

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-033G

IN THE MATTER OF THE APPLICATION OF AQUILA, INC., DOING BUSINESS AS
AQUILA NETWORKS - PNG, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY TO PROVIDE NATURAL GAS PUBLIC UTILITY SERVICES IN THE TOWN
OF ELLICOTT, EL PASO COUNTY, COLORADO.

**ORDER RULING ON PETITIONS FOR
INTERVENTION, AUTHORIZING LIMITED
DISCOVERY, AND DIRECTING FURTHER FILINGS**

Mailed Date: March 22, 2004

Adopted Date: March 17, 2004

I. BY THE COMMISSION

A. Statement

1. This matter concerns the Application for a Certificate of Public Convenience and Necessity (CPCN) to provide natural gas public utility service in the Town of Ellicott, Colorado and surrounding areas filed by Aquila, Inc., doing business as Aquila Networks--PNG (Aquila). Aquila filed this Application on January 20, 2004. The Commission issued notice of the Application, and, on February 19, 2004, Edward F. Corn and Danny J. Gillis filed their Petition to Intervene. In addition to requesting intervention, the Petition requests that the Commission set the Application for hearing. On March 2, 2004, Aquila filed its Response to Petition to Intervene. Aquila's Response addresses the requests for intervention and also objects to setting this matter for hearing. The Response requests that we grant the Application without hearing. Now being duly advised in the premises, we issue the following rulings and directives.

B. Ruling on Petitions to Intervene

2. With respect to Edward F. Corn, the Petition to Intervene states: Mr. Corn is the Fire Chief for the town of Ellicott. As the Fire Chief, Mr. Corn has a substantial interest in the safety of any natural gas service to be provided to Ellicott. According to Chief Corn, Aquila's network immediately preceding the extension proposed in the Application has suffered a number of operational problems. Chief Corn states that Aquila's pipeline system in the area may be operating at excessive pressure.

3. Aquila's Response to the Petition, while disputing the allegations that any part of its system has operated unsafely, does not object to Chief Corn's intervention. We conclude that the Petition states adequate grounds for finding that Chief Corn is a person interested in or affected by any Commission order on the Application. *See* § 40-6-109(1), C.R.S. (persons "interested in or affected by" a commission order in a proceeding are entitled to be heard). Therefore, we grant Chief Corn's Petition to Intervene.

4. With respect to Danny J. Gillis, the Petition to Intervene states: Mr. Gillis is an officer of the Henderson Propane Company (Henderson Company). The Henderson Company sells propane to persons residing within the service territory proposed in the Application. Additionally, Mr. Gillis has a substantial interest as a possible customer of Aquila and seeks to participate in this proceeding to provide information to the Commission regarding the Application based upon his previous work to develop natural gas service in the territory. Notably, Mr. Gillis had prior discussions with Aquila about the possibility of extending natural gas service to the proposed territory. Aquila representatives informed him that "the economics simply did not justify extending service" to that area.

5. In its Response, Aquila does object to Mr. Gillis's request to intervene. Aquila states that the Henderson Company is a potential, unregulated competitor to Aquila in the proposed service territory. The Commission, however, has not allowed potential, unregulated competitors to a public utility to intervene in Commission proceedings simply to advance their own competitive interests. Mr. Gillis's stated reasons for intervening are really for these purposes, and, as such, Mr. Gillis is not entitled to intervene in this case. As for Mr. Gillis's stated interests as a potential customer of Aquila in the proposed service area, Aquila notes that rates are not at issue in this CPCN proceeding. The rates, moreover, for service provided in the Ellicott area will be the same rates charged to customers throughout Aquila's broader service territory; these rates are contained in tariffs already approved by the Commission.

