

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03V-446E

IN THE MATTER OF THE PETITION BY AQUILA INC., DOING BUSINESS AS AQUILA NETWORKS-WPC FOR A VARIANCE IN THE FILING DATE OF ITS ELECTRIC LEAST-COST RESOURCE PLAN.

ORDER GRANTING PETITION

Mailed Date: November 5, 2003

Adopted Date: October 29, 2003

I. BY THE COMMISSION

A. Statement

1. On October 14, 2003, Aquila Network – WPC (Aquila or Company) filed its Verified Petition for a Variance in the Filing Date of its Electric Least-Cost Resource Plan (Petition for Variance). The Petition for Variance requests that we extend the time within which Aquila must file its Least-Cost Resource Plan (LCP) by an additional three months, or until January 31, 2004. By Decision No. C03-1194, the Commission shortened the response time to the Petition for Variance and set October 28, 2003 as the filing deadline for any responses to the Petition for Variance.

2. On October 28, 2003, Aquila filed a supplement to its Petition for Variance. The supplement includes: 1) a draft loads and resource table for 2002 to 2012; 2) documents showing the status of a Federal Energy Regulatory Commission (FERC) complaint case involving Aquila, Intermountain Rural Electric Association, Holy Cross Energy, and Yampa Valley Electric Association against Public Service Company of Colorado (Public Service); and 3) answers to certain questions propounded by the Staff of the Commission.

3. The Commission has reviewed the Petition for Variance, including the supplement, and finds that it contains all of the information required by Rule 59 of the Commission's Rules of Practice and Procedure. Thus, the Commission deems the Petition for Variance complete.

4. According to the Company, the purpose of this Petition for Variance is to allow it more time to prepare its LCP filing because it has limited staffing resources. Aquila notes that many of the same employees who are preparing its Phase II filing, required in Decision No. C03-0697, are involved in the preparation of its LCP filing. As a result, its resources are spread too thin to accomplish both filings by October 31, 2003. Furthermore, Aquila contends that it is logical and preferable to file the Phase II case prior to filing the LCP because of LCP Rule 3604(h). This rule requires Aquila to explain whether its current rate designs for each major customer class are consistent with the contents of its plan and whether possible future changes in rate design will facilitate its proposed resource planning and resource acquisition goals. It also notes that LCP Rule 3607(b) requires Aquila to coordinate its LCP plan with Public Service and it needs the additional time to better coordinate its LCP filing. Finally, Aquila notes that it has filed a complaint with the FERC regarding Public Service's administration of its FERC fuel adjustment clause. The results of the complaint case will need to be incorporated into two purchase power contracts it has with Public Service, one contract relating to its 1996 Integrated Resource Plan (IRP) and the other relating to its 1999 IRP.

5. The Colorado Independent Energy Association (CIEA) filed an intervention and response to the Petition for Variance. The Commission waives the remaining response time to the CIEA's intervention and grants the intervention.

6. CIEA opposes the requested variance. It disagrees for two reasons. First, regarding the limited number of company employees to work on both the Phase 2 filing and this LCP filing, CIEA contends that Aquila should have known about the LCP deadline when it was negotiating the rate case settlement. And to now argue that it is “spread too thin,” when it was in control of its own destiny, is inappropriate. CIEA is also concerned about the coordination requirement under LCP rules. CIEA contends that, if the extension is granted, Aquila will be both negotiating a purchase power agreement with Public Service and coordinating its LCP filing with Public Service during the extension period. As a result, this may introduce the ability of Aquila to improperly subvert the LCP rules’ clear presumption in favor of bidding. This possible bias with coordination also extends to possible participation in the Public Service coal plant, according to CIEA. For these reasons, CIEA recommends that the Commission require Aquila to finalize and file its contract with Public Service before it proceeds to coordinate with Public Service on LCP matters.

B. Findings

7. The Commission finds that no hearing is necessary on this matter. Extending the time for complying with a Commission requirement is a matter within our discretion if we find that good cause for such an extension is stated. The information provided in the Petition for Variance along with the responsive pleading is sufficient for the Commission to issue its ruling.

8. We believe that CIEA has taken an overly broad interpretation of the coordination aspect within the LCP rules. This aspect is designed to ensure consistent reporting of information within and between the LCP filings of the various utilities. For example, if Utility A has an existing four-year purchase power contract with Utility B for 100 MW, the intent of the

LCP rule for coordination was to ensure that Utility A show the same four years of 100 MW as a sale of purchase power and that Utility B show the same four years of 100 MW purchased power.

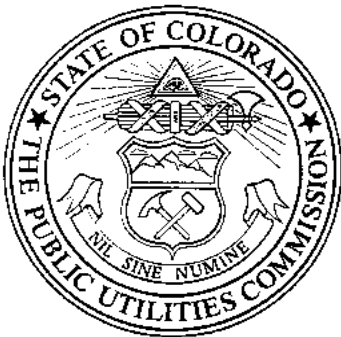
9. We decline to adopt CIEA's recommendation. If Aquila delays working on the coordination aspect of its LCP filing with Public Service until the pending 1999 IRP purchase power contract with Public Service is finalized, the LCP may not be filed within the three-month extension period. The supplemental information does state that the parties intend to file a proposed settlement on the FERC complaint case by November 7, 2003. However, the FERC order acknowledging the parties' intent to settle allows the parties to file another status report on November 7, 2003, instead. Likewise, it is unclear to the Commission how long it may take Aquila and Public Service to execute and finalize the 1996 and 1999 IRP contracts once the FERC complaint case decision, assuming the settlement is approved, becomes administratively final.

10. We also do not see the nexus between the 1999 IRP purchase power contract and Aquila's possible participation in Public Service's proposed coal plant. How one "subverts" the other CIEA does not say. If CIEA has evidence that Public Service is not complying with Commission rules or orders, it is free to file a complaint. However, we will not let speculation affect our decision on the instant petition.

11. Good cause having been shown, we grant the request to extend by three months Aquila's filing of its 2003 Least Cost Plan until January 31, 2004.

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

1. The Commission waives the remaining response times to the petition for intervention filed by the Colorado Independent Energy Association.
2. The Commission grants the intervention of the Colorado Independent Energy Association following requests for intervention:
3. The Verified Petition for a Variance in the Filing Date of its Electric Least-Cost Resource Plan by Aquila Network – WPC is granted, consistent with the above discussion.
4. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 29, 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****POLLY PAGE****JIM DYER****Commissioners**