

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 04A-046E

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IN THE MATTER OF THE APPLICATION OF AQUILA, INC., DOING BUSINESS AS  
AQUILA NETWORKS-WPC, FOR APPROVAL OF A QUALITY OF SERVICE PLAN  
APPROPRIATE FOR AQUILA'S COLORADO ELECTRIC OPERATIONS.

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**INTERIM ORDER OF  
ADMINISTRATIVE LAW JUDGE  
MANA L. JENNINGS-FADER  
NOTICING WAIVER, GRANTING UNOPPOSED  
MOTION, VACATING HEARING DATES AND  
PROCEDURAL SCHEDULE, ESTABLISHING NEW  
PROCEDURAL SCHEDULE, SCHEDULING NEW  
HEARING DATES, AND WAVING RESPONSE TIME**

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Mailed Date: December 1, 2004

**I. STATEMENT**

1. On January 29, 2004, Aquila, Inc., doing business as Aquila Networks-WPC (Aquila or Applicant), filed its Verified Application for approval of a quality of service plan for Aquila's Colorado electric operations. The Application commenced this proceeding.

2. The Colorado Office of Consumer Counsel (OCC) and Staff of the Commission (Staff) intervened of right. They are the only intervenors in this proceeding.

3. Aquila has waived the statutory deadline found in § 40-6-109.5, C.R.S.

4. By Decision No. R04-0357-I, the undersigned Administrative Law Judge (ALJ) established a procedural schedule and scheduled a hearing for January 11 and 12, 2005. In accordance with that procedural schedule, Aquila filed its direct testimony and exhibits, and Staff filed its answer testimony and exhibits.

5. On December 1, 2004, Applicant filed an Unopposed Motion to Continue the Hearing Date and Procedural Schedule (Motion to Continue) and an Unopposed Motion for Waiver of Response Time (Motion for Waiver).

6. As support for the Motion to Continue, Applicant states that press of other business (notably a rate case in another jurisdiction) hampers its witness's ability to prepare rebuttal testimony and to prepare for hearing in this matter and that press of other business (notably the extensive hearings and settlement discussions in Dockets No. 04A-214E, No. 04A-215E, and No. 04A-216E) has hampered OCC's ability to prepare its answer testimony and exhibits in this matter. Applicant presents a procedural schedule and hearing dates which are acceptable to all parties.

7. The Motion to Continue states good cause. Granting the motion will not prejudice any party as the motion is unopposed. The Motion to Continue will be granted, and the procedural schedule and hearing dates proposed in the Motion to Continue will be adopted.

8. The following procedural schedule and filing dates will be adopted: (a) on or before **December 3, 2004**, OCC will file its answer testimony and exhibits; (b) on or before **January 17, 2005**, Applicant will file its rebuttal testimony and exhibits; (c) on or before **January 17, 2005**, each intervenor will file its cross-answer testimony and exhibits;<sup>1</sup> (d) on or before **February 8, 2005**, each party will file its prehearing motions; (e) on or before **February 16, 2005**, each party will file its corrected testimony and exhibits; (f) on or before **February 16, 2005**, the parties will file any stipulation reached; (g) on or before **February 18, 2005**, each party will file its response to prehearing motions;<sup>2</sup> (h) hearings will be held on

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<sup>1</sup> Cross-answer testimony may respond only to answer testimony.

<sup>2</sup> This is a shortened response time.

**February 23 and 24, 2005**; and (i) on or before **March 14, 2005**, each party will file its written statement of position, to which (absent further order) no response will be permitted.

9. No final prehearing conference will be scheduled at this time. Should a party believe that a prehearing conference is necessary or desirable, a motion may be filed.

10. Parties shall hand-deliver to the office of the ALJ a copy of any motion, and of any response to a motion, when it is filed with the Commission. This requirement does not reduce the number of copies to be filed with the Commission.

