

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Joint Application of ) Application No. NG-128  
NorthWestern Energy Public Service )  
Corporation, Sioux Falls, South Dakota; )  
Black Hills Corporation, Rapid City, ) HEARING OFFICER ORDER ON  
South Dakota, and NorthWestern ) MOTION TO COMPEL AND  
Energy Group, Inc., Sioux Falls, South ) MOTION FOR CONTINUATNCE  
Dakota, seeking approval of a merger. )  
)  
) Entered: January 26, 2026

BY THE HEARING OFFICER:

On October 27, 2025, NorthWestern Energy Public Service Corporation of Sioux Falls, South Dakota; Black Hills Corporation of Rapid City, South Dakota, and NorthWestern Energy Group, Inc. of Sioux Falls, South Dakota ("Applicants") filed a joint application with the Nebraska Public Service Commission ("Commission") seeking approval of a merger. Petitions for Formal Intervention were filed by the Nebraska Public Advocate ("PA") on October 27, 2025, and the Nebraska LIUNA Local 1140 on November 25, 2025. These petitions were approved by the Commission on October 30, 2025, and December 1, 2025, respectively.

On December 30, 2025, the PA filed with the Commission a Motion to Compel responses to certain data requests and a Motion for Continuance. On January 14, 2026, the Applicants filed responses to the PA's motions. On January 16, 2026, the PA filed a request for hearings on both the Motion to Compel and the Motion for Continuance, stating that the PA and the Applicants were unable to resolve the issues underlying those motions.

Oral arguments on the pending motions were held on January 21, 2026, at 2:00 p.m. Central Time in the Commission Hearing Room, 300 The Atrium, 1200 N Street, Lincoln, Nebraska. Ms. Chris Dibbern of Dibbern Law and Mr. Derek Aldridge of Perry Law Firm appeared on behalf of the PA. Mr. Douglas Law, associate general counsel for Black Hills, Ms. Cathy Shields of Wilkinson Barker Knauer LLP, and Mr. Andy Pollock of Rembolt Ludtke LLP, appeared on behalf of the Applicants. Finally, Mr. Jonathan Smith, Mr. Alex Timperley and Ms. Nichole Mulcahy appeared on behalf of Commission staff.

## O P I N I O N

I will first address the PA's Motion to Compel, in which, the PA requested Applicants fully respond to the following discovery requests: PA-1, PA-55, and PA-58.<sup>1</sup> The foregoing discovery requests are related in subject matter and were discussed together during oral arguments, therefore, these discovery requests will be reviewed together in this order. After which, I will discuss the PA's Motion for Continuance, in which, the PA requested a continuance of the timelines in the remaining procedural schedule, extending all deadlines ninety days.<sup>2</sup>

### **1. Nebraska Public Advocate Discovery Requests PA-1, PA-55, and PA-58**

The Commission's Rules of Procedure provide that 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>3</sup> Generally, Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action and appears reasonably calculated to lead to the discovery of admissible evidence.<sup>4</sup>

While the Commission's discovery standards are broad, they are not without limitation. Discovery must remain relevant to the issues properly before the Commission, consistent with the nature of the proceeding, and within the Commission's statutory authority. The Commission's established standard for the admissibility of evidence does not adhere strictly to formal rules of evidence, but rather allows for the admission of evidence that possesses probative value recognized by a "reasonably prudent person" in the context of the proceeding.<sup>5</sup>

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<sup>1</sup> PA Motion to Compel at pg. 16

<sup>2</sup> PA Motion for Continuance at pg. 4.

<sup>3</sup> 291 Neb. Admin. Code Ch.1, § 1-002.14. See also, Rule 003.09B (contested cases invoking that the Commission be bound by the rules of evidence applicable).

<sup>4</sup> Neb. Ct. R. Disc. § 6-326(b)(1).

<sup>5</sup> See e.g., *In the Matter of Black Hills/Nebraska Gas Utility Company, LLC, d/b/a Black Hills Energy, Omaha, seeking a General Rate Increase for Black Hills Energy's Rate Areas One, Two and Three (Consolidated)*, Application No. NG-0061, Hearing Officer Order Denying Motions (May 20, 2010) (citing Neb. Rev. Stat. § 84-914(1)).

