BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Joint Application of Aquila Inc. d/b/a Aquila Networks, Black Hills Corporation and Black Hills/Nebraska Gas Utility Company, LLC, Source Gas Holdings LLC for approval of the proposed transfer of Aquila's certificate of convenience and for a change of control of Aquila's Nebraska Jurisdictional assets.	)	Application No. NG-0044 GRANTED Entered: October 16, 2007

APPEARANCES:

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BY THE COMMISSION:

Background

On April 4, 2007, Aquila, Inc. d/b/a Aquila Networks (Aquila), Black Hills Corporation (Black Hills) and Black Hills/Nebraska Gas Utility Company, LLC (BH/Nebraska Gas) (collectively the Applicants) filed a Joint Application Seeking Approval of the proposed transfer of Aquila's Certificate of Convenience and for a Change of Control of Aquila's Nebraska Jurisdictional Assets. Notice of the Joint Application was published in The Daily Record, Omaha, Nebraska, on April 6, 2007.

Petitions for Formal Intervention were timely filed by the Public Advocate and SourceGas Distribution, LLC f/k/a Kinder Morgan, Inc. on May 3, 2007, and April 30 2007, respectively. A petition for Informal Intervention was filed by Cornerstone Energy on August 15, 2007. Both petitions for formal intervention were granted by the Commission in an order issued in the above-captioned docket on May 15, 2007. Cornerstone Energy's petition for informal intervention was granted by the Commission in an order issued in the above-captioned docket on September 5, 2007.

A Hearing on the Application was held on September 10, 2007, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above.

The Parties

Aquila is a corporation duly organized under the laws of the State of Delaware with its principal place of business located in Kansas City, Missouri. Aquila is one of the largest providers of electricity and natural gas in the Midwest. Aquila serves approximately one million electric and gas customers in Nebraska, Missouri, Iowa, Kansas, and Colorado. In Nebraska Aquila serves approximately 194,000 natural gas customers in 110 communities located in the eastern part of the state.

Black Hills is a corporation duly organized under the laws of South Dakota with its principal place of business located in

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Rapid City, South Dakota. Black Hills employs approximately 850 employees and has assets totaling approximately $2.2 billion. Through its utility subsidiaries, Black Hills provides retail natural gas and electric service to approximately 137,000 utility customers in South Dakota, Wyoming, and Montana. Black Hills has non-regulated subsidiaries that provide wholesale energy production and marketing throughout the western United States and western Canada. In addition, Black Hills maintains a wholly-owned subsidiary that provides centralized services to affiliate companies in the Black Hills system.

BH/Nebraska Gas is a limited liability company duly organized under the laws of the State of Delaware and has its principal place of business located in Rapid City, South Dakota. BH/Nebraska Gas is a wholly-owned subsidiary of Black Hills. BH/Nebraska Gas is duly authorized to transact business in the State of Nebraska. BH/Nebraska Gas has been formed for the purpose of the transaction between Aquila and Black Hills described herein, and at the closing of the transaction BH/Nebraska Gas will own and operate the Nebraska natural gas business and assets that Black Hills is acquiring from Aquila.

The Transaction

Black Hills is proposing to acquire all of the assets of Aquila in Nebraska and to become a rate-regulated public utility subject to the Commission's jurisdiction under the Act. Under the terms of the Asset Purchase Agreement, Black Hills will assume the contractual obligations and liabilities of Aquila associated with the assets acquired. Aquila's Nebraska natural gas assets will be held by a separate subsidiary, BH/Nebraska Gas. Black Hills has formed Black Hills Utility Holding Company, Inc. (BHUH), which will hold all of the acquired utility assets of BH/Nebraska Gas, as well as the assets of the other separate subsidiaries formed in Iowa, Kansas and Colorado to own assets located in those states.

