

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO
DOCKET NO. 03P-232G

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STATE OF COLORADO
PUBLIC UTILITIES COMM.
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**IN THE MATTER OF GAS PURCHASE PLANS AND GAS PURCHASE REPORTS
FOR AQUILA, INC., DOING BUSINESS AS AQUILA NETWORKS-PNG, FOR THE
GAS PURCHASE YEAR FROM JULY 1, 2003 THROUGH JUNE 30, 2004.**

**SETTLEMENT AGREEMENT
AND MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT**

Aquila, Inc., doing business as Aquila Networks--WPC ("Aquila"), and the Trial Staff of the Colorado Public Utilities Commission ("Staff") (together, the "Parties"), by and through their respective undersigned counsel, and for good and valuable consideration, herewith enter into this Settlement Agreement ("Settlement Agreement") to settle all disputed issues that have arisen or could have arisen in this docket regarding establishment of a prudence review proceeding for Aquila to review natural gas purchases for the Gas Purchase Year of July 1, 2003 through June 30, 2004.

I. PROCEDURAL HISTORY

1. This proceeding in Docket No. 03P-232G was commenced on January 14, 2005, when the Colorado Public Utilities Commission issued an Order Commencing Prudence Review and Notice of Hearing establishing a prudence review proceeding for Aquila to review natural gas purchases for the period July 1, 2003 through June 30, 2004, as set forth in Decision No. C05-0075.

2. Notices of Intervention were filed by the Staff and the Colorado Office of Consumer Counsel ("OCC"), the latter of which indicated it intended only to monitor the docket. Aquila, Staff and OCC are the only parties to this docket.

3. On February 15, 2005, Administrative Law Judge Mana L. Jennings-Fader issued an Interim Order requiring Aquila to file, on or before March 2, 2005, a procedural schedule which is satisfactory to all parties, addressing identified items, and "which, absent further order, permits the hearing to proceed as scheduled." (See, Decision No. R05-0195-I, paragraph I.5 at page 2.)

4. At the request of Aquila, Staff and the OCC (hereinafter collectively referred to as "Parties"), Administrative Law Judge Mana L. Jennings-Fader issued Decision No. R05-0261-I, Interim Order Granting Unopposed Motion; Vacating Hearing Date; Establishing Prehearing Conference Date, Hearing Date, and Procedural Schedule and Waiving Response Time.

5. The Parties have devoted substantial efforts and time working to settle this docket. Staff and Aquila exchanged information through the audit process, also providing information to the OCC, and conducted successful settlement negotiations. This Settlement Agreement memorializes the negotiated settlement and stipulations among the Parties. As a result of the settlement negotiations, the Parties agree, as set forth herein, that all disputed issues in this docket have been resolved to the satisfaction of the Parties, that this Settlement Agreement is just and reasonable, and that the settlement detailed herein should be approved by the Commission without hearing.

II. THE SETTLEMENT

1. Imbalance Cash-outs. The Parties agree that Imbalance Cash-outs will be handled as follows:

- (a) Over-deliveries of Shipper's Gas Supplies. These purchases shall be made at an appropriate percent of the lesser of the CIG Rocky Mountain spot gas price index or the Panhandle Eastern Pipeline Company spot gas price index as reported in the table titled "Prices of Spot Gas Delivered to Pipelines," in the first monthly issue of *Gas Daily*.

- (b) Under-Deliveries of Shipper's Gas Supplies. The rate and terms for such sales shall be a rate equal to an appropriate percent of the greater of the CIG Rocky Mountain spot gas price index or the Panhandle Eastern Pipeline Company spot gas price index as reported in the table titled "Prices of Spot Gas Delivered to Pipelines," in the first monthly issue of *Gas Daily*, plus pipeline transportation charge @ 100% load factor and applicable fuel charges.
- (c) Monthly Imbalances: At the end of each calendar month, the Customer will be required to balance its receipts and deliveries. Any variance between Customer's receipts and deliveries will result in the following "cash out" of imbalance volumes:

