

**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 TO COMPEL DISCOVERY 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”) submit this Response in Objection to the Motion to Compel Discovery (“Motion to Compel”) filed by the Nebraska Public Advocate (the “Public Advocate”) on December 30, 2025 as follows:

**I. INTRODUCTION**

The Motion to Compel concerns the Public Advocate’s request for the production of documents that BHC and NorthWestern Group have not yet submitted to the United States Department of Justice (“DOJ”) and the Federal Trade Commission (“FTC”), as required for those agencies’ review of federal antitrust issues under the Hart-Scott-Rodino Antitrust Improvements Act (“HSR”) for this merger. As described in the Motion to Compel, Request PA-1 contained in the Public Advocate’s first set of discovery to Joint Applicants requested the “complete, unredacted copy of each of the transacting parties’ (Black Hills and NorthWestern Group) Hart-Scott-Rodino premerger notification filings as referenced in the Direct Testimony of Brian Bird before the

Nebraska Public Service Commission at page 25.”<sup>1</sup> The Joint Applicants raised several specific objections to this request and responded over those objections to inform the Public Advocate that no HSR premerger notification filings had been made by the transacting parties (either individually or collectively) at the time of Joint Applicants’ data response.<sup>2</sup>

Undeterred, the Public Advocate served two additional discovery requests (*i.e.*, Request PA-55 through PA-57 (“PA Set 3”) and Request PA-58 through PA-60 (“PA Set 4”)) on the Joint Applicants which – in the Public Advocate’s own words – “removed the reference to HSR and requested documents and information using the instructions for HSR filing but without reference to same.”<sup>3</sup> Upon determining that the Public Advocate’s discovery requests effectively constituted a “copy and paste” of the HSR premerger notification filing instructions,<sup>4</sup> the Joint Applicants understood the Public Advocate’s additional discovery requests as restating its initial request in PA-1 for the Joint Applicants’ HSR premerger notification filings. Once again, the Joint Applicants objected to producing the requested information and sought to work constructively to address the Public Advocate’s concerns by providing relevant information that would not implicate the Joint Applicants’ pending HSR notification filings.<sup>5,6</sup>

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<sup>1</sup> Motion to Compel at 1, ¶ 2.

<sup>2</sup> See Motion to Compel (Confidential Version), Exhibit B.

<sup>3</sup> Motion to Compel at 3, ¶¶ 7-8.

<sup>4</sup> Compare Motion to Compel 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](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](https://www.ftc.gov/system/files/ftc_gov/pdf/acquired-person-instructions-october-2024.pdf).

<sup>5</sup> See Motion to Compel (Confidential Version), Exhibit D.

<sup>6</sup> Joint Applicants also highlight that many questions asked by the Public Advocate, which it now moves to compel, are questions that it knows the answer to. For example, PA-56 and PA-59 ask each party to describe their business and products. While the Joint Applicants answered these questions over objections, explaining that Joint Applicants are natural gas utilities operating in the State of Nebraska

Beyond seeking to compel the production of HSR filings that remain unavailable at this time, the Public Advocate's repeated requests for the Joint Applicants' HSR filings seek information that is both irrelevant to this proceeding, premature, and inconsistent with the longstanding Commission standards that govern this proceeding. Through its requests for the Joint Applicants' HSR filings and its Motion to Compel, it appears that the Public Advocate is attempting to broaden the scope of this proceeding without justification for such an inquiry under Nebraska law and Commission precedent.

On that point, the Commission has established the relevant standard of review for utility reorganization applications filed pursuant to Neb. Rev. Stat. § 66-1828 in four different proceedings spanning over almost two decades.<sup>7</sup> The Commission has held in each of those proceedings that 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, the Commission will consider several factors.<sup>8</sup> The factors considered by the Commission focus on: (1) management; (2) local commitments; (3) impact on rates and services; (4) investment and planned long-term ownership; and, (5) stability.

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providing natural gas retail service, these questions highlight how the HSR information is not necessarily necessary for or relevant to this proceeding.

<sup>7</sup> 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, at 8 (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); *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)).

