

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, AND WITHIN THE SURROUNDING
AREA.

**COMMISSION ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

Mailed Date: May 14, 2004

Adopted Date: May 12, 2004

I. BY THE COMMISSION

A. Statements

1. On January 20, 2004, Aquila, Inc., doing business as Aquila Networks-PNG (Aquila or Applicant), filed a verified application for a Certificate of Public Convenience and Necessity (CPCN) to extend and operate its natural gas distribution system in designated areas of El Paso County, Colorado, and the Town of Ellicott, Colorado.

2. On February 19, 2004, Edward F. Corn and Danny J. Gillis, by and through counsel, filed a petition to intervene and request for hearing.

3. On March 2, 2004, Aquila filed a response to the petition to intervene.

4. On March 17, 2004, the Commission issued Decision No. C04-0293, ruling on the petitions for intervention, authorizing limited discovery, and directing further filings. The petition to intervene by Danny J. Gillis was denied; the petition to intervene by Edward F. Corn

was granted. Mr. Corn is the Fire Chief for the Town of Ellicott, the largest community within the proposed service territory.

5. On April 21, 2004, Intervenor Corn filed a reply to Aquila's opposition to request for hearing. Intervenor Corn withdraws his request for hearing, but requests that Aquila be directed to provide him with "contact information for emergency response, and...adequate safety information on an ongoing basis related to construction and maintenance of the pipeline."

6. On April 30, 2004, Aquila filed a response promising to work with Intervenor Corn to provide him information necessary and relevant at the appropriate time without the need for any order by the Commission to do so. Aquila opposes any conditional grant of the CPCN (*e.g.*, granting the CPCN on the condition that Aquila provide the information requested by Chief Corn).

7. The Commission issued Notice of the Application on January 21, 2004. Although Chief Corn has intervened in this matter, he does not request a hearing provided that Aquila provides him the information specified above. In light of Chief Corn's Reply, this is a non-contested matter; there are no outstanding protests, objections, or requests for hearing before the Commission. In accordance with § 40-6-109(5), C.R.S., and Rule 24 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, the Commission may decide this matter pursuant to its modified procedures without a formal hearing.

B. Findings of Fact

8. Aquila is a Delaware corporation in good standing with its principal office and place of business located at 20 West Ninth Street, Kansas City, Missouri 64105. Aquila's

principal office in Colorado is located at 7060 Alegre Street, P.O. Box 280, Fountain, Colorado 80817.

9. Applicant is authorized to do business in the State of Colorado and currently conducts operations as a Colorado public utility. Applicant is a local distribution company, engaged in, *inter alia*, the purchase, distribution, transportation, and sale of natural gas in various certificated areas in the State of Colorado.

10. Applicant obtains its natural gas supply at wholesale for its entire Colorado service area from third party suppliers in conjunction with supply made available by Colorado Interstate Gas Company (CIG). All gas supply is transported by CIG. Applicant represents that it has access to capacity (with the recent completion of the Peyton Pipeline) and a natural gas supply sufficient to meet the projected needs of customers in the areas sought in this Application.

11. Aquila currently provides natural gas service to approximately 55,000 residential, commercial, and industrial customers in its Colorado service territory. Applicant seeks a CPCN conferring to it the right to provide natural gas sales, distribution, and transportation services in El Paso County, Colorado in the area specifically described below:

<u>Township</u>	<u>Range</u>	<u>Sections</u>
14 South	62 West	7, 18, and 19
14 South	63 West	7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18

12. The area encompasses one section on either side of Colorado Highway 94 and the Town of Ellicott and is located in an area contiguous to Applicant's existing natural gas system and facilities. Immediately to the west of the proposed service territory, Applicant currently serves Schriever Air Force Base with a 6" high pressure steel main line. Applicant represents that this main has sufficient excess capacity to serve the proposed territory and beyond.

13. Aquila is not affiliated with any other utility or company holding authority that duplicates in any respect the authority sought herein. Aquila and Colorado Springs Utilities are the only public utilities of like character providing similar service in or near the territory involved in this Application.

