

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: AQUILA, INC., d/b/a AQUILA NETWORKS	DOCKET NO. P-872
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE AND PROPOSING TO
TAKE OFFICIAL NOTICE AND NOTICE OF HEARING**

(Issued October 26, 2007)

On September 11, 2007, Aquila, Inc., d/b/a Aquila Networks (Aquila) filed a petition and exhibits with the Utilities Board (Board) for a pipeline permit. Aquila proposes to construct, operate, and maintain approximately 7.01 miles of 6-inch diameter steel pipeline in Clay and O'Brien Counties, Iowa. Aquila filed amendments to its petition and exhibits and provided additional information on September 24 and October 19, 2007.

The proposed pipeline would deliver natural gas from a Northern Natural Gas Company (Northern) town border station on a Northern pipeline in Clay County, Iowa, to the VeraSun Energy Hartley Ethanol Plant currently under construction west of Hartley in O'Brien County, Iowa. In its petition, Aquila requests a maximum allowable operating pressure (MAOP) of 800 pounds per square inch gauge (psig).

The proposed pipeline must have a permit from the Board because it meets the definition of a transmission line. 199 IAC 10.16; 49 CFR 192.3. The proposed pipeline meets the definition of a transmission line because it will transport gas from

another transmission line to a large volume customer that is not downstream from a distribution center, and because it will operate at a hoop stress of more than 20 percent of specified minimum yield strength (SMYS). 49 CFR 192.3.

On October 23, 2007, the Board assigned this proceeding to the undersigned administrative law judge to establish a procedural schedule and exercise the authority provided in 199 IAC 7.3.

THE BOARD'S AUTHORITY AND JURISDICTION

The Board has the authority to grant permits for pipelines in whole or in part upon terms, conditions, and restrictions as to safety requirements, and as to location and route, as it determines to be just and proper. Iowa Code §§ 479.12, 479.18, and 479.23 (2007).

To obtain a permit, the petitioner must show that the services it proposes to render will promote the public convenience and necessity. Iowa Code § 479.12, 479.23; 199 IAC 10.8. The petitioner must also satisfy the financial requirements of Iowa Code § 479.26 and comply with the land restoration plan requirements at Iowa Code § 479.29.

The conduct of this case is governed by Iowa Code chapters 17A and 479, and by Board rules at 199 IAC 9 and 10.

THE ISSUES

Pursuant to Iowa Code §§ 479.7 and 479.8, and 199 IAC 10.6 and 10.8, this matter will be set for a public hearing for the presentation of oral and documentary evidence and the cross-examination of witnesses concerning the public convenience and necessity issue, any safety issues, any pipeline location and route issues, the financial issue, land restoration plan issues, and issues raised by objectors or any other party.

PREPARED TESTIMONY AND EXHIBITS

All parties will be given the opportunity to present and respond to evidence and argument on all issues, and to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision and order that the administrative law judge will issue in this case must be based on evidence contained in the record and on matters officially noticed in the record. Iowa Code § 17A.12(8). Unless contrary arrangements are made on the record at the hearing, all evidence will be received at the hearing, and the record will be closed to any further evidence at the conclusion of the hearing.

The submission of prepared evidence prior to hearing will help to identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a

substantial amount of new testimony. Instead, the witness is cross-examined by the other parties concerning the statements already made in writing. The use of prepared testimony prevents surprise at the hearing and helps each party to prepare adequately for the hearing so that a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1), 17A.14(3), and 479.11. This procedure also tends to diminish the length of the hearing and spares the parties the expense and inconvenience of additional hearings.

Aquila must submit prepared testimony and exhibits prior to the hearing in accordance with the procedural schedule set forth in this order. At a minimum, Aquila's prepared testimony must address the issues listed above. In addition, in its prepared testimony, Aquila must address the issues listed in italics in Mr. Jeffrey O'Neal's staff report dated October 2, 2007, although Aquila has already filed the corrected Exhibit C form mentioned in Mr. O'Neal's report on page 2. Aquila has filed certain information regarding its financial condition in petition Exhibit D (as revised). The information filed to date does not clearly show that Aquila meets the requirement of Iowa Code § 479.26. Therefore, Aquila must file additional evidence to clearly demonstrate that it meets this requirement. Aquila may choose to satisfy this requirement by filing the affidavit of a corporate officer stating that Aquila owns property within Iowa, other than pipelines, that is subject to execution, of a value in excess of \$250,000. Aquila must provide testimony regarding the status of permits from Clay and O'Brien Counties for occupancy of county road right-of-way and must

file such permits as soon as they are obtained. Finally, Aquila must testify regarding the number of easements it has acquired for the proposed pipeline, the status of any remaining easement negotiations, the number of easements left to obtain, and the likelihood of obtaining all voluntary easements in its prefiled testimony.

The undersigned administrative law judge notes that Aquila's land restoration plan, petition Exhibit I, contains incorrect citations to Board rules on the first two pages by referring to rules as chapters and by using incorrect citation form. Correct citations would be "199 IAC 9.4(1) to 9.4(10)" or "Subrules 199 IAC 9.4(1) to 9.4(10)." These are minor errors that would not ordinarily require correction or re-filing of the exhibit, but this is the second case in which this consultant has filed a land restoration plan with the same errors and the land restoration plan will be given to landowners. Therefore, Aquila must file a corrected land restoration plan with its prefiled testimony.

Aquila has the burden to prove that the proposed pipeline meets all of the statutory and regulatory requirements discussed above. Failure to file adequate prepared testimony and exhibits to support the petition for a pipeline permit may result in delays of these proceedings or in denial of the requested permit.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate), and any objectors may also file prepared testimony and exhibits before the hearing in accordance with the procedural schedule set forth in this order.

Parties other than Aquila who choose not to file prepared testimony and exhibits before the hearing will not be precluded from participating in the proceedings. If an objector, for example, does not intend to present evidence going substantially beyond the information contained in the letter of objection, it is unnecessary for the objector to file prepared testimony. However, when a party has a substantial amount of information to present to the Board about the petition, if the information has not been previously disclosed to the Board, it should be presented in the form of prepared testimony and exhibits according to the procedural schedule established below.

Aquila has waived the right to file prepared rebuttal testimony. Therefore, if any objector or the Consumer Advocate files prepared testimony or other information, Aquila must also address the issues raised in those filings at the hearing.

PARTY STATUS

Aquila and the Consumer Advocate are currently the parties to this proceeding. Iowa Code §§ 17A.2(8) and 475A.2(2). As of the date of this order, no objectors have filed an objection to the petition. Aquila does not request the right of eminent domain for the proposed pipeline.

Any person who files an objection pursuant to Iowa Code §§ 479.9 and 479.10 and 199 IAC 10.5 will be presumed to be a party to this proceeding unless it is established at hearing that the objector has no right or interest that may be affected by the grant or denial of the petition. Iowa Code § 479.9. Therefore, objectors

should be prepared to give evidence that will explain the nature of their specific rights or interests they believe should be protected, and that will show how these rights or interests will be affected by the pipeline or the grant of a permit. As has already been noted, to the extent that the evidence goes substantially beyond information already communicated to the Board in an objection letter, it should be reduced to writing and filed as prepared testimony according to the procedural schedule established below.

Because objectors are presumed to be parties up to the time of the hearing, objectors will receive copies of all documents filed in this docket by other parties after their own objections have been filed with the Board. If a person files an objection after some or all of the prepared testimony and exhibits have been filed with the Board by other parties, the objector should make direct contact with the parties to obtain a copy of those materials. The official file of this case will be available for inspection at the Board's Records and Information Center, 350 Maple Street, Des Moines, Iowa, and copies of documents may be obtained for a small fee. 199 IAC 1.9(1).

Objections must be filed no less than five days prior to the date of hearing. Late-filed objections may be permitted if good cause is shown. 199 IAC 10.5. Objections must be made in writing and filed with the Executive Secretary of the Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

After an objector has filed a letter of objection, all further communications from the objector to the Board having to do with this case (including motions or prepared

testimony and exhibits) should be sent to the Executive Secretary. A party (including objectors) must file an original and ten copies of each communication with the Executive Secretary and the party must send one copy to each of the other parties to this case, except that three copies must be sent to the Consumer Advocate. 199 IAC 1.8(4), 7.4(6). Along with the communication being sent, the party must file with the Board a certificate of service that conforms to 199 IAC 2.2(16), which verifies that a copy of the document was served upon the other parties.

These procedures are necessary to comply with Iowa Code § 17A.17, which prohibits ex parte communication. Ex parte communication is when one party in a contested case communicates with the judge without the other parties being given the opportunity to be present. In order to be prohibited, the communication must be about issues of fact or law in the case. Calls to the Board to ask about procedure or the status of the case are not ex parte communication. Ex parte communication may be oral or written. This means the parties in this case may not communicate about issues of fact or law in this case with the undersigned administrative law judge unless the other parties are given the opportunity to be present, or unless the other parties are provided with a copy of the written documents filed with the Board.

The parties should examine Iowa Code chapter 479 and Board rules at 199 IAC 9 and 10 and 199 IAC 1.8, 7.1(3), 7.22, 7.26, and 7.27 for other substantive and procedural statutes and rules that apply to this case. There is a link to the Iowa Code and the administrative rules on the Board's website at www.state.ia.us/iub.

Since the proposed pipeline is more than five miles long and Aquila requests an operating pressure exceeding 150 psig, the hearing must be held in Primghar, Iowa. Iowa Code § 479.8.

PROPOSAL TO TAKE OFFICIAL NOTICE

Mr. Jeffrey L. O'Neal, utility regulatory engineer for the Board, has prepared a report in the form of a memo dated October 2, 2007, concerning Aquila's petition. A copy of this report is attached to this order. Pursuant to Iowa Code § 17A.14(4), the undersigned administrative law judge proposes to take official notice of the report and of the facts contained therein, thus making them a part of the record of this case. Iowa Code § 17A.12(6)(c). Any party objecting to the taking of official notice of the report must file such objection as soon as possible, and no later than five days prior to the hearing. The parties will have the opportunity to contest any information contained in the report in prepared testimony and at the hearing. Mr. O'Neal will be present at the hearing and available for cross-examination regarding his report.

IT IS THEREFORE ORDERED:

1. Each person who files a letter of objection to Aquila's petition in this docket will be presumed to be a party in the proceeding unless it is established at hearing that the objector has no right or interest that may be affected by the pipeline or the grant or denial of the requested permit.

2. Objections must be made in writing and filed with the Executive Secretary of the Board, 350 Maple Street, Des Moines, Iowa 50319-0069, no later

than five days before the hearing. Objectors must file an original and ten copies of all subsequent communications to the Board with the Executive Secretary. The communications must be served on the other parties and accompanied by a certificate of service as discussed in this order.

3. The following procedural schedule is established:

a. On or before November 16, 2007, Aquila must file prepared direct testimony and exhibits regarding its petition for a permit as discussed in this order. If Aquila chooses to file a prehearing brief, it must be filed by November 16, 2007.

b. If the Consumer Advocate or any objector chooses to file prepared responsive testimony or a brief, it must do so on or before November 30, 2007.

c. Aquila waives the right to file prepared rebuttal testimony.

d. A public hearing for the presentation of evidence and the cross-examination of witnesses concerning the issues identified in this notice of hearing will be held beginning at 1:00 p.m. on Friday, December 7, 2007, in the Assembly Room, First Floor, O'Brien County Courthouse, 155 South Hayes Avenue, Primghar, Iowa 51245. Each party must provide a copy of its prepared testimony and exhibits to the court reporter at the hearing.

Ordinarily, parties and witnesses would have the opportunity to be connected to the hearing by telephone conference call. Since the hearing must be held

in Primghar, it is unclear whether telephone conference capability is available. If any party wishes to be connected to the hearing by telephone conference call or to have a witness connected by telephone conference call, the party must notify the Board as soon as possible, and no later than Friday, November 16, 2007, so that Board staff can determine whether conferencing is available and make the appropriate arrangements. Persons with disabilities who will require assistive services or devices to observe this hearing or participate in it should contact the Board at (515) 281-5256 no later than ten days prior to the hearing to request that appropriate arrangements be made.

e. Required number of copies. All parties must file an original and ten copies of all documents filed with the Board. 199 IAC 1.8(4), 7.4(4).

4. The undersigned administrative law judge proposes to take official notice of Mr. O'Neal's report dated October 2, 2007, which is attached to this order, and of the facts contained therein. Any party objecting to the taking of official notice of the report should file such objection as soon as possible, and must file such objection no later than ten days prior to the hearing.

5. Pursuant to Iowa Code §§ 17A.12(1) and 199 IAC 10.4, a copy of this order will be served by ordinary mail upon Aquila and will be delivered to the Consumer Advocate. No person has filed an objection to the petition as of the date of this order.

6. Board staff will provide Aquila with a notice to be published and Aquila must publish the notice pursuant to Iowa Code § 479.7 and 199 IAC 10.4. The statute and rule require Aquila to file proof of publication prior to or at the beginning of the hearing. Since the hearing must be held in Primghar, Aquila must file proof of publication at least two days prior to the hearing date. Failure to publish notice and file proof of publication as required will result in delay of the hearing.

7. Aquila must comply with the additional service of notice and filing requirements contained in 199 IAC 10.4(3) if all required interests in private property have not been obtained.

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 October, 2007.

**Department of Commerce
UTILITIES DIVISION
SAFETY & ENGINEERING SECTION**

TO: Docket No. P-872

FROM: Jeffrey L. O'Neal

DATE: October 2, 2007

**SUBJ: Staff Review of Aquila Petition for Pipeline Permit for
Approximately 7 Miles of 6-inch Diameter Natural Gas Pipeline in
Clay and O'Brien Counties, Iowa**

On September 11, 2007, Aquila, Inc. (Aquila) filed a Petition for Pipeline Permit with the Utilities Board (Board). By letter dated September 17, 2007, I advised Aquila of petition deficiencies requiring correction and requested additional information. On September 24, 2007, Aquila filed revisions to its petition exhibits and provided additional information.

In its petition, Aquila proposes to construct approximately 7 miles of 6-inch diameter steel pipeline. Petition Exhibit F states the purpose of the project is to supply natural gas to the VeraSun Hartley Ethanol Plant, which is currently under construction near Hartley, Iowa. Petition Exhibit C shows Aquila plans to design and test the pipeline for a maximum allowable operating pressure (MAOP) of 800 psig.

The proposed pipeline requires a pipeline permit because it will operate at a pressure higher than 150 psig, and because it will meet the definition of a transmission line under 49 CFR Part 192. (See 199 IAC 10.16.) It will meet the definition of a transmission line because it will transport gas from another transmission line (and ultimately from gathering lines and/or storage facilities) to a large volume customer that is not downstream from a distribution center, and because it will operate at a hoop stress of more than 20 percent of specified minimum yield strength (SMYS). (See 49 CFR § 192.3.)

Informational meetings were held for this proposed pipeline on August 9, 2007, in Clay and O'Brien Counties, as required by 199 IAC 10.3. Documentation regarding the informational meetings is included in petition Exhibit G, which includes a copy of the notice of informational meeting that was mailed to affected parties and published in newspapers as required by 199 IAC 10.3(4). The second paragraph of the notice of informational meeting includes a statement that the proposed pipeline will operate at a maximum pressure of 250 pounds per square inch. However, Exhibit C indicates the pipeline will have a maximum allowable operating pressure of 800 psig. The cover letter included with Aquila's September 24, 2007, petition filing states the informational meeting

notice was in error; the normal operating pressure of the pipeline will be 600 psig, and the maximum operating pressure will be 800 psig. Iowa Code 479.5 and 199 IAC 10.3(4) specify the information required to be included in the notice of informational meeting. The law and rule do not specifically require the notice to include the operating pressure of the pipeline, but they do require the notice to set forth the general description and purpose of the proposed project. Whether the incorrect maximum operating pressure in the informational meeting notice is a substantive error may be an issue to be decided in this case.

