

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  AQUILA, INC., d/b/a AQUILA NETWORKS	DOCKET NO. P-876
---	------------------

**PROPOSED DECISION AND ORDER GRANTING PERMIT**

(Issued March 27, 2008)

**APPEARANCES:**

MR. PHILIP E. STOFFREGEN, MS. LEANNA WHIPPLE, and MR. BRAD KRUSE, Attorneys at Law, Brown, Winick, Graves, Gross, Baskerville and Schoenebaum, PLC, 666 Grand Avenue, Suite 2000, Des Moines, Iowa 50309, appearing on behalf of Aquila, Inc., d/b/a Aquila Networks.

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 December 19, 2007, Aquila, Inc., d/b/a Aquila Networks (Aquila) filed a petition and exhibits for a pipeline permit with the Utilities Board (Board). (petition for permit.) Aquila proposes to construct, operate, and maintain a new 6-inch and 4-inch diameter steel natural gas pipeline approximately 3.6 miles long in Delaware County, Iowa. (petition for permit; testimony of Mr. Ernst, Mr. Hingtgen; O'Neal report.) Aquila filed amendments to its petition and exhibits and provided additional information on February 5, 11, and 14, 2008. (petition for permit; O'Neal report.) The proposed pipeline will provide natural gas service to an industrial park under

development by the City of Dyersville and will deliver natural gas to the US BioEnergy Corporation ethanol plant currently under construction near Dyersville, Iowa. (petition for permit; testimony of Mr. Ernst, Mr. Hingtgen; O'Neal report.)

On February 12, 2008, Mr. Jeffrey L. O'Neal, regulatory engineer for the Board, filed a report regarding the petition and proposed pipeline (O'Neal report). On February 21, 2008, the Board assigned this case to the undersigned administrative law judge. On February 27, 2008, the undersigned issued an order establishing a procedural schedule, proposing to take official notice, and providing notice of the hearing.

Aquila filed the prepared direct testimony and exhibits of Mr. Mark Ernst and Mr. David J. Hingtgen on March 11, 2008. Aquila filed proof of publication of notice on March 18, 2008.

The hearing was held on March 25, 2008, in Conference Room 3, Iowa Utilities Board Offices, 350 Maple Street, Des Moines, Iowa. Aquila was represented by its attorneys, Ms. Leanna Whipple and Mr. Brad Kruse. Mr. Ernst and Mr. Hingtgen testified on behalf of Aquila. Mr. Ernst is the operations manager for Aquila in eastern Iowa. (testimony of Mr. Ernst.) Mr. Hingtgen is the vice-president of business development for Graham Land Acquisition Associates (GLAA). (testimony of Mr. Hingtgen.) Aquila has contracted with GLAA to provide right-of-way acquisition and permitting services for the proposed pipeline. (testimony of Mr. Hingtgen.) Aquila Exhibits ME-1, ME-2, ME-3, ME-4, ME-5, DJH-1, DJH-2, DJH-3, and DJH-4

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, Aquila agreed to file post-hearing documents to clarify questions regarding the easements granted to Aquila by Dyersville Industries, Inc.

On March 26, 2008, Aquila filed hearing Exhibits DJH-2, DJH-3, and DJH-4. Aquila filed a notice of filing and an affidavit of Mr. David J. Schroeder (post-hearing filing) on March 26, 2008.

#### **FINDINGS OF FACT**

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

2. On December 19, 2007, Aquila filed a petition and exhibits for a pipeline permit with the Board. (petition for permit.) Aquila proposes to construct, operate, and maintain a new 6-inch and 4-inch diameter steel natural gas pipeline approximately 3.6 miles long in Delaware County, Iowa, with a maximum allowable operating pressure of 450 psig. (petition for permit; testimony of Mr. Ernst, Mr. Hingtgen; O'Neal report.) Aquila filed amendments to its petition and exhibits and provided additional information on February 5, 11, and 14, 2008. (petition for permit; O'Neal report.)

3. The proposed pipeline must have a permit from the Board because it will operate at a pressure greater than 150 psig and because it will meet the definition of a transmission line. 199 IAC 10.16; 49 CFR 192.3. (petition for permit; testimony of Mr. Ernst, Mr. Hingtgen; 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. Ernst, Mr. Hingtgen; O'Neal report.)

4. Aquila caused notice of the hearing to be published in Delaware County in the Telegraph Herald, a newspaper of general circulation in Dubuque and Delaware Counties, on March 8 and 15, 2008. (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; Exhibit ME-1; testimony of Mr. Ernst, 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. Ernst, Mr. Hingtgen; O'Neal report; post-hearing filing.)

6. Aquila has received all required permits and approvals from Delaware County, the Iowa Department of Transportation, the Chicago, Central & Pacific Railroad Company (and its parent corporation, the Canadian National Railroad), and Dyersville Industries Inc. for the proposed pipeline. (testimony of Mr. Ernst, Mr.

Hingtgen; petition for permit; O'Neal report; Exhibits ME-2, DJH-1, DJH-2, DJH-3, DJH-4; post-hearing filing.)

