

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03S-539E

**RE: THE INVESTIGATION AND SUSPENSION OF TARIFF SHEETS FILED BY
AQUILA, INC., DOING BUSINESS AS AQUILA NETWORKS-WPC, WITH ADVICE
NO. 586.**

**STIPULATION REGARDING ISSUES RAISED IN DECISION NO. C04-0335 AND
MODIFIED PROCEDURAL SCHEDULE**

Respondent, Aquila, Inc., doing business as Aquila Networks – WPC (“Aquila”), the Trial Staff of the Commission (Trial Staff), and the Colorado Office of Consumer Counsel (OCC), by and through their respective counsel, respectfully submit this Stipulation, pursuant to Rule 723-16.3.2 of the Commission’s Rules Relating to the Claim of Confidentiality of Information Submitted to the Colorado Public Utilities Commission, 4 *Colo. Code Regs.* 723-16, resolving the Motion for Protective Order filed by Aquila on March 15, 2004. As grounds for this Stipulation, Aquila, the OCC and the Trial Staff state as follows:

1. This docket is Aquila’s Phase II rate case involving cost of service, rate design and tariff issues. *See*, Decision No. C03-1423 (mailed December 18, 2003, the Suspension Order).
2. On February 11, 2004, the Commission held a prehearing conference in this docket. One issue raised by the Commission *sua sponte* was a requirement to provide to the Advisory Staff a copy of the executable electronic version of the cost of service study model used for the rate design proposed by Aquila in the direct testimony. At the Prehearing Conference, the Commission was advised that the OCC and Trial Staff wanted to have a copy of the executable electronic version of the cost of service model and would be seeking it in discovery. Aquila explained that providing copies of the cost of service model to Advisory Staff,

the OCC, and the Trial Staff may be difficult because the cost of service study model used by Aquila is a proprietary model owned by Threshold Associates (Threshold).

3. In Decision No. C04-0176 (mailed February 18, 2004), the Commission expanded the production of the cost of service model “to all other parties and the Advisory Staff of the Commission.” *See*, Decision No. C04-0176, ¶ I.A.5 (at page 3).

4. On March 15, 2004, Aquila filed a Motion for Protective Order, seeking extraordinary protection for the proprietary cost of service model (called the Threshold Associates Cost of Service [or “TACOS”] software), and limiting access to such confidential and proprietary information to the members of the Commission’s Advisory Staff, who execute non-disclosure agreements.

5. Responses to the Motion for Protective Order were filed by the OCC and the Trial Staff on March 19 and 22, 2004, respectively. No responses were filed by the other intervenors. Aquila was allowed to file a reply, *see*, Decision No. C04-0335, ¶ I.A.15-17 (at pages 5-6), and a hearing on the Motion was set for Friday, April 9, 2004. *See*, Decision No. R04-0346-I (mailed April 2, 2004).

6. After negotiations between Aquila, the OCC and the Trial Staff, a compromise has been reached resolving the Motion for Protective Order. Aquila has obtained additional concessions from the owner of the model and agreed to provide to the OCC and the Trial Staff a copy of the executable electronic version of the TACOS software used by Aquila in its direct case. Aquila, the OCC and the Trial Staff also agreed that the Motion for Protective Order and this Stipulation can be approved without the need for a hearing, and that the hearing set for April 9, 2004 can be vacated. An executable electronic version of the TACOS software was delivered to the OCC and the Trial Staff on April 6, 2004.

7. In return, the OCC and Trial Staff have consented to the entry of a Protective Order containing the extraordinary protections requested by Aquila, which include the following extraordinary restrictions with respect to the use of the TACOS software by employees of the OCC, members of the Trial Staff and their attorneys who have signed non-disclosure forms:

a. that the TACOS software shall not be transmitted at any time using e-mail, nor shall additional electronic copies of the software be made by a party other than Aquila or Threshold.

b. that the TACOS software shall not be used except as necessary for the conduct of this proceeding, nor shall it be disclosed, distributed, transmitted, modified, used, reused or provided to anyone, other than Threshold, for commercial or public purposes in any manner.

c. that all persons who obtain copies of the TACOS software must return the copy to Aquila within seven days of a final non-appealable Commission order in this docket.

d. that all computer files which use the TACOS software must be destroyed within seven days of a final non-appealable Commission order in this docket, and an affidavit of destruction shall be provided to Aquila and Threshold, upon request.


8. The OCC and the Trial Staff also request an extension of approximately three weeks within which all parties may file answer testimony and exhibits, to May 4, 2004, which also necessitates an extension of the date for filing rebuttal and cross-answer testimony and exhibits to June 4, 2004. This change preserves the hearing dates of June 23 – July 2, 2004, but also requires two discovery-related adjustments to the procedural order: 1) a shortening of the time to serve discovery on rebuttal and cross-answer cases to the close of business June 15, 2004 and 2) shortening the response time for such discovery to 7 calendar days, or no later than close of business June 22, 2004. Aquila agrees with those changes to the procedural schedule.

9. This Stipulation has been provided to counsel for the other intervenors in the docket, who have not specifically requested the TACOS model in discovery. Aquila, the OCC and the Trial Staff are authorized by counsel for the other intervenors to state herein that they have no objections to the Stipulation, to the entry of the requested protective order, to vacating the hearing set for April 9, 2004, or to the changes to the procedural schedule set forth herein.

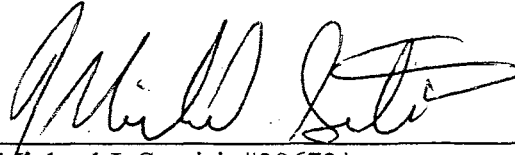
WHEREFORE, Aquila, the OCC and the Trial Staff respectfully request that the Commission approve this Stipulation, grant Aquila's Motion for Protective Order Affording Extraordinary Protection to the confidential and proprietary TACOS software, and modify the procedural schedule in this docket to extend the due date by which all parties may file answer testimony and exhibits, to May 4, 2004, to extend the date for filing rebuttal and cross-answer testimony and exhibits to June 4, 2004, and to adjust the procedural order by shortening the time to serve discovery on rebuttal and cross-answer cases to the close of business June 15, 2004 and by shortening the response time for such discovery to 7 calendar days, or no later than close of business June 22, 2004.

RESPECTFULLY SUBMITTED this 7th day of April 2004.

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CERTIFICATE OF SERVICE

I hereby certify that on this 7TH day of April 2004, a true and correct copy of the foregoing **STIPULATION REGARDING ISSUES RAISED IN DECISION NO. C04-0335 AND MODIFIED PROCEDURAL SCHEDULE** was served via e-mail on trial counsel [*] and by United States mail, first class postage prepaid, addressed to the following:

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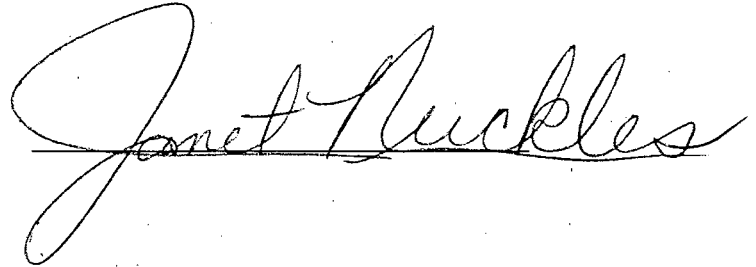
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A handwritten signature in cursive script, reading "Janet Buckles", written over a horizontal line.