11. Parties shall hand-deliver to the office of the ALJ a copy of a stipulation when it is filed with the Commission. This requirement does not reduce the number of copies to be filed with the Commission.

12. Parties shall serve testimony either by hand-delivery or by overnight delivery for receipt on the next business day.

13. Except as modified by this Order, the procedures and time frames set out in Rule 4 *Code of Colorado Regulations* (CCR) 723-1-77 govern discovery in this proceeding.

14. The response time for discovery directed to the OCC answer testimony and exhibits is ten calendar days. The response time for discovery directed to rebuttal testimony and exhibits and for discovery directed to cross-answer testimony and exhibits is seven calendar days.

15. Each party shall serve discovery requests and responses on counsel for every other party.

16. To the extent possible, discovery requests and discovery responses shall be served electronically, except that confidential materials shall be served by paper copy only. If electronic

service of a discovery request or a discovery response is not possible, then that discovery request or response shall be served either by hand-delivery or by overnight delivery for receipt on the next business day.

17. A discovery request served after 11:00 a.m. Mountain Time on a Friday shall be deemed served as of the next business day.

18. Responses to discovery requests and objections to discovery requests may be served at the same time.

19. Motions to compel response to discovery requests shall be filed within five business days of receipt of the responses to which they are directed. Response time to a motion to compel response to discovery will be shortened to five business days from receipt of the motion to which the response is directed.

20. Discovery requests and responses are not to be filed with the Commission and are not to be served on the Commission advisors (including Commission counsel) identified by Staff in the Rule 9(d) Notice filed by Staff in this proceeding.

21. The provisions of ¶¶ 13 through and including 20, *supra*, apply to Staff audit.

22. Parties are reminded of Rule 4 CCR 723-1-22(d)(3), which states: “If a pleading refers to new court cases or other authorities not readily available to the Commission, six copies of each case or other authority shall be filed with the pleading.” If a party wishes the ALJ to consider a cited authority *other than* an opinion of the United States Supreme Court, a reported Colorado state court opinion, or a Commission decision, the party must provide a copy of, or a website address for, that cited authority.

23. The parties and their witnesses shall provide the decision number when referring to or citing a Commission decision.

24. The Motion for Waiver states good cause; no party will be prejudiced by granting it. The Motion for Waiver will be granted. Response to the Motion to Continue will be waived.

## **II. ORDER**

### **A. It Is Ordered That:**

1. The Unopposed Motion to Continue the Hearing Date and Procedural Schedule is granted.

2. The procedural schedule established in Decision No. R04-0357-I is vacated.

3. The hearing scheduled for January 11 and 12, 2005, is vacated.

4. Hearing in this matter is scheduled at the following dates, time, and place:

DATES: February 23 and 24, 2005

TIME: 9:00 a.m. each day

PLACE: Commission Hearing Room  
1580 Logan Street, OL2  
Denver, Colorado

5. This is the procedural schedule in this matter: (a) on or before December 3, 2004, the Office of Consumer Counsel shall file its answer testimony and exhibits; (b) on or before January 17, 2005, Aquila, Inc., doing business as Aquila Networks-WPC, shall file its rebuttal testimony and exhibits; (c) on or before January 17, 2005, Staff of the Commission and the Office of Consumer Counsel each shall file its cross-answer testimony and exhibits; (d) on or before February 8, 2005, each party shall file its prehearing motions; (e) on or before February 16, 2005, each party shall file its corrected testimony and exhibits; (f) on or before February 16, 2005, the parties shall file any stipulation reached; (g) on or before February 18, 2005, each party shall file its response to prehearing motions; and (h) on or before March 14,

2005, each party shall file its written statement of position, to which (absent further order) no response will be permitted.

6. The parties shall follow the procedures and make the filings as set forth above.

7. The Unopposed Motion for Waiver of Response Time is granted.

8. Response time to the Unopposed Motion to Continue the Hearing Date and Procedural Schedule is waived.

9. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Administrative Law Judge