122 FERC ¶ 61,177
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Great Plains Energy Incorporated Kansas City Power & Light Company Aquila, Inc. Black Hills Corporation	Docket Nos. EC07-99-001 EL07-75-001

ORDER DENYING REHEARING AND CLARIFYING ACCOUNTING REQUIREMENT

(Issued February 27, 2008)

1. On October 19, 2007, the Commission authorized a transaction under section 203 of the Federal Power Act (FPA)[1] in which: (1) Aquila, Inc. (Aquila) will transfer ownership of its electric utility assets in Colorado and its non-jurisdictional gas utility assets in Colorado, Kansas, Nebraska and Iowa to Black Hills Corporation (Black Hills) and (2) immediately thereafter, a subsidiary of Great Plains Energy Incorporated (Great Plains Energy) will merge into Aquila, making Aquila a wholly-owned subsidiary of Great Plains Energy.[2] Black Hills filed a request for rehearing on the issue of accounting for the acquisition adjustment under the Commission's Uniform System of Accounts. In this order we deny Black Hills' request for rehearing and clarify our accounting instructions.

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[1] 16 U.S.C. § 824b (2000), as amended by the Energy Policy Act of 2005, Pub. L. No. 109-58, § 1289, 119 Stat. 594 (2005).

[2] *Great Plains Energy Inc.*, 121 FERC ¶ 61,069 (2007) (October 19 Order).

I. <u>Rehearing Request</u>

2. Black Hills states that its acquisition of the Aquila electric utility assets will occur in two stages. In the first stage, Aquila will transfer ownership of its Colorado electric utility assets, including its generating facilities, Commission-jurisdictional transmission facilities and associated jurisdictional tariffs, rate schedules, contracts, books, records, and accounts, to a new limited partnership, Aquila Colorado Electric Opco, LP (Electric Opco), a wholly-owned subsidiary of Aquila. In the second stage, Aquila will transfer ownership of Electric Opco to Black Hills.

3. Black Hills states that the application included pro forma accounting entries showing its proposed accounting for the acquisition of Electric Opco. Black Hills proposed to record a debit of $95.4 million in Account 114, Electric Plant Acquisition Adjustment, under the Uniform System of Accounts, with a balancing credit of $95.4 million in Account 211, Other Paid-In Capital. The application explained that the proposed entries in Accounts 114 and 211 are "to record the balance of the purchase price in excess of book values immediately following its acquisition of Electric Opco."

4. Black Hills states that the Commission required it in the October 19 Order to record the debit entry for the acquisition premium in Account 186, Miscellaneous Deferred Debits, rather than in Account 114.[3] It notes that the Commission characterized the acquisition of Electric Opco as a "business combination" and said that "in a business combination, the excess cost of the acquired company over the sum of the amounts assigned to all identifiable assets acquired and liabilities assumed is recorded as goodwill in Account 186."[4] The Commission therefore required that Electric Opco account for goodwill using Account 186, rather than Account 114.

5. Black Hills argues that the acquisition of Electric Opco will be in substance an asset sale rather than a business combination and maintains that the Commission agreed with this characterization in the October 19 Order. Black Hills concludes that the requirement to use Account 186 was incorrect, and further argues that even if the transaction were a business combination, Account 114 is the appropriate account in

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[3] Black Hills states at some points in its Rehearing Request that this requirement applies to the "acquisition premium" and at other points that the requirement applies to the "acquisition adjustment," although it does not explain what difference in meaning, if any, it attributes to these two terms. *See, e.g.*, Rehearing Request at 2 and 10. We note that the focus here is on the acquisition adjustment, or the amount paid above book cost up to fair value. The Commission does not use the term "acquisition premium" in the October 19 Order.

[4] October 19 Order at P 61.

which to record the acquisition adjustment.[5] Black Hills maintains that the Commission's instructions on accounting entries contained in the October 19 Order are inconsistent with this characterization.

II. Commission Determination

6. We will deny Black Hills' request for rehearing. Black Hills misinterprets the October 19 Order as concluding that acquisition adjustments are not properly included in Account 114. The October 19 Order affirmed the Commission's longstanding accounting policy that amounts paid above depreciated original cost in a purchase, merger, consolidation, or liquidation must be recorded as an acquisition adjustment in Account 114. However the order went beyond the discussion of acquisition adjustments to make clear that in a business combination, any amount paid in excess of fair value is considered goodwill and therefore is properly recorded in Account 186.

