

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-071SEG

IN THE MATTER OF THE APPLICATION OF AQUILA, INC., FOR AN ORDER
AUTHORIZING THE ISSUANCE OF LONG-TERM DEBT ALREADY APPROVED
BY THE FERC.

**ORDER OF THE COMMISSION
GRANTING VERIFIED APPLICATION**

Mailed Date: March 25, 2003
Adopted Date: March 20, 2003

I. BY THE COMMISSION

A. Statement

1. Aquila, Inc. (the Applicant or the Company), a Delaware corporation, filed with this Commission on February 24, 2003, an Application, along with Exhibits A through J, for an order authorizing it to issue a total amount of up to \$430 million of long-term Debt Securities.

2. After the Commission issued notice of the Application on February 26, 2003 (with an errata issued on February 28, 2003 to correct the caption and first paragraph of the original notice), the Application was set for hearing at 9:00 a.m. on Friday, March 21, 2003, in the Commission Hearing Room, Office Level 2, 1580 Logan Street, Denver, Colorado.

3. No petitions to intervene were filed in opposition to the Application, therefore the Commission has the authority to determine the Application under its modified procedure as a non-contested and unopposed matter pursuant to § 40-6-109(5), C.R.S., and Rule 4 *Code of Colorado Regulations* (CCR) 723-1-24 of the Commission's Rules of Practice and Procedure,

4 CCR 723-1. The hearing on the Application, set for March 21, 2003, was vacated by prior order.

B. Findings of Fact

4. Applicant is a public utility as defined in § 40-1-103, C.R.S. Applicant, a Delaware corporation, is engaged, in the State of Colorado, principally in the generation, purchase, transmission, distribution, and sale of electricity and in the purchase, distribution, and sale of natural gas in various areas.

5. Copies of Applicant's Certificate of Authority, issued by the Colorado Secretary of State on September 27, 2002, and of Applicant's Certificate of Incorporation and amendments containing its Articles of Incorporation were filed as Exhibit B to the Application, are accepted, and will be on file with the Commission until the Applicant files amended corporate documents.

6. Applicant is engaged, generally, as an electric and natural gas utility operating in seven states, one Canadian province, and parts of Australia and the United Kingdom. Specifically, Applicant delivers energy through networks in seven states in the Mid-continent of North America. Through Aquila Networks, the Company serves 431,000 retail electric distribution customers in three states: Colorado, Missouri, and Kansas; and 874,000 retail natural gas distribution customers in Colorado, Missouri, Kansas, Nebraska, Iowa, Michigan, and Minnesota.

7. This Commission has jurisdiction over Applicant and the subject matter of this Application.

8. Pursuant to Applicant's Certificate of Incorporation, as amended, the Board of Directors of Applicant is authorized to approve the issuance of up to 400 million shares of

common stock, par value of \$1 per share; of up to 20 million shares of Class A common stock, \$1 par value, in one or more series; and of up to 10 million shares of Preference Stock, without par value, in one or more series. On September 30, 2002, there were issued and outstanding 181,299,947 shares of Common Stock, no shares of Class A common stock, and no shares of Preference Stock.

9. As of September 30, 2002, the aggregate principal amount of long-term debt of Applicant was \$2,423,500,000, issued in Applicant's various indentures of trust, purchase agreements, and bonds, as set forth in Exhibit C to the Verified Application.

10. As of September 30, 2002, Applicant had short-term indebtedness totaling \$597.5 million. During the nine months period ending September 30, 2002, Applicant incurred total interest charges of approximately \$178.5 million.

11. The purpose of Applicant's request is to allow it to proceed with the issuance of new long-term debt already authorized by the Federal Energy Regulatory Commission (FERC) on June 7, 2002, in Docket No. E802-38-000. In that docket, FERC authorized Applicant:

to issue up to an aggregate of \$1 billion of the following securities: (1) long-term debt (and any like instruments issued in exchange therefore or in refinancing thereof) with a final maturity or maturities of not less than twelve months nor more than 30 years; (2) common stock including shares which may be issued upon conversion of other securities; and (3) forward contracts or other financial instruments and associated common stock to be issued at a future date specified in the forward contract.¹

¹ At the time Applicant applied for and received this approval from FERC, this Commission lacked jurisdiction over the issuance of securities by Applicant pursuant to § 40-1-104(2), C.R.S., because Applicant was below the two jurisdictional threshold tests set forth in the statute. Based upon preliminary, unaudited year-end 2002 financial results, Applicant has concluded that the Commission now has jurisdiction over the issuance of securities by Applicant, using results of the "consolidated gross revenues" test set forth in the foregoing statute.

Approximately \$430 million of long-term debt remains to be issued under FERC's June 7, 2002 approval order.

12. Applicant intends to issue long-term debt under the FERC approval order to retire and to replace existing debt that will mature, and/or address the waivers that will become due, on April 12, 2003. Applicant has attached to this Application, as **Exhibit J**, a copy of its third quarter Form 10-Q, (on page 21, Paragraph 9, "Credit Facilities") which contains a detailed description of the current debt obligations and waivers that Applicant will be required to address by April 12, 2003.

13. Applicant believes that § 40-1-104(2), C.R.S., requires it to obtain this Commission's prior approval of the issuance of new long-term debt, or if a financing transaction would "create liens on its property situated within this state . . .". Applicant has advised the Commission that the transactions for which authority is sought in this Application will not involve the pledge of any of its regulated utility assets located in Colorado. Therefore, Applicant seeks Commission approval only to issue new long-term debt already approved by FERC.