E V I D E N C E

In support of their Joint Application, the Joint Applicants offered the pre-filed testimony of Stephen L. Pella, Operating Vice President, Natural Gas of Aquila; R. Thomas Fleener, Vice President, Corporate Development of Aquila; Linden R. Evans, President and Chief Operating Officer of Black Hills' Retail Business Segment; Thomas M. Ohlmacher, President and Chief Operating Officer of Black Hills' Wholesale Business Segment; and Mark T. Thies, Executive Vice President and Chief Financial

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Officer of Black Hills. Mark T. Thies also submitted Rebuttal Testimony.

On behalf of the Public and the ratepayers of Aquila, the Public Advocate, Roger Cox, offered the pre-filed testimony of William L. Glahn, a consultant with Dahlen, Berg Consulting, Inc. headquartered in Minneapolis, Minnesota. At the hearing on September 10, 2007, Mr. Cox cross-examined Mr. Pella and Mr. Thies in relation to their pre-filed testimony.

The Public Advocate objected at hearing to the admission of Exhibit Nos. JA-2, JA-3, JA-4, JA-8, JA-9, and JA-10 as they relate to an acquisition premium adjustment based on the grounds that they lack a proper and sufficient foundation and hearsay. The Hearing Officer overruled the Public Advocate's objections, and the Commission affirms the Hearing Officer's decision. All Exhibits offered at the September 10, 2007 hearing on this matter, along with the Application and other documents filed in this proceeding are accepted into evidence and will be included in the official record in this proceeding.

Procedural Motions

The Public Advocate submitted two Procedural Motions at the hearing. The Public Advocate's first Motion was to remove the "Confidential" and "Super-Confidential" designations for information contained in Trial Exhibit Nos. JA-2, JA-3, JA-4, JA-8, JA-9, and JA-10. Specifically, the Public Advocate sought to remove confidential protection of specific figures contained in the exhibits regarding acquisition premiums and transaction costs and the categories of those costs. (Tr. 11).

The Public Advocate's second Motion concerned the treatment of acquisition adjustments and transaction costs. The Public Advocate sought a Commission ruling conditioning approval of the proposed transaction on the inclusion of a prohibition on the Applicants seeking recovery of any acquisition premium adjustment in any future proceedings before the Commission. Further, the Public Advocate argued that any determination in this proceeding by the Commission should preclude the Applicant Black Hills from seeking to recover an acquisition premium or transactions costs as part of a future general rate filing before the Commission.

The Hearing Officer and the Commission heard oral argument and after deliberating for a period of time, the Hearing Officer

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issued rulings denying both Public Advocate Motions. The Hearing Officer stated that the Commissioners declined to remove in whole or in part the confidential status of the documents at issue. (Tr. 38). Concerning the Public Advocate's second Motion, the Commission found that the determination of possible future recovery of acquisition adjustments by Black Hills is not proper under the current docket and should be correctly addressed in a future general rate filing. (Tr. 38). The Commission hereby affirms the prior ruling of the Hearing Officer at the hearing.

Mr. Pella[1] and Mr. Fleener[2] both filed pre-file testimony on behalf of Aquila. Mr. Fleener testified that Aquila's board determined that the transaction with Black Hills, was in the best interests of Aquila. (Fleener, p. 2,6). Mr. Pella testified concerning the current structure of Aquila's gas operations in Nebraska and the transition of customers and employees from Aquila to Black Hills.

Mr. Pella stated that Aquila and Black Hills have established a pre-closing transaction team to smooth the transition of operations. Mr. Pella elaborated that Black Hills has stated its intent to offer employment to all of Aquila's field operations and field customer service employees in Colorado, Nebraska and Iowa to help ensure consistency of service and preserve institutional knowledge. (Pella, p. 4-5).

In his pre-filed testimony, Mr. Linden R. Evans, testifying on behalf of Black Hills, further elaborated on the steps taken to smooth the transition from Aquila to Black Hills.[3] Mr. Evans also testified that Black Hills expects to employ Aquila's employees in Colorado, Iowa, Kansas and Nebraska. Black Hills does not expect there to be any disruptive workforce reductions associated with the transaction. (Evans, p. 20). Further, Mr. Evans testified that Black Hills expects a seamless transition. Black Hills has purchased the rights to Aquila's current billing and customer data systems as well as other information

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[1] Mr. Pella's pre-filed Direct Testimony, (hereafter "Pella, p. __"), was admitted as part of Hearing Exhibit No. PSC-1.

