

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

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| IN RE: ABSOLUTE ENERGY, LLC | DOCKET NO. P-871 |
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PROPOSED DECISION AND ORDER GRANTING PERMIT

(Issued September 26, 2007)

APPEARANCES:

MR. VERLE W. NORRIS, Attorney at Law, 300 West Marion, P.O. Box 256, Corydon, Iowa 50060, appearing on behalf of Absolute Energy, 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 June 12, 2007, Absolute Energy, LLC (Absolute Energy) filed a petition and exhibits for a pipeline permit with the Utilities Board (Board). (petition for permit.) Absolute Energy proposes to construct, operate, and maintain a new 6-inch diameter steel natural gas pipeline approximately 3.2 miles long in Mitchell County, Iowa. (petition for permit; testimony of Mr. Schwarck, Mr. Pauling, Mr. Hingtgen; O'Neal report.) Absolute Energy filed amendments to its petition and exhibits and provided additional information on June 26, July 5, July 12, August 8, August 16, and September 21, 2007. (petition for permit; O'Neal report.) The proposed pipeline will deliver natural gas to the Absolute Energy ethanol plant currently under construction

near Mona, Iowa. (petition for permit; testimony of Mr. Schwarck, Mr. Pauling, Mr. Hingtgen; O'Neal report.)

On July 13, 2007, Mr. Jeffrey L. O'Neal, regulatory engineer for the Board, filed a report regarding the petition and proposed pipeline. On July 31, 2007, the Board assigned this case to the undersigned administrative law judge. On August 2, 2007, the undersigned issued an order establishing a procedural schedule, proposing to take official notice, and providing notice of the hearing.

On August 8, 2007, Absolute Energy filed a letter and revised petition exhibits that reflected a revised route for the proposed pipeline. On August 9, 2007, Mr. O'Neal sent a letter to Absolute Energy identifying issues the company needed to address with respect to its filing. Absolute Energy filed a revised petition and exhibits and the prepared direct testimony and exhibits of Mr. David L. Pauling, Mr. David J. Hingtgen, and Mr. Ricky A. Schwarck on August 16, 2007.

On August 24, 2007, Mr. O'Neal filed a revised report regarding the petition and proposed pipeline that reflected the new proposed route and that superseded the report Mr. O'Neal filed on July 13, 2007.

On August 27, 2007, Absolute Energy requested a change in the hearing date because it had not been able to publish notice as required by the Board's statutes and rules. On August 28, 2007, the undersigned issued a revised procedural schedule and notice of hearing and proposed to take official notice of Mr. O'Neal's August 24, 2007, revised report. In that order, the undersigned set September 20,

2007, as the hearing date. Absolute Energy filed an appearance on June 22, 2007, and proof of publication of notice on September 12, 2007.

On August 31, 2007, in Docket No. SPU-07-12, the Board approved a settlement agreement in which the Black Hills Corporation (Black Hills) and its subsidiary, Black Hills/Iowa Gas Utility Company, LLC (BH Iowa Gas), will acquire the natural gas assets of Aquila, Inc., d/b/a Aquila Networks (Aquila) located in Iowa and other states. Once this acquisition is completed, Aquila will discontinue providing utility service in Iowa. Since prefiled testimony in this docket stated that Absolute Energy had contracted with Aquila to design, construct, operate, and maintain the proposed pipeline at issue in this docket, on September 12, 2007, Absolute Energy was ordered to present evidence at the hearing regarding how the Black Hills/BH Iowa Gas acquisition would affect these contractual arrangements.

