

BEFORE THE PUBLIC SERVICE COMMISSION OF NEBRASKA

IN THE MATTER OF THE JOINT
APPLICATION OF NORTHWESTERN
ENERGY PUBLIC SERVICE
CORPORATION, BLACK HILLS
CORPORATION, AND
NORTHWESTERN ENERGY GROUP,
INC. FOR APPROVAL OF MERGER

Application No. NG-128

**JOINT APPLICANTS' RESPONSE TO MOTION FOR CONTINUANCE BY THE
NEBRASKA PUBLIC ADVOCATE**

Black Hills Corporation (“BHC”), NorthWestern Energy Group, Inc. (“NorthWestern Group”), and NorthWestern Energy Public Service Corporation d/b/a NorthWestern Energy (“NorthWestern” and collectively with BHC and the NorthWestern Group, the “Joint Applicants”) object to and respond as follows to the Motion for Continuance (“Motion for Continuance”) filed by the Nebraska Public Advocate (the “Public Advocate”) on December 30, 2025 as follows:

I. INTRODUCTION

The Public Advocate seeks a minimum 90-day extension of the procedural schedule based entirely on its pending Motion to Compel Discovery (“Motion to Compel”) relating to the Joint Applicants’ Hart-Scott-Rodino (“HSR”) premerger notification filings. As Joint Applicants explain in their concurrently-filed Response in Opposition to the Motion to Compel, that discovery is irrelevant, premature, and inconsistent with the longstanding Commission standards that govern this proceeding.

Even if considered independently, the Motion for Continuance fails to establish good cause under the Commission’s Rules of Procedure. The current procedural schedule provides ample time for discovery, testimony preparation, and hearing. The Public Advocate’s supposed need for additional time arises not from any action or inaction by the Joint Applicants, but from the Public

Advocate's unilateral decision to pursue discovery that falls outside the proper scope of this proceeding and information that is in draft form and has not yet been finalized or filed with federal regulators.

Accordingly, Joint Applicants respectfully request that the Commission deny the Motion for Continuance. Further, as reflected in their concurrently-filed Response to the Motion to Compel, the Commission should deny the Public Advocate's Motion to Compel in full.

II. RESPONSE

The Public Advocate expressly ties its request for a continuance to its Motion to Compel. In the Motion for Continuance, the Public Advocate claims additional time is needed because HSR-related records are purportedly "vital" to understanding the merger and developing testimony, and because additional time may be required for the Commission to rule on the Motion to Compel and for Joint Applicants to produce the requested materials if the Motion is granted.¹

If the Commission denies the Motion to Compel—as Joint Applicants respectfully submit it should—there will be no ruling delay, no compelled production, and no basis for additional time. In that circumstance, the asserted justification for the continuance disappears entirely.

Regardless, the Commission should not extend the procedural schedule to accommodate discovery that is not required under Nebraska laws, nor should the Commission allow a continuance request to function as leverage to expand the scope of this proceeding beyond the statutory bounds.

¹ See Motion for Continuance at 3-4, ¶¶ 16, 19.

A. The Public Advocate Fails to Establish Good Cause for a Continuance.

Under the Commission's Rules of Procedure, a continuance may be granted only upon a showing of good cause.² There is no basis for the Commission to grant such relief here. In prior merger and reorganization proceedings (as referenced below), the Commission has proceeded on similar established schedules where:

- Rates were not changing;
- Service quality was not at issue;
- Regulatory jurisdiction remained intact; and,
- Applicants made affirmative commitments enforceable through Commission oversight.

Here, the Public Advocate fails to identify any prior Nebraska case in which the Commission granted a continuance based solely on a dispute over antitrust-style discovery or HSR-related materials. To the contrary, Commission precedent demonstrates that merger reviews are routinely completed on the basis of sworn testimony, reasonable and relevant discovery inquiries, and compliance with legal merger standards — without prolonged schedule extensions to accommodate irrelevant discovery fishing expeditions.

Indeed, since assuming jurisdiction over natural gas utilities under the State Natural Gas Regulation Act in 2003, the Commission has approved multiple utility transactions within timeframes materially shorter than the schedule already established in this proceeding, without requiring HSR filings or related antitrust materials.³ The Table below provides the dates and length

² 291 Neb. Admin. Code Ch.1, Rule 003.07.

³ See *In the Matter of the Joint Application of SourceGas Distribution LLC, SourceGas LLC, SourceGas Holdings LLC and Black Hills Utility Holdings, Inc. For All Necessary Authorizations and Approvals For Black Hills Utility Holdings, Inc. to Acquire SourceGas Holdings, LLC*, Application No. NG-0084, (Jan. 26, 2016) (citing *In the Matter of the Joint Application of NorthWestern Corporation, D/B/A NorthWestern Energy, et al.*, Docket No. NG-0037 (Oct. 17, 2006); *In the Matter of the Joint Application of Kinder Morgan, Inc., KM Retail, SourceGas Distribution, et al.*, Docket No. NG-0039 (Feb. 27, 2007);

of time provided by the Commission to review and approve applications seeking approval to reorganize under *Neb. Rev. Stat. § 66-1828*.