7. Paragraph 61 of the October 19 Order discusses the requirements applicable to Electric Opco in accounting for its acquisition by Black Hills as follows:

> The proposed accounting entry debits Account 114, Electric Plant Acquisition Adjustment, and credits Account 211, Miscellaneous Paid-in Capital, to record the amount of the purchase price in excess of Electric Opco's book values. Black Hills' acquisition of Electric Opco will constitute a business combination, as it will acquire the equity interest in Electric Opco pursuant to the Partnership Interest Purchase Agreement. The Commission has previously stated that, in a business combination, the excess cost of the acquired company over the sum of the amounts assigned to all identifiable assets acquired and liabilities assumed is recorded

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[5] Black Hills notes that Part 101 of the Commission's regulations describes Account 114 as follows:

114 Electric plant acquisition adjustments.

A. This account shall include the difference between (1) the cost to the accounting utility of electric plant acquired *as an operating unit or system by purchase, merger, consolidation, liquidation, or otherwise*, and (2) the original cost, estimated, if not known, of such property, less the amount or amounts credited by the accounting utility at the time of acquisition to accumulated provisions for depreciation and amortization and contributions in aid of construction with respect to such property. (Emphasis supplied by Black Hills.)

> as goodwill in Account 186. Electric Opco shall therefore account for goodwill using Account 186, rather than Account 114.[6]

8. Black Hills states that this discussion incorrectly characterizes the acquisition as a business combination and that the Commission elsewhere conceded that it is not a business combination. That is incorrect. The application clearly describes the transaction as an acquisition by Black Hills of "Electric Opco's partnership interests."[7] The description in paragraph 61 of the October 19 Order is consistent with this characterization. Black Hills contends that the Commission recognized that the transaction is "in substance" an asset acquisition when the Commission stated in two places in the October 19 Order that "Aquila will sell its electric utility assets in Colorado . . . to Black Hills."[8] When read in context,[9] these statements are simply introductory summaries, and shorthand summaries of this sort cannot be considered dispositive for accounting purposes, in particular when the Commission elsewhere further elaborated on them by noting, consistent with the representations made in the application, that what Black Hills will in fact acquire is the "equity interest" in Electric Opco.[10] Additionally, Black Hills does not provide any support for the argument that this transaction should not be treated as a business combination under applicable accounting literature.

9. The October 19 Order does not suggest that Account 114 does not apply to business combinations. Black Hills disputes the requirement that Electric Opco must "account for *goodwill* using Account 186, rather than Account 114."[11] Black Hills describes this requirement at different points in its rehearing request as one that applies to the "acquisition adjustment" or the "acquisition premium."[12] However, it is important to

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[6] October 19 Order at P 61 (footnotes omitted).

[7] *See* Application at 15.

[8] Rehearing Request at 4 n. 14.

[9] *See* October 19 Order at P 1, 12.

[10] Statements of Financial Accounting Standards No. 141, Business Combinations, states that a business combination occurs when an entity acquires net assets that constitute a business or acquires equity interests of one or more other entities and obtains control over that entity or entities.

[11] *Id.* at P 61 (emphasis supplied).

[12] *See* n.3 above.

distinguish between an acquisition adjustment and goodwill, as it is the difference between them that explains the accounting in question, as explained below.

10. The Commission has generally supported the purchase method of accounting for business combinations in section 203 proceedings and elsewhere.[13] To use this accounting method under the Commission's Uniform System of Accounts, the acquiring corporation should first allocate the cost of the acquired company to all identifiable assets acquired and liabilities assumed based on their fair value on the date of acquisition. The amounts allocated to utility plant in excess of depreciated original cost at the date of acquisition should be recorded as an acquisition adjustment in Account 114. Second, the excess of the cost of the acquired company over the sum of the amounts assigned to identifiable assets acquired and liabilities assumed should be recorded as goodwill in Account 186. An acquisition adjustment in this context consists of all amounts above original cost up to fair value. Goodwill, on the other hand, is excess costs of the acquired company over the fair value of the identifiable assets acquired and liabilities assumed. In short, the Commission's instructions in paragraph 61 of the October 19 Order concerning Account 186 pertain only to amounts that are appropriately accounted for as goodwill.

<u>The Commission orders</u>:

Black Hills' request for rehearing of the October 19 Order is hereby denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[13] *See, e.g.*, *Entergy Services Inc. and Gulf States Utilities Co.*, 65 FERC ¶ 61,332 (1993); *El Paso Electric Co. and Central and South West Services, Inc.*, 68 FERC ¶ 61,181 (1994); *see also Transwestern Pipeline Co.*, Docket No. AC03-50-000 (July 25, 2003) (unpublished letter order).