Petition Exhibit C lists specifications for the pipeline on a form provided by the board. The first page of the Exhibit C form filed by Aquila on September 24, 2007, is missing the last line at the bottom of page, under item number 11. A line on the form where the petitioner is to list "Rivers, Streams, Bodies of Water, Number of crossings" is missing from the form filed by Aquila. It appears there may have been a problem in printing or copying of the page. (An Exhibit C form filed earlier by Aquila on September 11, 2007, did include that information, indicating the number of such crossings was zero.) I do not believe the error in the most recent Exhibit C form is significant enough that the petition cannot be set for hearing. *However, I recommend that Aquila be directed to file a corrected Exhibit C form prior to the hearing.*

Petition Exhibit A states part of the route will run longitudinally along 330th Street within the road right-of-way, and Exhibit E lists several roads that will be crossed at other than a right angle. Exhibit E states that permits have been applied for from Clay County and O'Brien County for occupancy of county road right-of-way, and that the approved permit from each of the counties will be supplied upon receipt. For each crossing of a highway at other than an approximate right angle, or longitudinal occupancy of road right-of-way, a showing of consent of the highway authority must be filed with the Board prior to construction. See 199 IAC 10.2(1)e and 10.14(2). The roads that are crossed or occupied longitudinally by the proposed pipeline route are considered to be "highways" for the purpose of these rules. If the petition for pipeline permit is granted, a pipeline permit could be issued prior to Aquila's filing of these road crossing permits with the Board. However, construction of the pipeline could not begin until showings of consent by the road authorities have been filed with the Board. Exhibit B shows that one mile of the pipeline route, located within road right-of-way along the north side of 330th Street from Warbler Avenue to Vine Avenue, is just within the city limits of Hartley. *It is recommended that Aquila be asked to address in its prefiled testimony whether the highway authority for the portion of the pipeline route within road right-of-way within the city limits of Hartley is O'Brien County or the City of Hartley.*

Aquila has not requested eminent domain for this project. In a cover letter dated September 20, 2007, included with its petition revisions filed September 24, 2007, Aquila stated that easement negotiations were underway, and all easements had not yet been signed.

The proposed route includes agricultural land. Aquila filed a land restoration plan as Exhibit I. Aquila's Land Restoration Plan appears to comply with the applicable provisions of 199 IAC Chapter 9.

I examined the route of the proposed pipeline on September 19, 2007. The route runs through fairly flat terrain. The proposed route begins at the location of an existing Northern Natural Gas Company (Northern) facility where the existing Northern pipeline that supplies natural gas to the municipal gas distribution utility in Hartley takes off from Northern's main lines across northwest Iowa. For a little over 5 miles the proposed route runs diagonally northwest toward Hartley through agricultural land that was mostly planted in row crops this year, running roughly parallel to the existing Northern pipeline to Hartley, mostly about a quarter mile away from the existing Northern pipeline. This part of the route is on private property, except where it crosses several county roads. Near the southeast corner of Hartley, the proposed route crosses to the north side of 330th Street, then runs west along the north side of 330th Street, within the road right-of-way, for a little less than 2 miles to its endpoint at the VeraSun Hartley Ethanol plant just west of Hartley. The ethanol plant was under construction at the time of the inspection. The portion of the route along 330th Street passes near a shooting range located on the south side of 330th Street in the NW ¼ of Section 4, T-96N, R-39W. It runs between the road and a cemetery located on the north side of 330th Street east of Walnut Avenue, and it runs across the road from two houses, and between the road and a house at one location. Exhibit B shows that one mile of the pipeline route, along 330th Street from Warbler Avenue to Vine Avenue, is just within the city limits of Hartley.