14. Through this Application, Applicant is seeking a CPCN to extend and operate its natural gas distribution system to designated areas within El Paso County, Colorado. The service territory for which Applicant seeks the issuance of a CPCN comprises territory that is adjacent to existing service territory in the area, thus constituting service territory into which Applicant reasonably expects to expand service in the ordinary course of business through a logical and orderly expansion of its system, as customer growth dictates in the future. The proposed territory is not currently served by any other natural gas provider. Applicant seeks to provide natural gas public utility services to new potential customers in the proposed service territory.

15. Applicant represents that it has the operational and management experience, the financial capability, and is qualified in all respects to extend its natural gas distribution operations as set forth herein. A copy of Aquila's most recent balance sheet, income statement, and statement of retained earnings, dated September 30, 2003, are attached to the Application. Applicant believes that these exhibits demonstrate that Aquila is financially capable of constructing and operating the extension of its natural gas distribution system as proposed herein and Aquila requests that these financial statements be accepted in lieu of a feasibility study, pursuant to Rule 4 CCR 723-1-55(c)(5).

16. Applicant's tariff, including the rates and regulations of Aquila, are on file with the Commission and will be applicable to the operations proposed in this Application.

17. Applicant is prepared to begin the construction process concerning the system extension described in this Application and will commence construction as soon as is practical following the grant of this Application. As permitted by Rule 4 CCR 723-1-55(c)(5) of the Commission's Rules of Practice and Procedure, Applicant has submitted financial statements in lieu of a feasibility study. However, at the time of extending operations pursuant to existing tariff provisions into territory contiguous to existing service territory, Applicant should maintain records of such feasibility study or financial analysis to justify economic expansion into the area that would allow audit by the Staff of the Commission. Any area of the requested CPCN not served by Applicant within a reasonable time frame will be subject to review, revision, or termination by this Commission in light of circumstances regarding the availability of service, reliability of supply, or ability of another utility to commence service.

18. As noted above, on April 21, 2004, Intervenor Corn withdrew his request for hearing in this matter, but requested that the Commission order Aquila to contact him, to provide him with contact information for emergency response, and to provide him adequate safety information on an ongoing basis related to construction and maintenance of the pipeline.

19. On April 30, 2004, Aquila filed its response with an attached affidavit stating that Aquila normally provides the sort of information requested by Chief Corn and that such a condition is unnecessary in approving this CPCN application. Aquila submitted that the request is vague and could lead to litigation in the future. In addition, Aquila attached a letter that it sent to Chief Corn outlining what Aquila does in the ordinary course of business in providing the information to local officials such as Chief Corn. In part, that letter states that Aquila will supply

Chief Corn "with information for emergency response and with safety information, now as well as on a continued basis."

20. Since, Aquila, in its Response, indicates that it will provide safety-related information to Chief Corn in the future, we trust that it will do so. However, we do not make the grant of CPCN conditional on this commitment. We expect Aquila to abide by the Commission's rules regarding natural gas safety requirements, and decline to impose any conditions beyond these requirements.

21. We find that the present and future public convenience and necessity respectively now require and will require the extension and operation of a natural gas distribution system as proposed in this Application.

22. This Application for a CPCN is made under § 40-5-101, C.R.S., and Rule 55 of the Commission's Rules of Practice and Procedure.

23. The granting of the requested CPCN will be in the public interest, and it should be granted.

II. ORDER

A. The Commission Orders That:

1. The application by Aquila, Inc., doing business as Aquila Networks-PNG, for a Certificate of Public Convenience and Necessity, is granted.

2. The request by Aquila, Inc., doing business as Aquila Networks-PNG, to submit financial statements in lieu of a feasibility study, is granted. However, Aquila Inc., doing

business as Aquila Networks-PNG shall perform a feasibility study or financial analysis at the time of the extension and maintain said records for Staff of the Commission audit.

3. A Certificate of Public Convenience and Necessity is granted to Aquila, Inc., doing business as Aquila Networks-PNG, to extend and operate its natural gas distribution system in specific portions of El Paso County as described herein, and this Order shall be deemed to be, and shall be, a Certificate of Public Convenience and Necessity.

4. The Commission shall retain jurisdiction of this proceeding to the end that it may take such action and enter such orders as may appear necessary to fully effectuate this Order. Any area of the requested Certificate of Public Convenience and Necessity not served by Aquila, Inc., doing business as Aquila Networks-PNG, within a reasonable time frame will be subject to review, revision, or termination by this Commission.

5. The authority herein granted shall be exercised from and after the date of this Decision.

6. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 12, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners