

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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IN RE:  EAST FORK BIODIESEL, LLC	DOCKET NO. P-870
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**PROPOSED DECISION AND ORDER GRANTING PERMIT**

(Issued August 29, 2007)

**APPEARANCES:**

MR. VERLE W. NORRIS, Attorney at Law, 300 West Marion, P.O. Box 256, Corydon, Iowa 50060, appearing on behalf of East Fork Biodiesel, LLC.

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 May 21, 2007, East Fork Biodiesel, LLC (East Fork) filed a petition and exhibits for a pipeline permit with the Utilities Board (Board). (petition for permit.) East Fork proposes to construct, operate, and maintain a new 6-inch diameter plastic natural gas pipeline approximately 1.3 miles long in Kossuth County, Iowa. (petition for permit; testimony of Mr. Clark, Mr. Pauling, Mr. Hingtgen; O'Neal report.) East Fork filed amendments to its petition and exhibits and provided additional information on June 5, June 13, and July 9, 2007. (petition for permit; O'Neal report.) The proposed pipeline will deliver natural gas to the East Fork plant currently under

construction east of Algona. (petition for permit; testimony of Mr. Clark, Mr. Pauling, Mr. Hingtgen; O'Neal report.)

On July 6, 2007, the Board assigned this case to the undersigned administrative law judge. On July 13, 2007, the undersigned issued an order establishing a procedural schedule, proposing to take official notice, and providing notice of the hearing. In that order, the undersigned set August 28, 2007, as the hearing date and proposed to take official notice of a report concerning the proposed pipeline dated June 14, 2007, prepared by Mr. Jeffrey L. O'Neal, utility regulatory engineer for the Board.

East Fork filed the prepared direct testimony and exhibits of Mr. David L. Pauling, Mr. David J. Hingtgen, and Mr. Kenneth M. Clark on August 2, 2007. East Fork filed an appearance on May 25, 2007, and proof of publication of notice on August 24, 2007.

The hearing was held on August 28, 2007, in Conference Room 3, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa. East Fork was represented by its attorney, Mr. Verle W. Norris. Mr. Clark, Mr. Pauling, and Mr. Hingtgen testified on behalf of East Fork. Mr. Clark is the president of the board of directors of East Fork. (testimony of Mr. Clark.) Mr. Pauling is the operations manager for Aquila, Inc. (Aquila) in southwest Iowa. (testimony of Mr. Pauling.) East Fork has contracted with Aquila to design, construct, operate, and maintain the proposed pipeline. (testimony of Mr. Pauling, Mr. Clark, Mr. Hingtgen; Exhibits DLP-2 and DLP-3.) Mr.

Hingtgen is the vice-president of business development for Graham Land Acquisition Associates (GLAA). (testimony of Mr. Hingtgen.) At Aquila's request, GLAA is providing right-of-way acquisition and permitting services for the proposed pipeline. (testimony of Mr. Hingtgen.) East Fork Exhibits DJH-1, DLP-1, DLP-2, and DLP-3 were admitted at the hearing. The Consumer Advocate Division of the Department of Justice (Consumer Advocate) was represented by its attorney, Mr. John F. Dwyer. 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 (2007). At the hearing, East Fork agreed to file a corrected petition Exhibit A with the Board by August 29, 2007.

### **FINDINGS OF FACT**

1. East Fork is a pipeline company within the meaning of Iowa Code § 479.2. (petition for permit; testimony of Mr. Clark, Mr. Pauling, Mr. Hingtgen; O'Neal report.)

2. On May 21, 2007, East Fork filed a petition and exhibits for a pipeline permit with the Board. (petition for permit.) East Fork proposes to construct, operate, and maintain a new 6-inch diameter plastic natural gas pipeline approximately 1.3 miles long in Kossuth County, Iowa, with a maximum allowable operating pressure of 100 psig. (petition for permit; testimony of Mr. Clark, Mr. Pauling, Mr. Hingtgen; O'Neal report.) East Fork filed amendments to its petition and

exhibits and provided additional information on June 5, June 13, and July 9, 2007.

(petition for permit; O'Neal report.)

3. The proposed pipeline must have a permit from the Board because it will meet the definition of a transmission line. 199 IAC 10.16; 49 CFR 192.3.  
(petition for permit; testimony of Mr. Pauling, Mr. Hingtgen, Mr. Clark; O'Neal report.)

It is a transmission line because it will transport natural gas from another transmission line to a large volume customer that is not downstream from a distribution center. 49 C.F.R. 192.3. (petition for permit; testimony of Mr. Pauling, Mr. Hingtgen, Mr. Clark; O'Neal report.)