<u>Imbalance Level</u>	<u>Overage People Pays Customers</u>	<u>Underage Customer Pays Peoples</u>
0-5%	100% x ADIP	100% x ADIP
> 5% -10%	90% x ADIP	110% x ADIP
> 10%-15%	80% x ADIP	120% x ADIP
> 15%	60% x ADIP	140% x ADIP

Average Daily Index Price (ADIP) shall mean the average of the daily mid-point index prices for Oklahoma - NGPL, Mid-Continent and the Rockies - IG, Rocky Mountains as published in Platt's Gas Daily for each day of the production month divided by the number of days in the Month. Should *Platt's Gas Daily* become available or not publish a price for any day, Transporter shall calculate the ADIP on information posted in a similar publication.

- (d) Proposed tariffs to implement the provisions of the agreements in this paragraph are attached hereto as Appendix A. In the event this Settlement Agreement is approved by the Commission, Aquila will file the compliance tariffs to become effective on one days' notice.
- (e) Except for the tariffs agreed to be filed pursuant to this Paragraph 1 of the Settlement Agreement, the Parties agree that this Prudence Review docket should not result in any additional tariff or rate changes that could affect different classifications of customers.

2. Backup Supply. Aquila does not intend to provide backup supply. Aquila agrees that if it were to propose backup supply service, it will price such service at a market-sensitive rate.

3. The Parties agree that Aquila's actions relating to the Gas Purchase Plan and the Gas Purchase Report for the Gas Purchase Year of July 1, 2003 through June 30, 2004 ("the subject Gas Purchase Year") and the actual gas portfolio purchases made during the subject Gas Purchase Year were reasonable and not imprudent. The Parties agree that, through the information and documents filed with the Commission in its Gas Purchase Plan and its Gas Purchase Report for the subject Gas Purchase Year, Aquila satisfied the burden of proof and the burden of going forward in this docket to establish the reasonableness of actual gas commodity and Upstream Service costs incurred during the review period. The Parties agree that Aquila's actual gas commodity and upstream service costs incurred during the subject Gas Purchase Year were reasonable and prudent.

4. Asset Optimization Program. Aquila inadvertently caused commingling of gas supplies between gas purchased for AOP sales and gas purchased for use by general system customers. Staff identified and expressed concern on the apparent negative effect of such commingling. Upon Staff's audit, Aquila discovered and represented to Staff that the apparent negative effect of the commingling on general system customers was stated erroneously in the Gas Purchase Report as the result of accounting errors. Within fourteen (14) days after the Commission's approval of this Settlement Agreement, Aquila will file a revised report to correct the accounting errors contained in its confidential Gas Purchase Report as identified in its audit responses to Staff. Said revised report will be reviewed and signed by an officer of Aquila in the accounting area. Aquila acknowledges that there shall be no commingling of gas supplies on gas

purchased for AOP sales and gas purchased for use by general system customers pursuant to the Settlement Agreement in Docket No. 03A-272G. Aquila represents that the inadvertent shift in gas supplies and costs between gas dedicated for AOP sales and gas purchased for general system customers was an anomaly and was unintentional. All AOP deals are back to back physical transactions, meaning that enough gas is purchased to ensure delivering the transacted sale volume. As corrected by this Settlement Agreement, the Parties agree that Aquila's handling of the AOP during the subject Gas Purchase Year was reasonable and not imprudent.

III. GENERAL TERMS AND CONDITIONS

1. Through active prehearing investigation and negotiation, the Parties have reached the agreement set forth herein resolving all contested and disputed issues in this docket in a manner which the Parties agree is just and reasonable and in the public interest. The Parties further agree that reaching agreement by means of negotiation and settlement rather than through litigation is in the public interest.

2. The Parties agree to present, to support, and to defend this Settlement Agreement before the Commission and before the courts. The Parties further agree, if necessary, to present testimony and exhibits to the Commission to secure the approval of this Settlement Agreement.