<sup>8</sup> *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*, Commission Application No. NG-0084 (Jan. 26, 2016) at pages 7-9.

The Commission has not required any prior applicants in the Commission cases cited herein to submit information regarding the HSR filing requirements as part of a Commission review of a reorganization affecting Nebraska natural gas customers. One of many reasons this information is not required (nor should be required) is that the focus of an HSR application is on the antitrust implications of a given merger. The Commission has deferred to the federal government to conduct that review as there currently is no similar HSR statute in Nebraska. The HSR filing is not relevant to the review in this proceeding, and the Joint Applicants should not be compelled to provide it in this proceeding.

More importantly, in their Joint Application and supporting direct testimonies, the Joint Applicants set forth a comprehensive, *prima facie* showing that satisfies applicable Commission standards and applicable statutory requirements. The Joint Application, supporting direct testimony, and direct testimony exhibits fully address the factors that the Commission has determined repeatedly are necessary for a comprehensive review and approval of such an application.

The Joint Applicants also have worked in good faith to fully comply with their discovery obligations by providing information that is relevant to the Commission's review and approval of the Joint Application to the 591 discovery requests (including subparts) that have been served upon Joint Applicants to date, including 296 discovery requests (including subparts) served by the Public Advocate alone. Notwithstanding the unavailability and irrelevance of the Joint Applicants' pending HSR filings to this proceeding, the Joint Applicants have produced numerous documents in response to various, more narrowly tailored discovery requests subsequently served by Commission Staff that overlap with certain categories of information sought by the Public Advocate. This production further renders the Motion to Compel moot.

Consequently, any additional HSR-related materials sought by the Public Advocate would not meaningfully assist the Commission in making the determinations required by Nebraska law. To the contrary, granting the Public Advocate's production request would unduly prejudice the Joint Applicants by requiring them to prematurely produce information that is still in the process of being identified, reviewed, and organized by the Joint Applicants and their legal counsel prior to submission to the federal agencies that properly have subject matter jurisdiction over the object of the Public Advocate's discovery requests.

Accordingly, and for the reasons set forth in this Response, the Commission should deny the Motion to Compel in its entirety. The Commission should likewise reject the Public Advocate's request to unnecessarily delay this proceeding in its concurrently-filed Motion for Continuance, which Joint Applicants are responding to *via* their concurrently-filed response to that motion.

## **II. PROCEDURAL BACKGROUND**

On August 19, 2025, the Joint Applicants publicly announced a proposed merger transaction. On October 27, 2025, the Joint Applicants filed their Joint Application in the instant docket seeking Commission approval of the merger transaction. As reflected in the Joint Application, the merger seeks no changes to the existing tariffs, rates, or corporate structure for NorthWestern or Black Hills Nebraska Gas, LLC ("BH Nebraska Gas"), nor do the Joint Applicants seek to alter the Commission's jurisdiction or regulatory authority over NorthWestern or BH Nebraska Gas.<sup>9</sup>

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<sup>9</sup> As explained in the Joint Application, BH Nebraska Gas is not a Joint Applicant in this matter because the merger will not change the ownership or control of BH Nebraska Gas, as shown in Exhibits MMJ-1 and MMJ-2 to the direct testimony of Marne M. Jones. However, BH Nebraska Gas recognizes the continued jurisdiction by the Commission of BH Nebraska Gas rates, tariffs, and conditions of service in other jurisdictional matters.

In support of the Joint Application, the Joint Applicants submitted extensive direct testimony from six witnesses who are executives and senior leaders within BHC and NorthWestern Group. That testimony addresses all factors required under Nebraska law and Commission regulation. The Joint Application also provided contextual information that the Commission has historically considered relevant to its analysis in utility merger and change-of-control proceedings, such as managerial experience, financial integrity, local operational commitments, service quality, and long-term ownership stability.