[2] Mr. Fleener's pre-filed Direct Testimony, (hereafter "Fleener, p. __"), was admitted as part of Hearing Exhibit No. PSC-1.

[3] Mr. Evans's pre-filed Direct Testimony, (hereafter "Evans, p. __"), was admitted as part of Hearing Exhibit No. PSC-1.

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technology systems to facilitate the transition of customers. (Evans, p. 21).

Mr. Evans further offered testimony concerning Black Hill's philosophy on long term capital investments, customer service and regulatory relationships. Mr. Evans stated in his pre-filed testimony that Black Hills has a long history of commitment to providing energy-related services. (Evans, p. 14). Concerning customer service, Mr. Evans stated that Black Hills strives to provide its customers with reliable gas and electric service at a fair rate and stable price. Furthermore, Mr. Evans testified that Black Hills has a demonstrated record of capital investments in utility infrastructure to ensure reliability and maintain high levels of service quality. Moreover, Mr. Evans stated that Black Hills takes a proactive approach to managing the supply requirements of customers. (Evans, p. 15). Finally, Mr. Evans testified that Black Hills has maintained an active partnership with communities its serves and has demonstrated a respectful and open relationship with regulators. Mr. Evans then stated that it is Black Hills goal to bring the same level of commitment to the customers of Nebraska, Colorado, and Iowa and the communities it serves, as well as, the same open and respectful relationship with regulators. (Evans, p. 19).

In his pre-filed testimony filed on behalf of the Public Advocate, Mr. Glahn[4] testified concerning different concerns with the proposed transaction and ultimately recommended the Commission not approve the transaction. (Glahn, p. 32-33). Mr. Glahn expressed concerns with Black Hill's possibly seeking recovery of an acquisition premium and/or transition costs in a future rate case. (Glahn, p. 13-17). Mr. Glahn further included several recommendations to the Commission in the event that the Commission decided to approve the Joint Applicants application. (Glahn, p. 33).

The Applicants and the Intervenor, SourceGas Distribution, LLC (SourceGas), entered into a Joint Stipulation prior to the September 10, 2007 hearing. In the Joint Stipulation, the Applicants recommend approval of the application and SourceGas offers no objection to the Commission approving the Application. The Joint Stipulation, signed by the Applicants and SourceGas, was admitted into evidence at the September 10, 2007 hearing.

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[4] Mr. Glahn's pre-filed Direct Testimony, (hereafter "Glahn, p. __"), was admitted as Hearing Exhibit No. PA-1.

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O P I N I O N A N D F I N D I N G S

The State Natural Gas Regulation Act (the Act) Neb. Rev. Stat. §§ 66-1801 et seq., requires the Commission to approve the reorganization or change of control of any jurisdictional utility serving customers in Nebraska. Specifically the Act provides:

> The commission shall not approve any proposed reorganization or change of control if the commission finds, after public notice and public hearing, that the reorganization or change of control will adversely affect the utility's ability to serve its ratepayers. Neb. Rev. Stat. § 66-1828(1)(2003 Supp.).

Likewise, the Act requires Commission approval of the transfer of any franchise or certificate of convenience granted to a jurisdictional utility serving customers in Nebraska. The Act provides:

> No franchise of certificate of convenience granted to a jurisdictional utility shall be assigned, transferred, or leased unless the assignment, transfer, or lease has been approved by the commission as being consistent with the public interest. Neb. Rev. Stat. § 66-1821 (2003 Supp.).

Further, Neb. Rev. Stat. § 66-1853 (1) reads as follows:

> (1) Except as provided in subsection (2) of this section, no jurisdictional utility shall transact business in Nebraska until it has obtained a certificate from the commission that public convenience will be promoted by the transaction of the business and permitting the applicants to transact the business of a jurisdictional utility in this state.