14. In the future, should Applicant need to pledge regulated assets located in Colorado to secure its long-term debt, it has agreed to file a separate application with this Commission for approval of those financing arrangements, setting forth the specific details of that transaction.²

² Applicant has advised the Commission that it understands that approval of the issuance of long-term debt as requested in the instant Application will have no bearing on the Commission's disposition of a separate application requesting authority to pledge Colorado regulated assets to secure debt, and that it has no expectation that approval of this Application would have any bearing on approval of the second application.

15. The long-term debt to be issued pursuant to the authority sought in this Application will consist of loans in the total amount of up to \$430 million, to be made by one or more lending syndicates. Applicant at this time does not know the identities of the lenders nor the exact amounts and terms of individual loans contemplated following Commission approval of this Application. Applicant has agreed to report that information to the Commission Staff within 30 days after the closing of individual loans. Applicant also has agreed to provide updates periodically on the status of issuing long-term debt under the authority to be granted in this Order, as such information becomes available.

16. Applicant contends that the issuance of the long-term debt securities will have no material adverse effects on the financial condition of the Company, nor on its Colorado ratepayers or Colorado operations. Applicant proposes to replace an existing debt facility with a new debt facility to support its ongoing operations. Applicant's Colorado regulated operations, as well as all of its other domestic utility and non-utility businesses, have had access to short-term credit, and proposes that such credit is now being replaced by the long-term debt involved in the Application. The costs of the existing credit facility have not been included in the determination of the rates paid by Colorado ratepayers. In its current electric rate case, Docket No. 02S-594E, Applicant has excluded short-term debt from its capital structure, and therefore such costs could not be recovered through the rates to be set in that case. The Commission has the authority, which Applicant recognizes, to review in future rate cases, all debt costs assigned to its regulated operations in Colorado to ensure that the assigned costs are just and reasonable.

17. Applicant plans to use the proceeds of this financing transaction to retire and to replace existing bank loans aggregating approximately \$400 million that become due on April 12, 2003. Any proceeds in excess of Applicant's debt retirement obligations will be used

for general corporate purposes including, but not limited to, the construction, completion, extension, or improvement of facilities; the improvement or maintenance of service; the discharge or lawful refunding of obligations; the reimbursement of monies actually expended for these purposes from income, or from any other monies in the treasury not secured by or obtained from the issuance of securities.

18. The proposed issuance of long-term debt should have no material effect on the Applicant's existing capital structure as the new debt will retire and replace existing debt.

19. Applicant has advised the Commission that the estimated costs of financing related to long-term debt are presently unknown and will probably not be known until shortly before the loan is finalized. Applicant agrees to include information identifying the costs incurred in issuing this debt in its periodic reports to the Commission. The recovery of such costs are subject to review by the Commission in any subsequent rate case proceeding.

20. The Applicant has caused Notices of the filing of this Application to be published on February 25, 2003, in *The Gazette Telegraph*, a newspaper of general circulation in the Applicant's areas of service, and in *The Pueblo Chieftain*, a newspaper of local circulation in the Applicant's service area, in accordance with Rule 4 CCR 723-1-56 of the Rules of Practice and Procedure, 4 CCR 723-1.

21. The issuance of the new long-term debt securities, as proposed by Applicant, is reasonably required and necessary for Applicant's proper corporate financing and should be authorized and approved.

C. Conclusions

22. The issuance of up to \$430 million of long-term debt securities, as proposed by Applicant, is consistent with the public interest and with the Public Utilities Laws of the State of Colorado.

23. The Application should be granted, and the issuance of the long-term debt securities should be authorized and approved.

II. ORDER**A. The Commission Orders That:**

1. The Application of Applicant Aquila, Inc., for an Order Authorizing the Issuance of Long-Term Debt is deemed complete, and is granted.

2. Aquila, Inc., is authorized to issue up to \$430 million of long-term debt securities. The \$430 million of long-term debt securities may be issued by Aquila, Inc., at one or more times, in one or more public offerings or private placements, and in one or more series depending on the cash requirements of Aquila, Inc., and the Applicant's consolidated capital structure, and market conditions.

3. Aquila, Inc., will report information about the identities of the lenders, the exact amounts and terms of individual loans, both specifically and in aggregate to the Commission Staff within 30 days following the mailing date of this Order. Thereafter, Aquila, Inc., will be required to file a quarterly report with the Commission's Chief of Fixed Utilities. This quarterly report shall provide updates on the status of issuing long term debt, including identification of lenders, rates, and terms of the long-term debt as granted in this Order. At the same time as it

reports the foregoing information, Aquila, Inc., will be required to report the financing costs incurred in issuing these loans.

4. The Commission reserves the right to review the financing costs, including interest rates, incurred in issuing long-term debt obligations requested in this Application. Full recovery of such expenses from ratepayers may or may not be allowed in future rate proceedings before this Commission. Accordingly, the Commission may consider imputing an appropriate interest rate expense that is less than the actual interest rate expenses incurred by Aquila, Inc., with respect to this long-term debt in any future rate proceeding.

5. Nothing herein shall be construed to imply any recommendation or guarantee of, or any obligation with respect to, said securities on the part of the Colorado Public Utilities Commission or the State of Colorado.

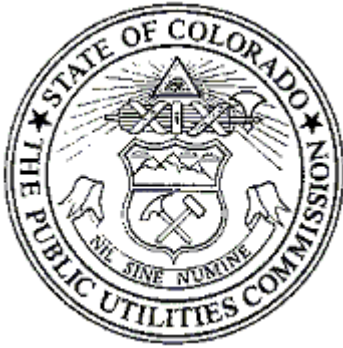
6. The Commission retains jurisdiction of this proceeding and may make such further order or orders in the matter as it may deem to be necessary and proper.

7. This Order shall be the initial Decision and Order of the Commission as provided in § 40-6-109(6), C.R.S.

8. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 20, 2003.**

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

JIM DYER

Commissioners

COMMISSIONER POLLY PAGE ABSENT.