The hearing was held on September 20, 2007, in Conference Room 3, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa. Absolute Energy was represented by its attorney, Mr. Verle W. Norris. Mr. Schwarck, Mr. Pauling, and Mr. Hingtgen testified on behalf of Absolute Energy. Mr. Schwarck is the chairman of the board, president, and chief executive officer of Absolute Energy. (testimony of Mr. Schwarck.) Mr. Pauling is the operations manager for Aquila in southwest Iowa. (testimony of Mr. Pauling.) Absolute Energy has contracted with Aquila to design, construct, operate, and maintain the proposed pipeline. (testimony of Mr. Pauling, Mr. Schwarck, Mr. Hingtgen; Absolute Energy Exhibits DLP-2, DLP-3; petition for

permit Exhibit I.) 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.) Absolute Energy Exhibits RAS-1, 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, Absolute Energy agreed to file a complete copy of its revised Land Restoration Plan (petition Exhibit I), a revised "Legal Descriptions of Crossings" document (as part of petition Exhibit C), an executed copy of Exhibit DLP-3, and the required permits and approvals from Mitchell County, the Iowa Department of Transportation, the Illinois Central and Cedar Valley Railroads, and the Iowa Department of Natural Resources. If the acquisition of Aquila by Black Hills and BH Iowa Gas is finalized, Absolute Energy also agreed to file either: 1) an executed copy of a new Technical Services Agreement for operation and maintenance of the pipeline signed by Absolute Energy and BH Iowa Gas; or 2) evidence that the current Technical Services Agreement (Absolute Energy Exhibit DLP-3) had been assigned to BH Iowa Gas pursuant to the terms of the Technical Services Agreement; depending on which document is executed, once it is executed.

Absolute Energy filed a new petition Exhibit C and a complete copy of petition Exhibit I on September 21, 2007. On September 24, 2007, Mr. O'Neal filed a second staff report reviewing the revised petition exhibits. Mr. O'Neal stated the revised exhibits corrected the issues raised in his August 24, 2007, report regarding the exhibits. On September 25, 2007, Absolute Energy filed a notice of filing substitute exhibit and a revised Absolute Energy Exhibit DLP-3.

FINDINGS OF FACT

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

2. On June 12, 2007, Absolute Energy filed a petition and exhibits for a pipeline permit with the Board. (petition for permit.) Absolute Energy proposes to construct, operate, and maintain a new 6-inch diameter steel natural gas pipeline approximately 3.2 miles long in Mitchell County, Iowa, with a maximum allowable operating pressure of 500 psig. (petition for permit; testimony of Mr. Schwarck, Mr. Pauling, Mr. Hingtgen; O'Neal report.) Absolute Energy filed amendments to its petition and exhibits and provided additional information on June 26, July 5, July 12, August 8, August 16, and September 21, 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. Schwarck; 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. Schwarck; O'Neal report.)

4. Absolute Energy caused notice of the hearing to be published in Mitchell County in the St. Ansgar Enterprise Journal, a newspaper of general circulation in the county, on September 1 and 8, 2007. (proof of publication.)

5. 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; 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. Absolute Energy has received all required permits and approvals from Mitchell County, the Iowa Department of Transportation, and the Illinois Central and Cedar Valley Railroads for the proposed pipeline, but has not yet filed them with the Board. (testimony of Mr. Hingtgen; petition for permit.) Absolute Energy has not yet received a permit from the Iowa Department of Natural Resources for a single stream crossing, but expects to receive it soon. (testimony of Mr. Hingtgen; petition for permit.) Absolute Energy must file evidence of all required permits and approvals prior to beginning construction of the pipeline.

7. The proposed pipeline will deliver natural gas from an existing Alliance Pipeline valve station on an Alliance pipeline east of Mona, Iowa, to the Absolute Energy ethanol plant currently under construction near Mona. (petition for permit; testimony of Mr. Pauling, Mr. Hingtgen; O'Neal report; Exhibit DLP-1.) The pipeline is necessary to serve the new ethanol plant. (petition for permit; testimony of Mr. Schwarck; O'Neal report.) The ethanol 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 ethanol production. (testimony of Mr. Schwarck; petition for permit.) The plant is expected to produce approximately 100 million gallons of ethanol per year and will be a major market for corn, which Absolute Energy anticipates will come from fields in Iowa and surrounding states. (testimony of Mr. Schwarck; petition for permit.) The ethanol plant will create between 41 and 44 new high paying jobs in the St. Ansgar and Mitchell County area and is expected to have a significant positive effect on the North Central Iowa economy. (testimony of Mr. Schwarck; petition for permit.) It will also positively impact the environment by producing a renewable fuel. (testimony of Mr. Schwarck; petition for permit.) Therefore, the proposed pipeline will promote the public convenience and necessity. (petition for permit; testimony of Mr. Schwarck, 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. Schwarck; O'Neal report.) Absolute Energy has contracted with Aquila to design, construct, operate, and maintain the proposed pipeline. (testimony of Mr. Pauling, Mr. Schwarck, Mr. Hingtgen; Absolute Energy Exhibits DLP-2 and DLP-3.) At the hearing, Mr. Schwarck and Mr. Pauling testified they would inform the Board if any changes were made to this contractual relationship and would file evidence of any change to the Technical Services Agreement for operation and maintenance of the pipeline. (testimony of Mr. Schwarck, Mr. Pauling.) Mr. Pauling testified the Black Hills acquisition of Aquila is still subject to approval of the shareholders and other state commissions, but if approved, will not impact the contracts with Absolute Energy in any way because the new entity will succeed to all contracts and retain the same staff in Iowa. (testimony of Mr. Pauling.) In addition, he testified, construction of the pipeline will be completed prior to the effective date of the acquisition, which he hopes to be during the first quarter of 2008. (testimony of Mr. Pauling.) Aquila has subcontracted the actual construction work to Pipeline Services of Iowa, a company Aquila knows to be experienced and that Aquila has used in the past. (testimony of 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, Absolute Energy 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. Schwarck, Mr. Pauling, Mr. O'Neal; O'Neal report.)

9. Absolute Energy 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. Schwarck; Absolute Energy Exhibit RAS-1.)

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-871 file.) Absolute Energy does not request the right of eminent domain. (testimony of Mr. Hingtgen; petition for permit.) Absolute Energy has obtained signatures for all five needed voluntary easements, although two of the parcels are in bankruptcy, and the bankruptcy court must approve the grants of the easements. (testimony of Mr. Hingtgen.)

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, 479.18, and 479.29; 199 IAC 10.

2. The Board has jurisdiction over Absolute Energy 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, 479.18, and 479.29; 199 IAC 9 and 10.

3. The petition of Absolute Energy for issuance of a permit for the natural gas pipeline in this docket should be granted. Iowa Code §§ 479.11, 479.12, 479.26 and 479.29; 199 IAC 9 and 10.

4. The land restoration plan filed by Absolute Energy complies with the requirements of Iowa Code § 479.29 and 199 IAC 9. (petition for permit; O'Neal reports; Absolute Energy Exhibit DJH-1.)

IT IS THEREFORE ORDERED:

1. Official notice is taken of the report dated August 24, 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 Absolute Energy in this docket is granted. A permit will be issued if this proposed decision and order becomes the final order of the Board.

3. Absolute Energy must file the required permits and approvals from Mitchell County, the Iowa Department of Transportation, the Illinois Central and Cedar Valley Railroads, and the Iowa Department of Natural Resources prior to beginning construction of the pipeline.

4. If the acquisition of Aquila by Black Hills and BH Iowa Gas is finalized, Absolute Energy must file either: 1) an executed copy of a new Technical Services Agreement for operation and maintenance of the pipeline signed by Absolute Energy and BH Iowa Gas; or 2) evidence that the current Technical Services Agreement (Absolute Energy Exhibit DLP-3) had been assigned to BH Iowa Gas pursuant to the

terms of the Technical Services Agreement; depending on which document is executed. The document must be filed as soon as it is executed.

5. Absolute Energy must file notice with the Board once the bankruptcy court has approved the two remaining voluntary easements needed for the pipeline and may not begin construction of the pipeline until the bankruptcy court has approved the easements. The issuance of the permit in this case is based on approval of the easements by the bankruptcy court.

6. Absolute Energy 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.

7. After Absolute Energy 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.

8. Within 180 days after completion of the construction of the new pipeline, Absolute Energy 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.

9. If Absolute Energy does not continue its contractual relationships for the design, construction, operation and maintenance of the proposed pipeline with Aquila or BH Iowa Gas, or if it significantly modifies one or both of the contractual

relationships, Absolute Energy 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.

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

11. 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 26th day of September, 2007.