In making a determination as to whether a proposed transfer of control will adversely affect a utility's ratepayers and is consistent with the public interest, this Commission has previously considered several factors. *In the Matter of the joint application of NorthWestern Corporation, D/B/A NorthWestern Energy, et al., Docket No. NG-0037 (Oct. 17, 2006)* (hereafter Northwestern), the Commission reviewed the following issues to

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determine whether the transaction would adversely affect the utility's ability to serve its ratepayers:

a. Management;

b. Local Commitments;

c. Impact on Rates and Services;

d. Investment and Planned Long-Term Ownership; and

e. Stability.

Management and Workforce

In the Joint Application, Aquila and Black Hills state that they have structured the proposed transaction with the intent of avoiding unnecessary adverse consequences to customers and employees of the utilities. Black Hills expects little to no disruptive workforce reductions associated with the transaction and intends to employ Aquila's leadership and operations support staff employees within Nebraska. That includes employees located at the customer call center in Lincoln and the consolidated gas supply center located in Omaha. In the Joint Application, Black Hills states it will continue to provide shared services in the same manner as Aquila, ensuring safe and reliable service, and will likely provide for additional employee talent in the Omaha, Lincoln and Rapid City, South Dakota locations.

Black Hills has indicated that Aquila's call center in Raytown, Missouri, would ultimately no longer be in use for Black Hills' customers. The Public Advocate expressed concern about whether the Lincoln Call Center would have adequate capacity to answer calls without excessive wait times during the proposed transition from Aquila to Black Hills. Black Hills stated that a second, smaller call center is being planned to help provide business continuity and to take a portion of the calls during peak times. The Commission finds that the planned addition of a second call center to assist with calls appears to address the Public Advocate fears concerning wait times.

Black Hills has further indicated it intends to retain the support staff located at Aquila's meter and measurement shops in Council Bluffs, Iowa. Also Black Hills purchased the rights to Aquila's current billing and customer data systems along with

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several other key information technology systems to assist and facilitate the transition of customers from Aquila to Black Hills.

In the Joint Application, Black Hills also included a description of the Black Hills management team and the combined experience of the team in the utility service industry. Those individuals making up the Black Hills management team have collectively over 150 years of experience in the retail utility business. Applicants state that Aquila's managers and employees with expertise and work experience with the Nebraska Assets of Aquila will be offered continued employment with Black Hills in Nebraska and that the transaction will not result in any disruptive changes in that workforce. The Commission finds that Black Hills possesses and will hire the management and employee support required to continue quality of the service requirements demanded by the Commission for approval.

Local Commitments

Black Hills states that it will bring its long history of active partnership and dedication to the local communities that Black Hills will serve as a result of the acquisition. In its testimony Black Hills states that it believes strongly in supporting the communities in which it provides utility service and intends to takes part in regional economic and community development through active participation in local organizations. Mr. Evans testified as to Black Hills support of its employees who participate in civic groups, leadership activities, and local fund-raising efforts. Mr. Evans further testified that Black Hills plans to continue such efforts to assist the local communities it will serve. (Evans, p. 22-23).

Black Hills also indicated its commitment to continue making capital improvements in its local distribution systems, complying with existing municipal franchise requirements, and the continuation of other reasonable local community programs initiated by Aquila.

The Commission finds the record demonstrates the Applicant Black Hills' commitment to supporting local communities and regional development, as well as, capital investments in infrastructure.

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Impact on Rates and Services

The Joint Applicants stated that they have remained focused on ensuring the transaction has no adverse effect on the reliability or quality of Aquila's service throughout the entire transaction process. The Applicants both further state that the transaction will not affect Aquila's quality of service or rates.

Black Hills' testimony indicates that the acquisition of Aquila assets by Black Hills is unlikely to impair the ability of BH/Nebraska Gas to provide safe, adequate, and reliable service. BH/Nebraska Gas states it will provide service under the same tariffs and rates as Aquila is currently providing service. Black Hills has also indicated that it has or will offer employment to all of the operational and field services personnel, as well as the managers of Aquila's gas operations.