3. The Parties hereby agree that this Settlement Agreement reflects a compromise and settlement of all issues raised or that could have been raised in this docket.

4. This Settlement Agreement shall not become effective until the issuance of a final Commission Order approving the Settlement Agreement, which Order does not contain any modification of the terms and conditions of this Settlement Agreement that is unacceptable to any of the Parties. In the event the Commission modifies this Settlement Agreement in a manner unacceptable to any Party, that Party shall have the right to withdraw from this Settlement

Agreement and proceed to hearing on the issues that may have been appropriately raised by that Party in this docket. The withdrawing Party shall notify the Commission and the Parties to this Settlement Agreement by e-mail and facsimile within five (5) business days of the Commission Order that the Party is withdrawing from the Settlement Agreement and that the Party is ready to proceed to hearing; the e-mail and facsimile notice shall designate the precise issue or issues on which the Party desires to proceed to hearing (the "Hearing Notice").

5. The withdrawal of a Party shall not automatically terminate this Settlement Agreement as to any other Party. However, within three (3) business days of the date of the Hearing Notice from the first withdrawing Party, all Parties shall confer to arrive at a comprehensive list of issues that shall proceed to hearing and a list of issues that remain settled as a result of the first Party's withdrawal from this Settlement Agreement. Within five (5) business days of the date of the Hearing Notice, the Parties shall file with the Commission a formal notice containing the list of issues that shall proceed to hearing and those issues that remain settled. The Parties who proceed to hearing shall have and be entitled to exercise all rights with respect to the issues that are heard which they would have had in the absence of this Settlement Agreement.

6. Hearing shall be scheduled as soon as practicable on all of the issues designated in the formal notice filed with the Commission. In the event that this Settlement Agreement is not approved, or is approved with conditions that are unacceptable to any Party who subsequently withdraws, the negotiations or discussions undertaken in conjunction with the Settlement Agreement shall not be admissible into evidence in this or any other proceeding, except as may be necessary in any proceeding to enforce this Settlement Agreement.

7. Approval by the Commission of this Settlement Agreement shall constitute a determination that the Settlement Agreement represents a just, equitable and reasonable resolution of all issues that were or could have been contested among the Parties in this proceeding.

8. The Parties specifically agree and understand that this Settlement Agreement represents a negotiated settlement in the public interest with respect to the various Aquila rate matters and terms and conditions of service involved in this docket, for the sole purpose of the settlement of the matters agreed to in this Settlement Agreement. No Party or person shall be deemed to have approved, accepted, agreed to, or consented to any concept, theory or principle underlying or supposed to underlie any of the matters provided for in this Settlement Agreement, other than as specifically provided for herein. Notwithstanding the resolution of the issues set forth in this Settlement Agreement, none of the methods or ratemaking principles herein contained shall be deemed by the Parties to constitute a settled practice or precedent in any future proceeding. Nothing in this Settlement Agreement shall preclude Aquila from seeking prospective changes in its gas rates, services, regulations or practices by an appropriate filing with the Commission. Nothing in this Settlement Agreement shall preclude any other Party from filing a Complaint or seeking an Order to Show Cause to obtain prospective changes in Aquila's gas rates, services, regulations or practices.

9. The OCC and its counsel, Assistant Attorney General Gregory E. Bunker, were kept apprised of the substance and progress of the settlement negotiations and were provided drafts of this Settlement Agreement. Mr. Bunker has authorized the statement herein that the OCC does not oppose the settlement or the Commission's approval of this Settlement Agreement.

10. This Settlement Agreement may be executed in counterparts and by facsimile copies of signatures, all of which when taken together shall constitute the entire Settlement Agreement with respect to the issues addressed by this Settlement Agreement.

CONCLUSION

For the reasons stated above, the Parties respectfully request that the Commission enter an order approving this Settlement Agreement with the finding that the Commission's approval of this Settlement Agreement represents a fair, just, and reasonable resolution of all disputed issues that have arisen, or which could have arisen, in this docket.