4. East Fork caused notice of the hearing to be published in Kossuth County in the Algona Upper Des Moines, a newspaper of general circulation in the county, on August 9 and 16, 2007. (proof of publication.)

5. The proposed pipeline will follow a route described in Exhibit A (as corrected) and shown on Exhibit B attached to the petition for a permit. (petition Exhibits A and B; testimony of Mr. Pauling, Mr. Hingtgen; 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; testimony of Mr. Pauling, Mr. Hingtgen; O'Neal report.)

6. East Fork has received all required permits and approvals from Kossuth County and the Iowa, Chicago & Eastern Railroad for the proposed pipeline. (testimony of Mr. Hingtgen; Exhibit DJH-1; petition for permit.)

7. The proposed pipeline will deliver natural gas from a new Northern Natural Gas (NNG) delivery and metering station (also known as a town border station) on an existing NNG pipeline east of Algona, Iowa, to the East Fork biodiesel plant currently under construction east of Algona. (petition for permit; testimony of Mr. Pauling, Mr. Hingtgen; O'Neal report; Exhibit DLP-1.) The pipeline is necessary to serve the new biodiesel plant. (petition for permit; testimony of Mr. Clark; O'Neal report.) The biodiesel plant is located in a newly formed industrial area with no natural gas lines in place, and the plant requires the proposed pipeline to supply natural gas to operate all facets of biodiesel production. (testimony of Mr. Clark; petition for permit.) The plant is expected to produce approximately 60 million gallons of biodiesel fuel per year and will be a major market for refined vegetable oil the owners expect will come from soybeans grown in Iowa and surrounding states. (testimony of Mr. Clark; petition for permit.) The plant will create between 32 and 36 high paying jobs in the Algona and Kossuth County area and is expected to have a significant positive effect on the North Central Iowa economy. (testimony of Mr. Clark; petition for permit.) It will also positively impact the environment by producing a renewable fuel. (testimony of Mr. Clark; petition for permit.) Therefore, the

proposed pipeline will promote the public convenience and necessity. (petition for permit; testimony of Mr. Clark, Mr. Pauling, Mr. Hingtgen; O'Neal report.)

8. The proposed pipeline will comply with the design, construction, and safety requirements of Iowa Code chapter 479, 199 IAC § 10.12, and 49 CFR Part 192. (petition for permit; testimony of Mr. Pauling, Mr. Clark; O'Neal report.) East Fork has contracted with Aquila to design, construct, operate, and maintain the proposed pipeline. (testimony of Mr. Pauling, Mr. Clark, Mr. Hingtgen; Exhibits DLP-2 and DLP-3.) At the hearing, Mr. Clark and Mr. Pauling testified they would inform the Board if any changes were made to this contractual relationship. (testimony of Mr. Clark, Mr. Pauling.) The grant of this pipeline permit assumes that these contractual arrangements will continue and will not be significantly modified. If this is not the case, East Fork must notify the Board as ordered below. Other than this requirement, no further safety-related terms, conditions, or restrictions need to be imposed pursuant to Iowa Code § 479.12. (petition for permit; testimony of Mr. Clark, Mr. Pauling, Mr. O'Neal; O'Neal report.)

9. East Fork 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." (petition Exhibit D; testimony of Mr. Clark.)

10. 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-870 file.)

East Fork proposes to construct the pipeline in county road right-of-way, so it does not request the right of eminent domain. (testimony of Mr. Hingtgen; petition for permit.)

### **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 10.

2. The Board has jurisdiction over East Fork 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 East Fork 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 10.

4. The proposed pipeline will not cross any agricultural land, so a land restoration plan is not required. Iowa Code § 479.29; 199 IAC 9.

### **IT IS THEREFORE ORDERED:**

1. Official notice is taken of the report dated June 14, 2007, filed in this docket by Mr. Jeffrey O'Neal, utility regulatory engineer for the Board.

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

3. East Fork must file a corrected petition Exhibit A as agreed at the hearing.

4. East Fork 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.

5. After East Fork 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, East Fork 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.

7. If East Fork does not continue its contractual relationship for the design, construction, operation and maintenance of the proposed pipeline with Aquila, or if it significantly modifies its contractual relationship, East Fork must notify the Board at least 30 days prior to discontinuance or modification of the contract and must explain how it will 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. Parts 192 and 199.

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

9. This proposed decision will become the final decision of the Board unless, within five (5) days after the proposed decision is issued, a party files written notice of appeal with the Board 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 29<sup>th</sup> day of August, 2007.