Commission Application	Applicants	Applicants Filing Date	Commission Hearing Date	Commission Order Date	Total # of Days
NG-0037	NorthWestern Babcock& Brown	June 7, 2006	Sept. 27, 2006	Oct. 17, 2006	132 Day or 4 Mos. and 10 days
NG-0039	Kinder Morgan SourceGas	Sept. 29, 2006	Feb. 14, 2007	Feb. 27, 2007	151 Days or 4 Mos. and 29 days
NG-0044	Aquila Black Hills Corp	April 4, 2007	Sept. 10, 2007	Oct. 16, 2007	195 days or 6 Mos. and 12 days
NG-0084	Black Hills SourceGas	August 1, 2015	Jan. 12, 2016	Jan. 26, 2016	178 days or 5 Mos. and 25 days.
NG-128	BHC NorthWestern	Oct. 25, 2025	April 7, 2026	June 2, 2026	220 days or 7 Mos. and 8 days

B. Joint Applicants Have Not Caused Delay or Withheld Information; the Public Advocate's Claimed Need is Based on its Own Delay.

The Motion for Continuance asserts that the Public Advocate needs additional time because it has devoted substantial effort to pursuing HSR-related materials and underlying antitrust

In the Matter of the Joint Application of Aquila Inc. d/b/a Aquila Networks, Black Hills Corporation, et al., Docket No. NG-044 (Oct. 16, 2007)).

analyses. As explained in the Joint Applicants’ Response to the Motion to Compel, however, those materials are not relevant to the Commission’s statutory review and have never been required in Nebraska merger proceedings.

A continuance is not warranted where, as here, the asserted need for additional time arises from a party’s pursuit of discovery beyond the proper scope of the case. Granting an extension on that basis would reward overbroad discovery and undermine the Commission’s ability to manage proceedings efficiently, while unfairly prejudicing the Joint Applicants with a “moving target” on the standard of review.

The Public Advocate’s Motion to Compel suggests that Joint Applicants have “refused to provide meaningful responses” to discovery. The facts demonstrate otherwise. Notably, Joint Applicants have:

- Responded timely to extensive discovery 59 requests to date (including subparts) from Commission Staff, the Public Advocate and LIUNA;
- Submitted detailed, sworn testimony from senior executives and leadership addressing all statutory approval factors;
- Repeatedly affirmed that Nebraska rates, tariffs, and regulatory oversight will not change as a result of the merger; and,
- Explained why certain requested materials are unavailable or fall outside the scope of this proceeding.

The Public Advocate’s Motion to Compel further claims that Joint Applicants’ objections to its discovery requests consumed “[n]early a month . . . from an already abbreviated procedural schedule.”⁴ That assertion is unfounded. Joint Applicants responded to discovery within the deadlines established by the procedural schedule (or with short, agreed-to extensions). After receiving objections to its initial discovery, the Public Advocate proceeded to repackage the exact

⁴ Motion to Compel Discovery by the Nebraska Public Advocate at 8, ¶ 13.

same discovery request through a “copy and paste” of the HSR premerger notification filing instructions.⁵

A party’s disagreement with relevance objections does not constitute prejudice and does not justify extending the procedural schedule.

C. Granting a Continuance Would Prejudice Joint Applicants and the Disserve the Public Interest.

The Motion for Continuance notes that Joint Applicants do not anticipate closing the merger until late 2026. But again, that fact does not support or justify granting a continuance of any sort, particularly as many factors outside of this Nebraska docket influence this merger transaction. The Commission’s role is to determine whether the merger should be approved under Nebraska law—not to align its procedural schedule with the internal transaction timeline of the parties or federal antitrust processes. A timely Commission decision promotes regulatory certainty and serves the public interest regardless of the ultimate closing date.

Granting a continuance would prejudice Joint Applicants by prolonging regulatory uncertainty and delaying resolution of issues squarely presented by the Application and testimony. More broadly though, unnecessary extension would undermine the Commission’s interest in efficient adjudication and risk establishing a precedent whereby procedural schedules may be expanded whenever a party seeks discovery beyond the Commission’s statutory mandate.

In addition, the Joint Applicants have ongoing proceedings in South Dakota and Montana that could be impacted if an extension is granted here. Joint Applicants have already cleared dates

⁵ Compare Motion to Compel Discovery by the Nebraska Public Advocate at 3-6, ¶ 9 with Federal Trade Commission, Antitrust Improvements Act Notification for Certain Mergers and Acquisitions, Acquiring Person Instructions, at 8-9 (Oct. 2024), available at https://www.ftc.gov/system/files/ftc_gov/pdf/acquiring-person-instructions-october-2024.pdf; Federal Trade Commission, Antitrust Improvements Act Notification for Certain Mergers and Acquisitions, Acquired Person Instructions, at 7 (Oct. 2024), available at https://www.ftc.gov/system/files/ftc_gov/pdf/acquired-person-instructions-october-2024.pdf.

for hearing preparation and hearing with its witnesses in multiple states. A movement of the dates in Nebraska could have an unwanted and unnecessary ripple effect on those other states.

III. CONCLUSION AND REQUEST FOR ORAL ARGUMENT

In sum, the Public Advocate's Motion for Continuance is premised almost entirely on its pending Motion to Compel. If that Motion is denied, the continuance is moot. But, even if considered independently, the Public Advocate has failed to demonstrate good cause for extending the procedural schedule. In fact, under the current procedural schedule, the Public Advocate has more time to complete a review of the Joint Application than any prior similar proceeding. There is no justification to grant the Public Advocate's request in this proceeding.

For these reasons, Joint Applicants respectfully request that the Commission deny the Motion for Continuance in full.

WHEREFORE, Joint Applicants request that the Commission deny the Public Advocate's Motion for Continuance. If the Motion for Continuance is not denied in full, that the Commission or assigned Hearing Examiner schedule oral argument on the pleadings.

Dated: January 14, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January 2026, the foregoing **Joint Applicants' Response to Public Advocate Motion for Continuance** by the Nebraska Public Advocate was served on the following at the email address shown below:

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