Black Hills shall ensure that its Nebraska state utility entity, BH/Nebraska Gas, maintains separate books and records, including financial and corporate records. Such books and records may be maintained at Black Hills' corporate offices located in Rapid City, South Dakota, or in the Nebraska operations office. Further, the Commission finds that such books and records shall be made available to the Commission for examination upon request. Black Hills has committed to and shall keep gas pipeline safety records on site at local offices in Nebraska, and any records not available at local offices will be made available for viewing upon request.

BH Nebraska Gas has committed to maintain and accept all existing Aquila tariffs. Black Hills shall make no major changes in service or rates and BH/Nebraska Gas will continue to provide natural gas service to Aquila's customers in accordance with Aquila's approved tariff rates and rules and regulations presently on file with the Commission. BH/Nebraska Gas also will adopt all of Aquila's current rates and terms and conditions of service for customers. Any changes made to the rates, terms and conditions or tariffs will be done in accordance with Nebraska law and Commission rule and regulations.

On January 1 of each year BH/Nebraska Gas has committed to and shall file with the Commission all shared services agreements between that utility and the holding company or other subsidiaries and affiliates. If a non-utility subsidiary or affiliated utility receives a material benefit from a cost

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incurred by BHUH or BH/Nebraska Gas, then the non-utility or affiliated utility will be charged a portion of that cost to compensate BHUH or BH/Nebraska Gas. Services provided by BHUH or BH/Nebraska Gas to any non-utility subsidiaries of Black Hills will be charged at the tariff rate, if applicable, or at the higher of cost or market. The purpose of the January 1 filings is to allow the Commission to monitor the relationship between BH/Nebraska Gas and other Black Hills Affiliates.

Black Hills agrees and shall adopt the current Aquila Operations and Maintenance Manual, continue the comprehensive training program for service call response employees, continue other activities designed to minimize first-response times, and will continue activities designed to minimize the effect of an aging workforce. Black Hills maintains that these commitments should help ensure that BH/Nebraska Gas will be able to provide the same level of service and meet federal and Commissions' safety requirements. However, the Commission also finds that Black Hills and BH/Nebraska Gas shall continue to look for ways to improve beyond the current Aquila practice in these areas.

Black Hills and BHUH will maintain cost allocation procedures for BH/Nebraska Gas in Accordance with the then-current COST ALLOCATION MANUAL (CAM). Black Hills Service Company costs will be charged in accordance with the CAM on file with the Board. The costs that are included for services provided by any non-utility subsidiary of Black Hills to BH/Nebraska Gas or BHUH shall be reasonably necessary and appropriate for the utility business and shall be charged on a valuation no higher than market prices. Any issue of the reasonableness of the allocation of costs from Black Hills to BH/Nebraska Gas will be subject to review by the Commission in future BH/Nebraska's rate cases.

Black Hills commits to maintaining a reliable gas supply portfolio for BH/Nebraska Gas. Black Hills states it has not determined whether gas supplies for BH/Nebraska Gas will be supplied by or through current suppliers utilized by Aquila or some other Black Hills affiliate in the future. Black Hills will make this decision based upon the expected benefits for consumers and a supplier's ability to demonstrate that the opportunity to supply natural gas is achieved in a competitive environment without special knowledge or favoritism.

In addition, Black Hills states that goods and services provided by its non-regulated subsidiaries shall be necessary

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and appropriate for the utility business and shall be charged no higher than market price. Black Hills shall maintain separate money pools for utility and non-utility entities and will further operate each of its utility businesses in accordance with prudent utility standards and practices, and will not engage in any practice with respect to allocation, assignment or distribution of capital, shared expenses, or other costs that is unduly discriminatory or preferential.

Regarding manipulation of gas purchasing practices to the detriment of public utility customers, Black Hills states that it intends to prevent manipulation from happening and commits to not engage in this practice. The Commission shall monitor this area to ensure that Black Hills is meeting its commitments in this area.