With respect to the discovery requests that are the subject of the Motion to Compel, representatives of the Joint Applicants met and conferred with the Public Advocate on December 23, 2025. During the discovery conference call, the Joint Applicants attempted to explain to the Public Advocate and the Public Advocate's consultants the basis for Joint Applicants' assertion that the HSR information is not needed for Commission approval of a reorganization application in Nebraska. The Joint Applicants also presented an overview of the transaction in an attempt to demonstrate that the information requested within an HSR filing is unrelated and irrelevant to the Commission's review and approval of the application in this proceeding. The Joint Applicants further attempted to narrow the scope of the Public Advocate's requests. Instead of narrowing its request, the Public Advocate filed the instant Motion to Compel and concurrently-filed the Motion for Continuance on December 30, 2025.

### **III. APPLICABLE LEGAL STANDARDS**

While the Commission's discovery standards are broad, they are not unbounded. Discovery must remain relevant to the issues properly before the Commission and to the nature of the proceeding, and consistent with the Commission's statutory authority. The Commission's well-established standard for the admissibility of evidence does not adhere strictly to formal rules of

evidence, but rather allows admission of evidence that possesses probative value recognized by a “reasonably prudent person” in the context of the proceeding.<sup>10</sup> Evidence that is incompetent, irrelevant, immaterial, or unduly repetitious may be excluded.<sup>11</sup> This evidentiary standard balances the need for comprehensive information with the efficiency and fairness of the proceeding.

Moreover, the Commission’s review of the Joint Application in this proceeding is conducted as a quasi-judicial administrative proceeding and is not in a court of law. The Commission’s Rules of Procedure provides the use of depositions and discovery in proceedings before the Commission is governed by the rules and regulations of the Nebraska Supreme Court unless otherwise ordered by the Hearing Officer.<sup>12</sup> To date, neither the Public Advocate nor the Joint Applicants have invoked the Nebraska Rules of Evidence.<sup>13</sup> Joint Applicants contend that the Nebraska Rules of Evidence can and should serve as a guide for procedure in this proceeding, but do not control each item of an evidentiary dispute. Thus, the Commission is not bound to strict compliance with those requirements. The Commission may determine that HSR and HSR-related information is not necessary or relevant to its proceeding, and not relevant for the purposes of compelling discovery.

#### IV. RESPONSE

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<sup>10</sup> See e.g., Application No. NG-0061, Hearing Officer Order Denying Motions (May 20, 2010) (citing Neb. Rev. Stat. § 84-914(1)).

<sup>11</sup> Neb. Rev. Stat. § 84-914(1).

<sup>12</sup> 291 Neb. Admin. Code Ch.1, Rule 002.14. See also, Rule 003.09B (contested cases invoking that the Commission be bound by the rules of evidence applicable).

<sup>13</sup> If a party does invoke the rules of evidence, then all Nebraska evidentiary rules would arguably apply to the proceeding, including but not limited to the timing for responding to discovery, limits on the number of discovery request, hearsay in testimony, etc. Those requirements would significantly impede the review and approval needed by the Commission under this proceeding.

**A. The Joint Applicants' Pending HSR Filings are Irrelevant and Immaterial to this Merger Proceeding.**

Even if the Joint Applicants' pending HSR filings were produced for the Public Advocate, those filings would have little to no bearing on the Commission's review in this proceeding. The FTC and DOJ require premerger notification filings to assist them in performing their task pursuant to the HSR Act of evaluating the potential competitive impacts of a merger for persons, corporations, and associations engaged in interstate commerce.<sup>14</sup> More specifically, the federal agencies' analysis of HSR premerger notification filings includes a review for price discrimination,<sup>15</sup> exclusive dealing or "tying" arrangements,<sup>16</sup> a substantial reduction in competition,<sup>17</sup> and interlocking directorates and officers.<sup>18</sup> The HSR Act only requires that premerger notification HSR documents be filed for mergers that involve larger and more complex transactions.<sup>19</sup> For most transactions that require a premerger notification filing, both the buyer and seller must file forms and provide data about the relevant industry, transaction, and their own businesses. As reflected in PA Set 3 and PA Set 4, this information includes (but is not limited to) "Competition Documents" that were produced "for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales

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<sup>14</sup> See generally FTC Premerger Notification Office, *What is the Premerger Notification Program? An Overview* (Aug. 2024), available at <https://www.ftc.gov/sites/default/files/attachments/premerger-introductory-guides/guide1.pdf>.