6. We deny Mr. Gillis's request to intervene. As noted above, persons who are interested in or affected by an order that may be issued by the Commission in a particular proceeding are entitled to intervene. This standard for intervention is more inclusive than in other civil litigation. *Yellow Cab v. Public Utilities Commission*, 869 P.2d 545 (Colo. 1994). However, we conclude that the private competitive interests of a potential, unregulated entity are not legally cognizable in a CPCN application by a public utility subject to our jurisdiction. For example, the Commission could not deny the Application here because Aquila's operations could do competitive harm to the Henderson Company. Those *private* interests are totally unrelated to whether provision of regulated natural gas in the area is in the interest of the *public* convenience and necessity. It appears that Mr. Gillis wishes to intervene because his interests as an officer of the Henderson Company may be affected by Aquila's proposed extension. Since these interests are not relevant to the decision to grant or deny the application, Mr. Gillis lacks standing to intervene.

7. Neither does Mr. Gillis's vague suggestion that Aquila's extension to the area may not be economically feasible to give him standing to intervene. To the extent Mr. Gillis is referring to the effect of a new pipeline on his propane business, the above discussion explains that this concern is not relevant to this case. To the extent Mr. Gillis, as a potential Aquila customer, is concerned about the rates for service, this also is not at issue in this proceeding. Aquila points out that the rates charged for service in the Ellicott area will be the same rates approved by the Commission for service throughout all of Aquila's service territory. Therefore, Mr. Gillis also lacks standing to intervene here based upon his status as a potential customer concerned about the rates for service.

C. Request for Hearing

8. Aquila, in its Response, objects to Chief Corn's request to set the Application for hearing. Aquila argues that the Petition to Intervene fails to state "sufficient grounds" or "good grounds" for having a hearing, citing Rules 22(d)(4) and 24(a)(1), Commission Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1. We note that Aquila mistakenly relies on these two rules. Rule 22(d)(4) states that when an attorney signs a pleading filed with the Commission, that signature certifies that the attorney has "good grounds" to support the pleading. That rule does not address the requirements for a request for hearing by an intervenor and is irrelevant to Aquila's argument. Rule 24(a)(1) clarifies when a petition for intervention will be deemed an opposition to a matter. The rule simply requires a petition for intervention to include "a statement specifying the grounds for the contest or opposition." Here, Chief Corn's Petition to Intervene states his request for a hearing and the issue he intends to raise in this proceeding (the safety of the proposed extension).

9. Notably, Aquila's Response makes a host of *factual* assertions as grounds for its argument that no hearing is required on the Application. Those assertions suggest that Aquila operates its facilities in the state in a safe manner and in compliance with the safety rules. Aquila further asserts that there is no reason to question, in this proceeding, whether it will construct and operate the proposed extension in a safe manner and in compliance with applicable rules. Chief Corn has not had an opportunity to reply to Aquila's assertions.

10. We note that a hearing may not be necessary to enable Chief Corn to investigate his questions regarding the safety of the proposed extension, in light of Aquila's Response and given that any new pipeline facilities will be required to comply with all applicable safety rules. We will permit Chief Corn to conduct discovery related to his expressed safety concerns. After conducting necessary discovery but within 30 days of the effective date of this order, Chief Corn shall file a reply to Aquila's Response, specifically addressing Aquila's legal and factual arguments that no hearing is necessary on the Application. Aquila may file a response to Chief Corn's reply within ten days after the reply is filed with the Commission. The Commission will issue further orders in this case after those pleadings are filed.

II. ORDER

A. The Commission Orders That:

1. The Petition to Intervene by Danny J. Gillis is denied.
2. The Petition to Intervene by Edward F. Corn is granted.
3. Petitioner Corn may immediately conduct discovery under applicable Commission Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1. Within 30 days of the effective date of this Order, Petitioner Corn shall file a reply to Aquila, Inc., doing

business as Aquila Networks--PNG's Response to Petition to Intervene. That reply shall address Aquila, Inc., doing business as Aquila Networks--PNG's legal and factual arguments that no hearing is necessary in this case. Aquila, Inc., doing business as Aquila Networks--PNG shall file a response to Petitioner Corn's reply within ten days after the filing of that reply.

4. The Commission will issue further orders in this case after the filing of the above-described pleadings.

5. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 17, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners