

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  AQUILA, INC., d/b/a AQUILA NETWORKS	DOCKET NO. P-876
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE AND  
PROPOSING TO TAKE OFFICIAL NOTICE AND NOTICE OF HEARING**

(Issued February 27, 2008)

On December 19, 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 3.6 miles of 6-inch and 4-inch diameter steel pipeline in Delaware County, Iowa. Aquila filed amendments to its petition and exhibits and provided additional information on February 5, February 11, and February 14, 2008.

The proposed pipeline would deliver natural gas from a new Northern Natural Gas Company (Northern) delivery and metering station on an existing Northern pipeline in Delaware County to the US BioEnergy Corporation ethanol plant currently under construction near Dyersville, Iowa. The proposed pipeline would also provide an additional supply of natural gas to land recently annexed by Dyersville for the development of an industrial park. In its petition, Aquila requests a maximum allowable operating pressure (MAOP) of 450 pounds per square inch gauge (psig).

The proposed pipeline must have a permit from the Board because it will operate at a pressure higher than 150 psig and 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. 49 CFR 192.3.

On February 21, 2008, 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 February 12, 2008, although Aquila has already filed the corrected page four of its petition 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 is current as of December 31, 2006, and does not clearly show that Aquila currently meets the requirement of Iowa Code § 479.26. Therefore, Aquila must file updated evidence to clearly demonstrate that it currently meets this requirement. Aquila may choose to satisfy this requirement by filing the affidavit of a corporate officer stating that Aquila currently owns property within Iowa, other than pipelines, that is subject to execution, of a value in excess of \$250,000. In addition, Aquila must file prepared testimony to support the statements made in the answers to questions two and three in the letter dated February 8, 2008, that Aquila

filed with the Board on February 11, 2008. Aquila must also clarify the length of the section of 4-inch pipeline, and separately, the length of the section of 6-inch pipeline it has proposed.

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.

On February 15, 2008, Aquila filed a request for an expedited proceeding. The Consumer Advocate does not object to this request, and it will be granted. Therefore, Aquila will not file prepared rebuttal testimony as would normally be the

case. 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) and 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](http://www.state.ia.us/iub).

### **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 February 12, 2008, 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 March 11, 2008, 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 March 11, 2008.

b. 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 March 11, 2008, so that appropriate arrangements can be made.

c. If the Consumer Advocate or any objector chooses to file prepared responsive testimony or a brief, it must do so on or before March 18, 2008.

d. Aquila will not file prepared rebuttal testimony.

e. 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 1:30 p.m. on Tuesday, March 25, 2008, in Conference Room 3, Iowa Utilities Board offices, 350 Maple Street, Des Moines, Iowa 50319. Each party must provide a copy of its prepared testimony and exhibits to the court reporter at the hearing. 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 five days prior to the hearing to request that appropriate arrangements be made.

4. 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).

5. The undersigned administrative law judge proposes to take official notice of Mr. O'Neal's report dated February 12, 2008, 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.

6. 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.

7. 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. It would be helpful if Aquila filed proof of publication prior to the hearing. Failure to publish notice and file proof of publication as required will result in delay of the hearing.

**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 27<sup>th</sup> day of February, 2008.

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

**TO: Docket No. P-876**

**FROM: Jeffrey L. O'Neal**

**DATE: February 12, 2008**

**SUBJ: Staff Review of Aquila Petition for Pipeline Permit for  
Approximately 3.6 Miles of 6-inch and 4-inch Diameter Natural  
Gas Pipeline in Delaware County, Iowa**

On December 19, 2007, Aquila, Inc. (Aquila) filed a Petition for Pipeline Permit with the Utilities Board (Board). By letters dated January 4, 2008, and February 6, 2008, I advised Aquila of petition deficiencies requiring correction and requested additional information. On February 5, 2008, and February 11, 2008, Aquila filed revisions to its petition exhibits and provided additional information.

