

Decision No. C03-0888

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-309SEG

Decision No. C03 _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-071SEG 03A-309SEG

IN THE MATTER OF THE APPLICATION OF AQUILA, INC., FOR AN ORDER
AUTHORIZING THE ISSUANCE OF \$150 MILLION OF CONVERTIBLE LONG-
TERM DEBT SECURITIES AND \$100 MILLION OF COMMON EQUITY.

**ORDER OF THE COMMISSION
GRANTING VERIFIED APPLICATION**

Mailed Date: August 8, 2003

Adopted Date: August 8, 2003

I. BY THE COMMISSION

A. Statement

1. Aquila, Inc. (the Applicant or the Company), a Delaware corporation, filed with this Commission on July 18, 2003, an Application, along with Exhibits A through I, for an order authorizing it to issue up to and including \$150 million of long-term debt securities (convertible long-term debt securities), all of which would be convertible to Common Stock at a later date, and \$100 million of Common Stock.

2. After the Commission issued notice of the Application on July 21, 2003, the Application was set for hearing at 9:00 a.m. on Monday, August 11, 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 ~~723-1-24, 4~~, *Code of Colorado Regulations* (CCR) 723-1-~~24~~, of the Commission's Rules of Practice and Procedure. The hearing on the Application, set for August 11, 2003, will be vacated.¹

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, respectively, as Exhibits A and 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

¹ On July 29, 2003, Applicant filed a Motion to Extend Statutory Time Frame for Decision and to Vacate Hearing. Because the Commission is granting the Verified Application in this Decision within the statutory deadline set forth in § 40-1-104(5), C.R.S., the Motion is denied as moot.

distribution customers in three states, ~~in~~ 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 March 31, 2003, there were issued and outstanding 194,346,137 shares of Common Stock, no shares of Class A Common Stock, and no shares of Preference Stock.

9. As of March 31, 2003, the aggregate principal amount of long-term debt of Applicant was \$2,401.9 million, issued in Applicant's various indentures of trust, purchase agreements, and bonds.

10. As of March 31, 2003, Applicant had short-term indebtedness totaling \$307.9 million. During the three-month period ending March 31, 2003, Applicant incurred total interest charges of approximately \$65.1 million.

11. The purpose of Applicant's request is to allow it to issue up to: (1) \$150 million of convertible long-term debt securities (and any like instruments issued in exchange therefore or

in refinancing thereof) with a final maturity or maturities of not less than 12 months or more than 30 years, which may be converted into shares of Common Stock of Applicant; and (2) \$100 million of shares of Common Stock of Applicant (separate and apart from the shares of Common Stock to be issued upon conversion of the convertible long-term debt securities identified under item (1)).

12. All of the \$150 million convertible long-term debt securities to be issued would be convertible debt instruments. The convertible long-term debt securities would be unsecured and senior or subordinated indebtedness of the Company. The convertible long-term debt will bear interest at rates to be determined at such time of issuance. The convertible long-term debt securities to be issued would not involve the pledge of any of Applicant's utility assets. ~~located in the State of Colorado.~~

13. The convertible long-term debt securities and Common Stock would be issued in one or more public or private offerings pursuant to a prospectus or private placement memorandum or similar other documents describing the terms and conditions of each respective security. The Common Stock of Applicant, par value \$1.00 per share, is subject to certain dividend limitations and to preferential dividend rights of its preferred ~~stock~~ stock. Currently, there is no preferred stock, none of which is outstanding. Applicant is currently prohibited by a loan agreement from paying dividends on Common Stock.² There would be no current cash dividend rate per share on the Common Stock.

² Applicant's \$430 Million Credit Agreement and the 364-day Credit Agreement, each dated April 9, 2003, place limitations on Applicant's ability to pay dividends on Common Stock and restrict the purposes for which the proceeds from the securities may be used. In Decision No. C03-0299, mailed March 25, 2003, ~~in~~ (Docket No. 03A-

14. Applicant cannot predict the order in which it will issue the convertible long-term debt securities or the Common Stock~~securities~~. These issuances will depend on market conditions, prudent financing practices, and capital structure requirements, among other things. The convertible long-term debt securities and/or Common Stock~~securities~~ will be issued in one or more series over a two-year period commencing upon receipt of all required regulatory approvals, but any debt or equity securities issued pursuant to the conversion or remarketing of debt issued pursuant to this application will be issued on the dates for such conversion or remarketing, which dates

071SEG), the Commission authorized Applicant to enter into the \$430 million Credit Agreement dated April 9, 2003. The 364-day Credit Agreement is short-term debt pursuant to § 40-1-103(4), C.R.S., for which no approval of this Commission was required.

will be not less than two or more than six years from the date of issuance of the underlying security.

15. The net proceeds from the sale of the convertible long-term debt securities and/or Common Stock~~of the securities~~ to be issued by Applicant will be added to the Company's general funds and applied to reduce liabilities through the repayment of existing long-term debt and short-term debt or working capital consistent with Applicant's corporate purposes. Applicant has advised the Commission that its general corporate purposes include, but are not limited to, the construction, completion, extension, or improvement of facilities; the improvement or maintenance of service; the discharge or lawful refunding of obligations; and 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.

16. To assure the Commission that the proceeds from the sale of the Aquila~~has advised the Commission that~~ convertible long term debt or Common Stock as prescribed in this application will not be it-used to pursue any business venture or other activity inconsistent with business strategies and goals previously presented in Docket Nos. 03A-071SEG and 03A-177SEG, Applicant proposes the following three conditions:~~will commit to the Commission that:~~

- a. proceeds from the issuance of convertible debt will be used to reduce or replace existing liabilities;
- b. convertible debt will not be issued unless the issuance results in a reduction to the Company's interest expense (or liability costs to the extent cash proceeds are used to reduce or replace existing liabilities rather than debt); and

ec. proceeds from the issuance of common equity will be used to reduce liabilities or to maintain required working capital.