DATED this 21st day of June 2005.

Accepted on behalf of

AQUILA, INC., d/b/a AQUILA
NETWORKS--PNG:

By: 

Glenn Dee
1815 Capitol Avenue
Omaha, NE 68102

Accepted on behalf of

TRIAL STAFF OF THE COMMISSION:

By: _____

Billy Kwan
1580 Logan Street, Office Level 2
Denver, CO 80203

Approved as to form:

ABEL, BAND, RUSSELL, COLLIER,
PITCHFORD & GORDON, CHARTERED

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Attorneys for Aquila, Inc., doing business as
Aquila Networks-WPC

Approved as to form:

OFFICE OF THE ATTORNEY GENERAL

By: _____

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Facsimile: 303-866-5395

Attorneys for the Trial Staff of the
Commission

CONCLUSION

For the reasons stated above, the Parties respectfully request that the Commission enter an order approving this Settlement Agreement with the finding that the Commission's approval of this Settlement Agreement represents a fair, just, and reasonable resolution of all disputed issues that have arisen, or which could have arisen, in this docket.

DATED this 22nd day of June 2005.

Accepted on behalf of

AQUILA, INC., d/b/a AQUILA
NETWORKS-PNG:

By: _____
Glenn Dee
1815 Capitol Avenue
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Attorneys for Aquila, Inc., doing business as
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Accepted on behalf of

TRIAL STAFF OF THE COMMISSION:

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Commission

APPENDIX A

PEOPLES NATURAL GAS COMPANY
Division of UtiliCorp United Inc.

Colo. PUC No. 2
Sixth Revised Sheet No. 13
Cancels Fifth Revised Sheet No. 13

NATURAL GAS
Transportation Service
SCHEDULE TS

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3. NOMINATION:

A. Requirements. Customers are required to nominate daily. Customers requesting volumes T to flow on the first day of any month must contact Company's Gas Control Department via Company's Internet-enabled electronic bulletin board, known as Gas Track Online (<http://www.gastrackonline.com>), and inform them of the volumes to be transported by receipt point(s) and delivery point(s). First of the month nominations and daily nominations via the Internet are due by 11:30 a.m. Central Time one day before the gas flows. Intra-day nomination for the 2nd through the 31st days of a month will be accepted until 5:00 p.m. Central Time. A confirmed pipeline nomination will also be accepted on a best effort basis on, the day of gas flow. The Company shall have the right, in its sole discretion, to reject or change any nomination that it deems is being made in order to take unfair advantage of any tariff provision, including but not limited to, monthly cash out.

4. MEASUREMENT: All transportation volumes will be measured on a Mcf basis at the standard sales base pressure of 14.65 psi.

5. INTERRUPTION: Capacity related interruptions shall occur in the following order: 1) Interruptible Sales and Interruptible Transportation, 2) Firm Sales and Firm Transportation, based on end-use priority classifications given in Company's General Service Rules and Regulations on file and approved by the PUC.

6. CURTAILMENT: Supply related curtailment will be a function of ownership; i.e. company will only deliver gas it has received for transportation, unless customer has contracted for sales backup service. Customer shall be curtailed if customer's supply is not received by Peoples at the receipt point.

7. BALANCING: To assure Peoples' system integrity, the customer is responsible for: 1) providing daily nominations which accurately reflect customer's expected consumption, and 2) balancing on a monthly basis, deliveries to Peoples' system with volumes consumed at the delivery points. Failure to fulfill these responsibilities will result in the customer incurring charges as described below.

Advice Letter No. 496 _____
Signature of Issuing Officer

Issue Date: June 15, 2005

Decision or
Authority No. C01-1013 Senior Vice President
Title

Effective Date: July 1, 2005

PEOPLES NATURAL GAS COMPANY
Division of UtiliCorp United Inc.