In its petition, Aquila proposes to construct approximately 3.6 miles of 6-inch and 4-inch diameter steel pipeline. Petition Exhibit F states the purpose of the project is to supply natural gas to the US BioEnergy Corporation ethanol plant, which is currently under construction near Dyersville, Iowa. Exhibit F states the pipeline will also provide an additional supply of natural gas to land recently annexed by the City of Dyersville for the development of an industrial park. Petition Exhibit C shows Aquila plans to design and test the pipeline for a maximum allowable operating pressure (MAOP) of 450 psig, and the actual operating pressure of the pipeline will be 250 psig. An attachment to Exhibit C shows most of the pipeline will be 6-inch diameter pipeline; a short branch line south of US Highway 20 will be 4-inch diameter pipeline.

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. (See 49 CFR § 192.3.)

An informational meeting was not held for this proposed pipeline. An informational meeting was not required because the pipeline will be less than 5 miles long. (See 199 IAC 10.3.)

One remaining deficiency was noted in the Petition filing that needs to be corrected. On page 4 of its Petition, Aquila struck out section XIII of the petition,

which addresses the requirement for a land restoration plan, and added a statement that no agricultural land will be impacted by the project. It appears the portion of the route on private easement south of U.S. Highway 20 will be on agricultural land. Aquila has 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. *Aquila should be asked to refile page 4 of its petition, removing the statement that no agricultural land will be impacted, and restoring the language that was struck out in section XIII of its petition.*

Petition Exhibit A shows most of the route will run longitudinally along 320<sup>th</sup> Avenue within the road right-of-way. Petition Exhibit E includes a copy of a permit from Delaware County allowing construction of the pipeline within county road right of way. Exhibit E appears to satisfy the requirements of 199 IAC 10.2(1)e and 10.14(2).

Exhibit B shows that two short sections of the pipeline will be within the city limits of Dyersville: one at the northern end of the route and another near U.S. Highway 20.

Aquila has not requested eminent domain for this project.

I examined the route of the proposed pipeline on January 29, 2008. The route map filed as Exhibit B was used as a guide. The route begins at a proposed new Northern Natural Gas Company (NNG) delivery and metering station (known as a town border station or TBS) on the east side of 320<sup>th</sup> Avenue, to be supplied by an existing NNG pipeline. The route enters the road right of way, and runs north along the east side of 320<sup>th</sup> Avenue, within the road right of way. South of U.S. Highway 20, a 4-inch diameter pipeline would branch off and run approximately 80 feet east on private easement to provide for gas supply to a future regulator station at this location. (In a cover letter dated February 1, 2008, filed with its petitions revisions on February 5, 2008, Aquila states the 4-inch lateral will be installed on property owned by the City of Dyersville to serve an industrial park the city is developing, and the City of Dyersville has granted Aquila the right to install the pipeline.) Just south of U.S. Highway 20, the main 6-inch pipeline route leaves the road right of way and continues east on private easement for about 300 feet, then turns north and crosses U.S. Highway 20. The route then continues north along the east side of 320<sup>th</sup> Avenue, within the road right of way. The route crosses 210<sup>th</sup> Street (a paved road) and the Canadian National Railroad, and ends at the US BioEnergy ethanol plant, which was under construction at the time of the inspection.

The route runs through flat to gently rolling terrain. It crosses two gravel roads, U.S. Highway 20 (a 4-lane divided highway), 210<sup>th</sup> Street (a paved road), and one railroad. The land along the route on both sides of the road (including the area where the pipeline is on private easement south of U.S. Highway 20) appeared to have been planted in row crops last year. There were four houses along the proposed route on the same side of 320<sup>th</sup> Avenue as the proposed

pipeline, and there were four houses along 320<sup>th</sup> Avenue across the road from the proposed route. 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 a low population density classification. 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 88 feet for the 6-inch pipeline and 59 feet for the 4-inch pipeline. I did not observe any apparent HCAs during my inspection of the proposed route. Aquila will need to conduct a review of the route to look for HCAs after construction as required by the rules, but 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.

On August 31, 2007, in Board Docket No. SPU-07-12, the 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. As of the date of this report, the sale of Aquila to Black Hills has not yet been completed. *It is recommended Aquila be asked to address whether it wishes the permit to be issued in Docket No. P-876 to also be transferred to Black Hills upon completion of the sale of Aquila assets to Black Hills.*

### **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 through a revised petition filing, in its prefiled testimony or at the hearing.