<sup>15</sup> See 15 U.S.C. § 13.

<sup>16</sup> See 15 U.S.C. § 14.

<sup>17</sup> See 15 U.S.C. § 18.

<sup>18</sup> See 15 U.S.C. § 19.

<sup>19</sup> See FTC and DOJ, *Hart-Scott-Rodino Annual Report Fiscal Year 2024*, at 1 ("HSR Annual Report"), available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/FY24-HSR-ANNUAL-REPORT-FOR-TRANSMITTAL-TO-CONGRESS.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/FY24-HSR-ANNUAL-REPORT-FOR-TRANSMITTAL-TO-CONGRESS.pdf).



growth, or expansion into product or geographic markets.”<sup>20</sup> The investigating federal agency (either the FTC or DOJ) “may challenge the transaction if the agency believes that a proposed transaction may substantially lessen competition or tend to create a monopoly in violation of the antitrust laws.”<sup>21</sup>

As part of complying with their HSR premerger notification reporting obligations, the Joint Applicants and their legal counsel are currently undertaking the process of identifying, reviewing, and compiling documents that will provide the FTC and DOJ with information that will enable the federal agencies to screen this merger for potential federal antitrust law violations. Because the federal agencies’ review will involve an examination of this merger on a national or enterprise-wide basis, the Joint Applicants do not anticipate that their pending HSR filings will provide any analysis that is specific to BHC’s and NorthWestern Group’s operating company subsidiaries in Nebraska and the local markets they serve.

By contrast, the Commission here is *not* charged with evaluating whether a proposed transaction “may substantially lessen competition or tend to create a monopoly in violation of the antitrust laws.”<sup>22</sup> Indeed, and as noted above, the merger will result in no changes to the current operations of NorthWestern or BH Nebraska Gas, both of which are Commission-regulated and legally-sanctioned monopoly providers of natural gas service. Instead, the Commission’s task is to determine whether the transaction adversely affects the utilities’ ability to serve their respective customers and is consistent with the public interest.<sup>23</sup> As stated above, in performing this task, the

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<sup>20</sup> Motion to Compel at 3-4, ¶ 9.

<sup>21</sup> *HSR Annual Report* at 3.

<sup>22</sup> *Id.*

<sup>23</sup> See Neb. Rev. Stat. §§ 66-1821 and 66-1828.

Commission has consistently evaluated transactions based on a well-defined set of factors, including:

- Management;
- Local commitments;
- Impacts on rates and services;
- Investment and planned long-term ownership; and,
- Stability.<sup>24</sup>

As the Commission has stated, “these factors form the bedrock principles that must be satisfied under the Act and the Commission’s rules, regulations, and decisions”<sup>25</sup> in utility reorganization proceedings.

Furthermore, Nebraska has no state analogue to the federal HSA Act,<sup>26</sup> and neither Nebraska statutes nor Commission rules authorize the Commission to require production of HSR filings or similar federal-purpose documents as part of a merger or change-of-control review proceeding. To the contrary, the Commission’s consistent practice—both before and after enactment of the State Natural Gas Regulation Act in 2003, Neb. Rev. Stat. §§ 66-1801 *et seq.*—confirms that such information is not required and has not been deemed relevant. After assuming

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<sup>24</sup> 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, at 8 (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); *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)).

<sup>25</sup> *Id.*

<sup>26</sup> Several other states have enacted their own state-specific versions of the federal HSR Act, or “mini-HSR” laws, requiring premerger notifications for certain transactions, to give State Attorneys General review power over deals that might fall below federal thresholds. See, e.g., Colorado Senate Bill 25-126 (June 2025); Washington Senate Bill 5122 (Feb. 2025).

jurisdiction over natural gas utilities in 2003, the Commission has approved numerous acquisitions, mergers, and reorganizations involving jurisdictional utilities without requiring HSR-related materials or federal antitrust documentation. Representative examples include:

- NG-0037 – NorthWestern Energy / Babcock & Brown (2006).
- NG-0039 – Kinder Morgan / SourceGas (2007).
- NO-0044 – Aquila / Black Hills Corporation (2007).
- NG-0088 – Black Hills Corporation / SourceGas (2016).