7. The proposed pipeline will deliver natural gas from a Northern Natural Gas Pipeline town border station in Delaware County to a future regulator station owned by Aquila on property owned by Dyersville Industries, Inc., and to the US BioEnergy ethanol plant currently under construction near Dyersville, Iowa. (petition for permit; testimony of Mr. Ernst, Mr. Hingtgen; O'Neal report; Exhibits ME-1, DJH-3, DJH-4; post-hearing filing.) The pipeline is necessary to serve the new ethanol plant and will provide an additional natural gas supply to the land recently annexed by the City of Dyersville, which will assist Dyersville in its development of an industrial park. (petition for permit; testimony of Mr. Ernst, Mr. Hingtgen; O'Neal report.) The ethanol plant is expected to produce approximately 110 million gallons of ethanol per year, and will be a new market for area corn producers by purchasing approximately 36 million bushels of corn from the local area. (testimony of Mr. Ernst; petition for permit.) The ethanol plant will also yield about 350,000 tons of dried distillers grains annually, which will benefit area cattle, hog, and other livestock producers. (testimony of Mr. Ernst.) The ethanol plant will create new construction jobs for local workers and approximately 50 to 60 additional new skilled permanent jobs once the plant is in operation. (testimony of Mr. Ernst.) These permanent jobs will offer a competitive wage with multiple benefits. (testimony of Mr. Ernst.) The plant is expected to have a significant positive effect on the local economy. (testimony of Mr.

Ernst; petition for permit; Exhibit ME-4.) The use of ethanol in gasoline reduces harmful vehicle tailpipe emissions and displaces the use of toxic gasoline components such as benzene. (testimony of Mr. Ernst; Exhibit ME-5.) In addition, the use of 10 percent ethanol blends reduces greenhouse gas emissions as compared with conventional gasoline. (testimony of Mr. Ernst; Exhibit ME-5.) Therefore, the proposed pipeline will promote the public convenience and necessity. (petition for permit; testimony of Mr. Ernst, Mr. Hingtgen; O'Neal report; Exhibits ME-4, ME-5, DJH-3, DJH-4; post-hearing filing.)

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. Ernst, Mr. Hingtgen; O'Neal report.) Aquila is responsible for overseeing all aspects of the design and construction of the proposed pipeline and has contracted with Infrasource Underground Construction, LLC (Infrasource), to install the proposed pipeline. (testimony of Mr. Ernst.) Aquila has contracted with Infrasource to construct pipelines in the past and is confident that Infrasource has sufficient qualifications and experience to construct the proposed pipeline. (testimony of Mr. Ernst.) Aquila will operate and maintain the proposed pipeline until its assets are acquired by the Black Hills Corporation, as discussed in finding of fact number eleven. (testimony of Mr. Ernst; O'Neal report.) No further safety-related terms, conditions, or restrictions need to be imposed pursuant to Iowa

Code § 479.12. (petition for permit; testimony of Mr. Ernst, Mr. O'Neal; O'Neal report.)

9. Aquila 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. Ernst; Exhibit ME-3.)

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-876 file.) Aquila does not request the right of eminent domain. (O'Neal report; testimony of Mr. Hingtgen; petition for permit.) Aquila has obtained all required easements for the proposed pipeline. (testimony of Mr. Hingtgen; petition for permit; Exhibits DJH-3, DJH-4; post-hearing filing.)

11. 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 located in Iowa and other states.<sup>1</sup> Once this acquisition is completed, Aquila will discontinue providing utility service in Iowa. The Board order concluded that Black Hills' commitments regarding continuation of operations in Iowa should help ensure that BH Iowa Gas will be able to provide the

---

<sup>1</sup> In re: Aquila, Inc., d/b/a Aquila Networks, Black Hills Corporation, and Black Hills/Iowa Gas Utility Company, LLC, Docket No. SPU-07-12, "Order Approving Settlement Agreement, Not Disapproving Proposal for Reorganization, Granting Request to Discontinue Service, and Requiring Reports," (August 31, 2007).

same level of service as Aquila and will meet federal and Board safety requirements. The Board found that the provisions in the settlement agreement and Black Hills' commitments indicated that the acquisition of Aquila assets by Black Hills was unlikely to impair the ability of BH Iowa Gas to provide safe, adequate, and reliable service. Upon completion of the sale of Aquila's assets to the Black Hills Corporation, Aquila requests that the pipeline permit granted in this docket be transferred to the Black Hills Corporation. (testimony of Mr. Ernst.)

### **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 Aquila 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 Aquila 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 Aquila complies with the requirements of Iowa Code § 479.29 and 199 IAC 9. (petition for permit; O'Neal report.)

**IT IS THEREFORE ORDERED:**

1. Official notice is taken of the report dated February 12, 2008, 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 Aquila in this docket is granted. A permit will be issued if this proposed decision and order becomes the final order of the Board.
3. Upon completion of the sale of Aquila's assets to the Black Hills Corporation, if Aquila continues to request that the pipeline permit granted in this docket be transferred to the Black Hills Corporation, Aquila must file evidence of the sale's completion, request that the permit be transferred, and comply with the requirements of 199 IAC 10.19.
4. Aquila must provide timely notice to the Board before beginning construction of the pipeline and must also file weekly progress reports with the Board during construction of the pipeline.
5. After Aquila completes construction of the new pipeline, it must file a construction completion report with the Board. This report must include information regarding any unusual construction problems or occurrences and a copy of the pressure test procedures used and the results obtained.
6. Within 180 days after completion of the construction of the new pipeline, Aquila must file a map that accurately shows the location of the pipeline

route as constructed. The map will be a part of the record in this case and will represent the final route as authorized by the permit.

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

8. 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 27<sup>th</sup> day of March, 2008.