 30 days prior to discontinuance or modification and explain how it intends to comply with applicable state and federal requirements regarding the pipeline contained in Iowa Code Chapter 479, 199 IAC § 10.12, and 49 C.F.R. Part 192. (testimony of Mr. Sprangers,

Mr. Swan, Mr. O'Neal; petition for permit; Exhibits JS-1, JS-10; O'Neal report.) In addition, WGT must file its operations manual that complies with the requirements of 49 C.F.R. Part 192 with the Board within 10 days of the date of the hearing for review and acceptance prior to commencement of operation of the proposed pipeline.

(testimony of Mr. Sprangers, Mr. Swan, Mr. O'Neal; petition for permit; Exhibit JS-1; O'Neal report.) WGT must also file a copy of the documents showing the agreement it has with Michels within 10 days of the date of the hearing and must file updated versions once they are executed.

9. Other than the safety-related conditions listed above, no other terms, conditions, or restrictions need to be imposed pursuant to Iowa Code § 479.12. (petition for permit; O'Neal report; testimony of Mr. Sprangers, Mr. Swan, Mr. O'Neal; Exhibit JS-10.)

10. The location and route of the proposed pipeline are reasonable 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. Sprangers, Mr. O'Neal; Exhibit JS-4.)

11. WGT did not present evidence sufficient to show it owns property subject to execution within this state, other than pipelines, of a value in excess of \$250,000. (Testimony of Mr. Sprangers; petition Exhibit D; Exhibits JS-8, JS-9.) WGT did not file satisfactory proof of its solvency and financial ability to pay damages. (Testimony of Mr. Sprangers; petition Exhibit D; Exhibits JS-8, JS-9.)

However, WGT agreed to file and maintain a surety bond in the sum of \$250,000 to satisfy the requirement of Iowa Code § 479.26. WGT must file the bond prior to beginning construction of the proposed pipeline.

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-867 file.)

13. WGT has obtained all necessary easements and the agreement with the City of Waterloo for use of the public right-of-way it needs for the proposed pipeline. (petition for permit; testimony of Mr. Sprangers; Exhibit JS-4.)

14. The proposed pipeline will not impact any agricultural land. (petition for permit; O'Neal report.)

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 any gaseous substance, including the digester gas that will be transported by the proposed pipeline at issue in this case. Iowa Code §§ 479.1, 479.3, 479.4, 479.5, 479.6, 479.12, and 479.18; 199 IAC 10.

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

3. The petition of WGT for issuance of a permit for the pipeline in this docket should be granted with the safety restrictions discussed above. Iowa Code §§ 479.11, 479.12, and 479.26; 199 IAC 10.

4. Since the proposed pipeline will not impact any agricultural land, WGT is not required to comply with the requirements of Iowa Code § 479.29 and 199 IAC 9.

5. WGT must comply with the requirements of all applicable statutes and rules regarding the construction, operation, and maintenance of the proposed pipeline. Iowa Code Chapter 479; 199 IAC 10.12; 49 C.F.R. Parts 192 and 199.

IT IS THEREFORE ORDERED:

1. Official notice is taken of the report dated November 17, 2006, filed in this docket by Mr. Jeffrey L. O'Neal, utility regulatory engineer for the Board's Safety & Engineering Section.

2. Pursuant to Iowa Code Chapter 479, the petition for a pipeline permit filed by WGT in this docket is granted, with the following safety restrictions:

a. If WGT does not continue its contractual relationships with Swan Engineering or Michels, or significantly modifies either or both of them, WGT must notify the Board at least 30 days prior to discontinuance or modification and explain how it intends to comply with applicable state and federal requirements regarding the pipeline contained in Iowa Code Chapter 479, 199 IAC § 10.12, and 49 C.F.R. Part 192.

b. Although construction of the proposed pipeline may commence once the Board issues a permit, WGT may not begin operating the pipeline until it files an operations manual that complies with the requirements of

49 C.F.R. Part 192 with the Board for review and acceptance. WGT must file a copy of its operations manual with the Board within 10 days of the date of the hearing.

c. WGT must file a copy of the documents showing the agreement it has with Michels Pipeline Construction with the Board within 10 days of the date of the hearing, and must file updated versions once they are executed.

d. A permit will be issued with these safety restrictions if this proposed decision and order becomes the final order of the Board.

3. WGT must file a surety bond that complies with the requirements of Iowa Code § 479.26 with the Board prior to beginning construction of the proposed pipeline.

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

5. After WGT 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.

6. Within 180 days after completion of the construction of the new pipeline, WGT must file a map with the Board 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.

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

8. Ordinarily, this proposed decision would become the final decision of the Board unless appealed to the Board within 15 days of its issuance. Iowa Code § 17A.15(3); 199 IAC § 7.8(2). However, under appropriate circumstances, it is possible to reduce the time for appeal. Iowa Code § 17A.15(3); 199 IAC 1.3, 7.8(2). WGT has requested expedited treatment of this case so it can proceed with construction. No objections to this petition were filed. The Consumer Advocate does not object to a reduced appeal period. There are no unresolved issues that indicate a need for the 15-day appeal period. Therefore, this proposed decision will become the final decision of the Board unless appealed to the Board within five (5) days of its issuance.

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 January, 2007.