Evidence that is incompetent, irrelevant, immaterial, or unduly repetitious may be excluded.<sup>6</sup>

The subject matter of the data requests at issue involves the production of Applicant's Hart-Scott-Rodino ("HSR") premerger notification filings submitted pursuant to the Hart-Scott-Rodino Antitrust Improvements Act. HSR filings are federal submissions made to the Federal Trade Commission and the Department of Justice and are intended to assist those agencies in evaluating whether a proposed transaction may substantially lessen competition or tend to create a monopoly in violation of federal antitrust laws.<sup>7</sup> NorthWestern and BH Nebraska Gas are both Commission-regulated monopoly providers of natural gas service in the state of Nebraska. The Commission's review under Neb. Rev. Stat. § 66-1828 is not an antitrust review, but rather an evaluation of whether the proposed transaction adversely affects the utilities' ability to serve their respective customers.<sup>8</sup> As a result, the Commission and the federal antitrust agencies operate under different statutory mandates, apply different standards of review, and possess distinct areas of regulatory expertise.

Furthermore, during oral arguments, the PA was unable to identify specific reports, studies, files, records, charts, work papers, or other specific documents sought through its promulgation of discovery related to the Applicants' HSR filings. A moving party's inability to identify the specific information sought weighs heavily in favor of a finding that the discovery requests are overly broad.

Based on the foregoing, the Hearing Officer finds that these discovery requests are overly broad and lack the specificity required for a determination of whether the information sought is relevant to the issues properly before the Commission. Additionally, during oral argument, the Applicants confirmed that high level integration planning meetings had recently begun. The Applicants further represented that they would continue to update the Commission and the PA regarding the results of those ongoing meetings during the pendency of this docket. I find that such updates are likely to encompass the same general categories of information sought by the PA, without requiring the production of documents that are either not yet in existence or in final form.

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<sup>6</sup> Neb. Rev. Stat. § 84-914(1).

<sup>7</sup> HSR Annual Report at 3.

<sup>8</sup> See Neb. Rev. Stat. § 66-1828.

Accordingly, I find that the PA's Motion to Compel Discovery Requests PA-1, PA-55, and PA-58 is denied.

## **2. Nebraska Public Advocate Motion for Continuance**

Under the Commission's Rules of Procedure, a continuance may be granted only upon a showing of good cause. The PA's Motion for Continuance asserts that additional time is necessary due to the effort devoted to pursuing discovery related to the Applicants' HSR filings.

While I acknowledge the PA's assertion that it devoted substantial time to pursuing that discovery, that effort alone does not establish good cause for a continuance of the procedural schedule. The procedural schedule in this matter was established at the planning conference with the agreement of all parties, at a time when the discovery dispute regarding Applicants' HSR filings was already an issue between the PA and the Applicants.<sup>9</sup> The Commission's proceedings require a reasonable degree of procedural certainty, and parties are expected to proceed in accordance with agreed-upon schedules, absent a showing of good cause.

Nevertheless, I do find that the adjudication of the motions filed by the PA, including the Hearing Officer's review of those motions, has consumed a portion of the procedural schedule and resulted in some delay in the proceeding. Accordingly, I find good cause to grant the Motion for Continuance, in part, for the purpose of making adjustments to the remaining procedural deadlines in recognition of the discovery disputes.

Therefore, the PA's Motion for Continuance is granted, in part, and the remainder of the procedural schedule is amended as follows:

<b>Event</b>	<b>Date</b>
Discovery by PA/Intervenors	November 4, 2025 – <b>January 30, 2026</b>
Testimony of PA/Intervenors Filed	<b>February 13, 2026</b>
Discovery by Joint Applicants	<b>February 13, 2026 – March 13, 2026</b>

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<sup>9</sup> The Parties discussed the dispute regarding the HSR filing at the Planning Conference with the Hearing Officer and Commission Staff present.

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Rebuttal Testimony of Joint Applicants	<b>March 13, 2026</b>
Filing of Hearing Exhibits/List of Issues/Settlements	<b>April 2, 2026</b>
Planning Conference for Hearing (if needed)	April 6, 2026
Hearing	April 7, 2026, from 10:00 a.m. to 4:30 p.m. and April 8, 2026, from 10:00 a.m. to 4:30 p.m.
Post-Hearing Briefs (if needed)	April 15, 2026
Commission Order Issued on or around	June 2, 2026

### **3. Conclusion**

After a thorough examination of all the filings, motions, and arguments in the current proceeding, I find that the PA's Motion to Compel Discovery Requests PA-1, PA-55, and PA-58 are denied. I find that the PA's Motion for Continuance is granted, in part, pursuant to this order.

### **O R D E R**

IT IS THEREFORE ORDERED by the Hearing Officer that the Public Advocate's Motion to Compel is hereby denied.

IT IS FURTHER ORDERED by the Hearing Officer that the Public Advocate's Motion for Continuance is hereby granted, in part, as found herein.

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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 26th day of January, 2026.

NEBRASKA PUBLIC SERVICE COMMISSION

BY:

  
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Kevin Stocker  
Hearing Officer