Applicant is seeking this approval to issue these securities so that it will have the flexibility necessary to issue these securities when (and if) market conditions warrant. Applicant would only issue these securities if these three conditions are met. Additionally, Applicant will only issue the securities if the issuance will be consistent with the strategy and goals outlined in the Company's Financial Plan (previously submitted to this Commission as a highly confidential exhibit in Docket No. 03A-177SEG); and the issuance will improve the Company's financial health. The Commission finds that the three points, cited above, to which Applicant has committed are just and reasonable, and they will be made conditions to the approval of this Verified Application.

17. Hence, the Commission finds that Applicant plans to use the proceeds of the issuance of the convertible long-term debt securities to reduce or to replace existing liabilities, and proceeds from the issuance of the Common Stock~~equity~~ will be used to reduce liabilities or to maintain required working capital.

18. The authority requested herein and the issuance of the convertible long-term debt~~se~~ securities and Common Stock will have no adverse effect on Applicant or its financial condition, nor will the issuance of these items have any adverse~~securities~~ effect upon any change~~in~~ the cost or quality of service provided to Applicant's Colorado ratepayers.

19. The issuance of the convertible long-term debt securities and/or Common Stock~~securities~~ is for a lawful object, within Aquila's corporate purposes and not contrary to, and is

consistent with, the public interest. The issuance of these securities is necessary for the operations of Aquila's business, will not impair its ability to operate its business, and is reasonably necessary and appropriate for the corporate purposes set forth above.

20. Neither the granting of this Application nor the issuance of these securities will require the filing of a new Registration Statement with the Securities and Exchange Commission (SEC). If the securities are sold in a public offering, they will be sold pursuant to a shelf registration statement already on file with the SEC, a copy of which was provided by Applicant to the Commission Staff.

21. The proposed issuance of these securities would have no material effect on the Applicant's existing capital structure.

22. Applicant has advised the Commission that the estimated costs of financing related to issuance of these securities are presently unknown and will probably not be known until shortly before the securities are issued. Applicant has committed to report to the Commission the estimated financing costs as soon as practicable after any the securities are issued. The recovery of such costs will be subject to review by the Commission in any subsequent rate case proceeding.

23. The Applicant has caused Notices of the filing of this Application to be published on July 21, 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.

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

C. Conclusions

25. The issuance of up to and including \$150 million of long-term debt securities, all of which would be convertible to Common Stock at a later date, and \$100 million of Common Stock, as proposed by Applicant, is consistent with the public interest and with the Public Utilities Laws of the State of Colorado.

26. The Application should be granted, and the issuance of up to and including \$150 million of convertible long-term debt securities and \$100 million of Common Stock 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 up to and including \$150 million of convertible long-term debt securities and \$100 million of Common Stock is deemed complete, and is granted.

2. Aquila, Inc., is authorized to issue up to and including \$150 million of convertible long-term debt securities and \$100 million of Common Stock. The 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., the Applicant's consolidated capital structure, and market conditions.

3. Aquila, Inc., shall submit a written report to the Chief of Fixed Utilities by letter when convertible long-term debt or Common Stock, as authorized in this Order, are issued. The written report shall inform the Commission of amount and type of said securities sold, identify the terms and conditions of the convertible long-term debt securities sold, and provide information concerning the cost incurred with issuing the securities sold. The report shall be submitted within 90 days following the transaction. Aquila, Inc., is required to file such a report following the closing and issuance of each sale of securities authorized in this Order.

3.4. The following three conditions are just and reasonable and will be made conditions to the approval of this Verified Application:

- a. Aquila will use the proceeds from the issuance of the convertible debt to reduce or replace existing liabilities;
- b. Aquila will not issue the convertible debt unless the issuance results in a reduction to the Company's interest expense (or liability costs to the extent cash proceeds are used to reduce or replace existing liabilities rather than debt); and
- c. Aquila will use the proceeds from the issuance of common equity to reduce liabilities or to maintain required working capital.

4.5. Aquila, Inc., Applicant is directed to immediately file a written report to the Commission if it were to fail to meet any of its obligations prescribed under existing debt indentures.~~the estimated financing costs as soon as practicable after these securities are issued.~~

5.6. The Commission reserves the right to review the financing costs, including interest rates, incurred in issuing the convertible long-term debt obligations and Common Stock 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 the long-term debt in any future rate proceeding.

~~6.7.~~ 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.

~~7.8.~~ 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.

~~8.9.~~ This Order shall be the initial Decision and Order of the Commission as provided in § 40-6-109(6), C.R.S.

10. The hearing set for Monday, August 11, 2003 is vacated.

~~9.11.~~ This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 8, 2003.**

THE _____ PUBLIC _____ UTILITIES _____ COMMISSION
OF _____ THE _____ STATE _____ OF _____ COLORADO

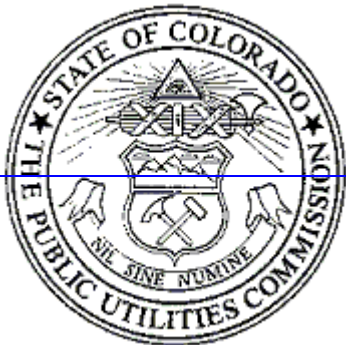
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Commissioners

(SEAL)



ATTEST: A TRUE COPY

Bruce N. Smith

Bruce _____ N. _____ Smith

Director

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Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
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