Investments and Planned Long-Term Ownership

In the Joint Application and the testimony offered by Black Hills, Black Hills stated it is committed to maintaining safe, reliable and high-quality service to its customers. Further, Black Hills has committed to making the capital expenditures necessary to achieve these goals for BH/Nebraska Gas. The Commission is cognizant that Black Hills must continue to make investments in utility infrastructure to ensure reliability, maintain high levels of service, and take a proactive approach to managing the supply requirements of its customer. The Commission finds that Black Hills shall maintain an appropriate capitalization ratio for the Nebraska gas utilities.

Stability

A primary consideration in determining whether a proposed reorganization and acquisition of a rate-regulated public utility by another entity will adversely affect a utility's ability to serve its ratepayers and is in the public interest is the measures the acquiring entity will implement to protect Nebraska consumers from non-regulated business risks. This consideration involves the ability of the acquiring entity to attract capital and maintain a reasonable capital structure, and what measures the acquiring entity will adopt to insulate Nebraska ratepayers from non-regulated business risks.

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Capital Attraction

Concerning Black Hills' ability to attract capital and maintain a reasonable capital structure, the Commission considered debt availability at a reasonable price. Rating agencies rank the relative investment qualities of various bonds and the risk of default for each company. The rating agencies consider a company's internal financing, as well as many other factors, including business risk, financial risks, financial metrics, expansion risks, and regulatory risks. A utility that fails to maintain an investment-grade rating for its bonds can incur significantly higher capital costs than a utility with an investment-grade rating.

The Commission is concerned that Black Hills has a low investment-grade rating. It was pointed out by the Applicants that Black Hills' rating is higher than Aquila's rating, which is currently below investment-grade. Also, Black Hills maintains it has a conservative corporate management strategy that should help it retain the investment-grade rating. Further, Black Hills has demonstrated to this Commission that it believes it has a greater ability than Aquila to attract capital on reasonable terms, and believes it has demonstrated this ability over the last five years. Black Hills has committed that it will endeavor to maintain an investment-grade credit rating. The Commission finds that Black Hills shall endeavor, with all due diligence and effort, to maintain an investment-grade credit rating.

Corporate Structure and Insulation

Next the Commission turns to an evaluation of Black Hills' capital structure. Based upon the pro forma capital structure shown in the Application, the proposed capital structure appears reasonable. The Commission finds it reasonable that BH Nebraska Gas shall not make any dividend payments to its parent, BHUH, or to Black Hills, if the payment of dividends would reduce BH Nebraska Gas' stand-alone equity level below 40 percent of its total capitalization. The Commission understands that this commitment may have limited effect since BH/Nebraska Gas will not be issuing debt and the commitment shall apply if BH/Nebraska Gas issues debt in the future.

Ring-fencing provides insulation for a regulated utility in two main ways. First, ring-fencing measures can be structured to insulate the public utility against excessive cash extraction by

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the parent, and second, ring-fencing measures can be used to insulate the public utility from being consolidated in any bankruptcy of the parent.

Black Hills has committed to ring-fencing measures to protect BH/Nebraska Gas from the risks posed by Black Hills' non-regulated subsidiaries. Black Hills' testimony cites numerous ring-fencing measures that it maintained pursuant to the Public Utility Holding Company Act (PUHCA) of 1935, and continues to maintain subsequent to the repeal of PUHCA. The Commission finds that ring-fencing protocols are prudent and will help protect Nebraska's gas utility operations from adverse impacts from non-utility business activity. Therefore, Black Hills shall implement the effective ring-fencing protocols referenced by Mr. Thies in his rebuttal testimony. (Thies Rebuttal, Hearing Exhibit JA-11, p. 5-6). Further, Black Hills shall implement any further ring-fencing measures included by the Joint Applicants in their post-hearing brief.