The entire route appears to be in a Class 1 location as defined by Federal Minimum Safety Standards in 49 CFR Part 192, as is stated in Exhibit C of the petition filing. Class 1 is the lowest population density classification. The only potential exceptions noted would be if the VeraSun Hartley ethanol plant or the shooting range would create a Class 3 location. Class 3 is a high population density classification. *It is recommended Aquila be asked to address in its testimony whether any building or small, well-defined outside area at the ethanol plant or at the shooting range would be occupied by more than 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period and will be within 100 yards of the pipeline.*

No problems were noted with the proposed route. No conflicts with safety standards or significant impediments to pipeline construction were found.

Natural gas pipelines must comply with the federal pipeline safety standards of 49 CFR Part 192, which have been adopted by the Board in 199 IAC 10.12(1)b. The information filed by Aquila shows the proposed pipeline will be designed, constructed and tested in compliance with these standards.

Subpart O of 49 CFR Part 192 requires pipeline operators to develop and implement an Integrity Management Program for gas transmission pipelines in high consequence areas (HCAs) as defined by the rules. An HCA is an area within the potential impact radius (PIR) for the pipeline that contains an identified site as defined in the rules, or that contains 20 or more buildings intended for human occupancy. Based on the pipe diameter and maximum allowable operating pressure specified in the filing, the PIR for this pipeline would be 117 feet. The only potential identified sites that I observed along the route would be the VeraSun Hartley ethanol plant and the shooting range. *It is recommended Aquila be asked to address in its testimony whether any identified site (as defined by 49 CFR § 192.903) at the ethanol plant or at the shooting range will be within the PIR of the pipeline.* Aquila will need to conduct a review of the route to look for HCAs after construction as required by the rules, but unless the ethanol plant or shooting range will create an HCA, it appears the pipeline will most likely not require an integrity management program under Subpart O of 49 CFR Part 192, and most of the requirements under Subpart O will not apply to this pipeline.

Earlier this year, the federal Department of Transportation adopted a new rule, 49 CFR § 192.476, regarding design and construction features to reduce the risk of internal corrosion. *It is recommended Aquila be asked to address in its prefiled testimony how it plans to comply with the requirements of 49 CFR § 192.476.*

On August 31, 2007, in Board Docket No. SPU-07-12, the Utilities Board approved a settlement agreement in which the Black Hills Corporation and its subsidiary, Black Hills/Iowa Gas Utility Company, LLC, will acquire the natural gas assets of Aquila located in Iowa and other states. The board order addressed the effect of the transaction on pipeline safety programs, pointing out that in its application, Black Hills committed to keep all existing Aquila field operations and field customer-service employees in their existing functions and locations and indicated there was no planned change in Aquila personnel involved in natural gas distribution service, including maintenance and repair of the distribution system. The order stated the Settlement Agreement provides that Black Hills will make no material change in management or employee levels at BH Iowa Gas. The order noted that Black Hills stated that it will 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. The order concluded these commitments should help ensure that BH Iowa Gas will be able to provide the same level of service and meet federal and Board safety requirements.

The order also addressed Aquila's pipeline permits, noting that Board rules at 199 IAC 10.19 require that where a corporate restructuring will reassign the ownership of a pipeline permit, even where there will be no change in the

operating personnel, notice to the Board of the transfer is required. The order stated the proposal for reorganization was sufficient notice of the change in ownership and Black Hills indicated that BH Iowa Gas will be the owner of the pipelines. Black Hills provided a list of the pipeline permits that BH Iowa Gas will own, and the Board found the list to be complete. The board stated these actions satisfied the requirements in rule 199 IAC 10.19. *It is recommended Aquila be asked to address whether it wishes the permit to be issued in Docket No. P-872 to also be transferred to Black Hills upon completion of the sale of Aquila assets to Black Hills.*

As of the date of this report, the sale of Aquila to Black Hills has not yet been completed. In the cover letter dated September 20, 2007, filed with its petition revisions on September 24, 2007, Aquila stated it expects this petition will go to hearing prior to completion of the sale.

Summary and Conclusions

I have reviewed the petition and exhibits in this docket. The information presented shows the proposed pipeline would comply with all design, construction, and testing requirements set forth by the Board. The filing appears in sufficient order to set a date for hearing. This report identifies, in *italic type*, items it is recommended Aquila be asked to address in its prefiled testimony or at the hearing.