As noted above, in each of these proceedings, the Commission completed its review and approved the transaction based on sworn testimony, regulatory commitments, and statutory criteria—without requiring production of HSR filings or related materials.

This practice is consistent with Nebraska’s regulatory history even prior to 2003. Under the former Municipal Natural Gas Regulation Act,<sup>27</sup> major multi-state utility transactions—including acquisitions by UtiliCorp United and the Kinder Morgan–KN Energy merger—proceeded without state-level review of antitrust materials. Any HSR filings were made exclusively to federal agencies, and local approvals were limited to municipal franchise consents. Neither municipalities nor regulators required disclosure of federal antitrust analyses, and no such transactions were opposed on that basis.

The Commission and the federal agencies, therefore, operate under two different jurisdictions, apply two different standards of review, and have two distinct areas of expertise. The Public Advocate’s Motion to Compel fails to adequately explain how the information it believes will be included in the Joint Applicants’ pending HSR filing is related to the set of issues that will guide the Commission’s review of this proceeding. Instead, the Public Advocate generally invokes

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<sup>27</sup> Neb. Rev. Stat. §§ 19-4601 to 19-4623 (Repealed 2003),

the “public interest”<sup>28</sup> and attempts to join its discovery requests for the Joint Applicants’ pending HSR filings with more specific and non-HSR-related discovery requests that were served upon Joint Applicants by Commission Staff.<sup>29</sup>

Against this backdrop, the Public Advocate’s requests for the Joint Applicants’ HSR filings, prior to those filings being finalized and submitted to federal regulators, represents a sharp departure from decades of Nebraska regulatory practice. Requiring production of such materials would not assist the Commission in performing its task pursuant to Nebraska law. Instead, doing so would improperly expand the scope of this proceeding by introducing concepts and analyses that Nebraska law does not require and the Commission has never relied upon in approving utility transactions.

For these reasons, the Joint Applicants’ pending HSR filings are irrelevant and immaterial to this proceeding. Nevertheless, the Joint Applicants have responded to or (are in the process of responding to) Commission Staff’s first set of discovery requests, which, among other things, contain several more narrowly tailored questions seeking similar types of information to what the Public Advocate now seeks to compel. According to the Public Advocate, Commission Staff’s discovery requests “seek[] information that, in whole or in part, are the types of documents that will be required to be submitted under the Applicant’s HSR obligations, and which were also sought by the Public Advocate.”<sup>30</sup> While the Joint Applicants respectfully disagree with this characterization and reiterate that there is a clear distinction between the objectionable and inappropriate discovery requests that were served by the Public Advocate and the more narrowly

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<sup>28</sup> Motion to Compel at 12, ¶¶ 38-39.

<sup>29</sup> See Motion to Compel at 13-14, ¶¶ 45-53.

<sup>30</sup> Motion to Compel at 13, ¶ 45.

tailored and non-HSR-related discovery requests served by Commission Staff,<sup>31</sup> the Joint Applicants have responded to or will soon respond to Commission Staff's similar but more narrowly-tailored discovery requests (including over objections, where applicable):

- Commission Staff Set One Request Nos. 7, 8, and 9, seeking “a description and quantification of the anticipated advantages and benefits from the Merger,” as averred on page 12 of the Joint Application, asking Joint Applicants to provide “all analyses and any documents generated by [NorthWestern or BH Nebraska Gas, their] parents or affiliates, or [their] consultants of potential synergies, savings or other benefits associated with the merger.” *See* Motion to Compel at 13, ¶ 46.
- Commission Staff Set One Request Nos. 10, and 11, asking Joint Applicants to provide “all analyses and any documents generated by [NorthWestern or BH Nebraska Gas, their] parents or affiliates, or [their] consultants of any costs (such as transitioning to a single customer system) or any other costs to be incurred in order to achieve the benefits identified” in Staff Request No. 7. *See* Motion to Compel at 13, ¶ 47.
- Commission Staff Set One Request No. 12, asking Joint Applicants to provide “all merger-related documents executed by Applicants.” *See* Motion to Compel at 13, ¶ 48.
- Commission Staff Set One Requests Nos. 13 and 14, asking Joint Applicants to provide “all presentations and analyses provided to [Black Hills, BH Nebraska Gas,