Colo. PUC No. 2
Third Revised Sheet No. 14
Cancels Second Revised Sheet No. 14

NATURAL GAS
Transportation Service
SCHEDULE TS

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7. BALANCING: (continued)

A. Incorrect Daily Nomination Charge:

If, on any day, the volume of gas expected to be consumed by customer is greater than the contract quantity (for firm transportation customers) or the transportation nomination (for interruptible transportation customers), then customer must notify Peoples. If Peoples has capacity available, then Peoples shall authorize such transportation. If Peoples does not have capacity available and consumption exceeds the contract quantity or transportation nomination, as applicable, by more than 10%, then Peoples will charge customer the applicable overrun service rate as defined in Paragraph 2C.

B. Monthly Imbalances:

At the end of each calendar month, Customer is required to balance its receipts and deliveries. Any variance between Customer's receipts and deliveries will result in the following "cash out" of imbalance volumes:

<u>Imbalance Level</u>	<u>Overage</u> <u>(Peoples Pays Customer)</u>	<u>Underage</u> <u>(Customer Pays Peoples)</u>	
0- 5%	100 % x ADIP	100% x ADIP	N
>5% - 10%	90 % x ADIP	110% x ADIP	N
>10% - 15%	80% x ADIP	120% x ADIP	N
Greater than 15%	60% x ADIP	140% x ADIP	N

"Average Daily Index Price" (ADIP) shall mean the average of the daily midpoint index prices for Oklahoma – NGPL, Mid-Continent and the Rockies – CIG, Rocky Mountains as published in Platt's Gas Daily for each day of the production month divided by the number of days in the Month. Should Platt's Gas Daily become available or not publish a price for any day, Transporter shall calculate the ADIP on information posted in a similar publication.

For Overage, Peoples pays customer the customer the relevant % x ADIP according to the imbalance level.

For Underage, the customer pays Peoples the relevant % x ADIP according to the imbalance level, plus pipeline transportation charges @100% load factor, plus fuel.

Advice Letter No. 481

Issue Date: June 15, 2005

Signature of Issuing Officer

Decision or

Authority No.

Senior Vice President

Title

Effective Date: July 1, 2005

PEOPLES NATURAL GAS COMPANY
Division of UtiliCorp United Inc.

Colo. PUC No. 2
Seventh Revised Sheet No. 12
Cancels Sixth Revised Sheet No. 12

NATURAL GAS
Transportation Service
SCHEDULE TS

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AVAILABILITY: Service under this rate schedule is available to customers who have contracted for an alternate or supplemental source of gas supply and have requested Peoples to transport such alternate or supplemental gas for customer's account. Service hereunder is conditioned upon availability of capacity without detriment or disadvantage to Peoples' existing customers.

RATES:

- A. Customer and Service Facility Charge: \$250.00 per month per meter

Surcharge: All transported volumes will receive the rate case expense surcharge on
Tariff Sheet 5a.

- B. Firm Service:

Demand Charge: \$.50 per Mcf.

Commodity Charge: Transportation rate applied to all volumes delivered to the customer
shall be no less than \$.10 per Mcf or more than \$.7000 per Mcf.

Interruptible Service:

Commodity Charge: Transportation rate applied to all volumes delivered to the customer
shall be no less than \$.10 per Mcf or more than \$.7000 per Mcf.

- C. Overrun Service:

Authorized overrun transportation for all gas transported in excess of nominated
peak day volumes shall be \$.70 per Mcf.

Unauthorized overrun transportation for all gas transported in excess of nominated peak day volumes
shall be \$25.00 per Mcf.

Unauthorized overrun sales backup for all volumes used in excess of contracted sales backup service
shall be \$25.00 per Mcf.

- D. Payment

The above rate is net and due and payable within ten (10) days from date of mailing or presentation
of bill.

Advice Letter No. 488 _____
Signature of Issuing Officer

Issue Date: June 1, 2005

Decision or
Authority No. R98-591 Senior Vice President
Title

Effective Date: July 1, 2005