Black Hills shall retain the holding company structure that Black Hills currently has in place. Black Hills' creation of BHUH as a separate holding company for the regulated utility assets in Iowa, Nebraska, and Kansas, will establish a corporate structure that will help insulate BH/Nebraska Gas from the non-regulated subsidiaries of Black Hills.

Black Hills shall also maintain separate money pools for utility and non-utility subsidiaries under its current structure and agreements. This will provide further protection from the risks associated with non-utility affiliates of BH/Nebraska Gas.

Black Hills shall also make the following commitments: (1) BHUH and BH/Nebraska Gas will not provide financing for, extent credit to, issue long-term debt for, or pledge utility assets in support of non-utility subsidiaries; (2) BHUH and BH/Nebraska Gas will not guarantee any new debt obligations, notes, debentures, or any other security of Black Hills or its non-regulated operations; (3) new stand-alone or project financing for non-utility business activities will be without recourse to BHUH or BH/Nebraska Gas; (4) non-utility subsidiaries will be prohibited from lending money directly to BHUH and BH/Nebraska Gas; and (5) non-utility subsidiaries will be prohibited from carrying an inter-company accounts payable balance with any utility of BHUH on a recurring basis that is above the level of normal business transactions.

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BHUH and BH/Nebraska Gas will hold all of their assets in their own names and will maintain adequate capital and numbers of employees in light of their business purposes. BH/Nebraska Gas assets shall not be used by affiliates as collateral or for other purposes that might increase the risk of loss or the risk of being consolidated in any bankruptcy proceeding.

Finally, any additional insulating commitment made by Black Hills in settlements in the other jurisdictions where Black Hills is acquiring Aquila assets shall also apply and be implemented in Nebraska by Black Hills and BH/Nebraska Gas.

Based upon the investment-grade credit rating given Black Hills, the commitment of Black Hills to endeavor to maintain that rating, the establishment of BHUH and BH Nebraska Gas as separate legal entities, and the ring-fencing provisions provided in the order, the Commission finds that the acquisition of Aquila by Black Hills meets the statutory requirements concerning capital attraction and capital structure.

Acquisition Adjustments

Black Hills has stated it will record an acquisition premium for accounting purposes as a result of the proposed transaction and presented testimony with respect to the potential issues involving recovery of an acquisition premium in future rate cases. The Public Advocate expressed strong concerns regarding possible future recovery by Black Hills of acquisition adjustments and urges this Commission to, at a minimum, condition Commission approval of the proposed acquisition on the Applicants agreeing that no acquisition adjustments associated with the acquisition will ever be sought in a future rate case.

While the Commission finds that it is not appropriate to place limitations on what may or may not be sought by an Applicant in a future proceeding, nothing in this order shall be construed or interpreted as the Commission endorsing or approving the inclusion of acquisition adjustments in any future rate proceeding before this Commission.

Public Interest

Black Hills has committed to retain Aquila's employees and managers, maintain Aquila's operations procedures, maintain the Lincoln call center and provide for a backup center, continue

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Aquila's activities to meet federal safety requirements, and establish a corporate structure that includes ring-fencing protection. Based on these commitments made by Black Hills, ratepayers and customers of Aquila should see no adverse change in service or other adverse effects from the acquisition.

The Commission finds after thorough review of all of the evidence and argument submitted in this proceeding that requirements of the Act are satisfied. Black Hills has demonstrated to the satisfaction of the Commission that Black Hill's acquisition of Aquila will not create an adverse impact on ratepayers and is consistent with the public interest.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. NG-0044 be and is hereby, approved.

IT IS FURTHER ORDERED that upon consummation of the transactions between Aquila Inc. and Black Hills Corporation this order shall govern matters as provided herein.

IT IS FURTHER ORDERED that the transfer of Aquila Inc., d/b/a Aquila Network's certificates of public convenience and necessity and other authority granted Aquila under the Act be and is hereby, approved.

MADE AND ENTERED at Lincoln, Nebraska, this 16th day of October, 2007.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman:

//s// Rod Johnson
//s// Frank E. Landis

ATTEST:

Deputy Director

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