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<sup>31</sup> For example, compare PA-55 and PA-57 with Commission Staff Request Nos. 13 and 14. Both the PA data requests and Commission Staff data requests seek documents given to the Joint Applicants' Board of Directors. However, the PA data requests seek documents given to the Board of Directors regarding “competition,” while the Commission Staff's data requests seek presentations more generally related to the merger. The latter are clearly relevant to this proceeding and the Commission's decision, while the former lack a tangible nexus.

NorthWestern Group, NorthWestern], and/or their respective Board of Directors regarding strategic direction or mergers” for the last five years. *See* Motion to Compel at 14, ¶ 49.

- Commission Staff Set One Request Nos. 15 and 16, asking Joint Applicants to provide “all presentations and analyses provided to or made by an executive of” a Joint Applicant or BH Nebraska Gas “regarding strategic direction of mergers” over the past five years. *See* Motion to Compel at 14, ¶ 50.
- Commission Staff Request Set One Nos. 19 and 20, asking Joint Applicants to provide all documents prepared by the Joint Applicants, BH Nebraska Gas, or their consultants/advisors over the past two years regarding the planned merger. *See* Motion to Compel at 14, ¶ 51.

The Joint Applicants respectfully submit that their responses and document production in response to Commission Staff requests should assuage the Public Advocate’s concerns and render the Motion to Compel moot.

**B. The Specific Information that the Public Advocate Seeks to Compel is Otherwise Unavailable as Joint Applicants Have Not Yet Submitted their HSR Filings.**

Another flaw with the Public Advocate’s repeated discovery requests is that, outside of what the Joint Applicants have provided and are providing in response to Staff’s requests noted above, the Public Advocate seeks to compel materials in a format that does not yet exist in final form. To be clear, the Joint Applicants: (1) have not yet submitted HSR premerger notification filings; (2) are still gathering information to support their HSR filings; and, (3) any draft or interim materials, to the extent they exist, are incomplete, evolving, and not in a stage where they can be relied upon for regulatory commitments or decision-making purposes (even if appropriate, which

Joint Applicants maintain is not necessary for the Commission to issue a decision in this docket). Moreover, anything that is in draft form is also protected by the attorney client and work product privilege as the Joint Applicants are developing their submissions with the assistance of experienced outside counsel.

While the Joint Applicants will comply with all applicable HSR Act requirements and will make the requisite premerger notification filings with the FTC and DOJ, there are multiple factors that influence the timing of when the Joint Applicants will make these filings. Most notably, the HSR filing process involves a one-year “shelf life” which runs from the date the HSR waiting period expires, which typically occurs 30 days after the parties to the transaction submit the HSR notification form.<sup>32</sup> This is an important consideration because Joint Applicants are concurrently navigating state approval proceedings in Montana, Nebraska, and South Dakota. Accordingly, Joint Applicants have not yet made their HSR filings and have not yet made a final decision as to when these filings will be made.

Finally, compelling production of draft HSR materials would be unduly prejudicial to the Joint Applicants, as it could lead to an inconsistent record that other parties might seek to unfairly exploit if the Joint Applicants’ preliminary work product does not “match” the information provided in their final HSR filings.

## **V. CONCLUSION AND REQUEST FOR ORAL ARGUMENT**

In sum, the Public Advocate’s Motion to Compel seeks information that is unavailable, irrelevant, immaterial, and inconsistent with Nebraska law and Commission precedent. Granting the Motion to Compel would improperly and unreasonably expand the scope of this proceeding and undermine the Commission’s established merger review framework.

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<sup>32</sup> See 16 CFR § 803.7(a).

WHEREFORE, the Joint Applicants respectfully request that the Commission deny the Public Advocate's Motion to Compel in full and, unless the Motion to Compel and the concurrently filed Motion for Continuance are denied in full, schedule oral argument on both 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 Motion to Compel Discovery** by the Nebraska Public Advocate was served on the following at the email address shown below:

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