

Decision No. C04-1209

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

DOCKET NO. 03S-539E

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RE: THE INVESTIGATION AND SUSPENSION OF TARIFF SHEETS FILED BY AQUILA, INC., DOING BUSINESS AS AQUILA NETWORKS-WPC, WITH ADVICE NO. 586.

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**ORDER ON APPLICATIONS FOR  
REHEARING, REARGUMENT, OR  
RECONSIDERATION OF DECISION NO. C04-1060**

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Mailed Date: October 15, 2004

Adopted Date: October 6, 2004

**I. BY THE COMMISSION**

**A. Statement**

1. This matter comes before the Commission for consideration of Applications for Rehearing, Reargument, or Reconsideration (RRR) of Commission Decision No. C04-1060, filed by Staff of the Commission (Staff); Colorado Office of Consumer Counsel (OCC); Fountain Valley Authority, the Board of Water Works of Pueblo, Colorado, and the City of Canon City, Colorado (collectively the Public Intervenors); and Cripple Creek & Victor Gold Mining Company, Goodrich Corporation, Holcim (U.S.) Inc., and the Trane Company (collectively CGHT). The applications request reconsideration of various portions of that decision wherein we rendered decisions regarding Aquila, Inc., doing business as Aquila Networks – WPC (Aquila) Phase II electric rate case.

**B. Application for Rehearing, Reargument, or Reconsideration Filed by Staff.**

2. Staff filed its RRR on September 24, 2004. Accompanying its RRR was a motion for leave to late-file its application. According to the motion, Staff attempted to file its RRR on

September 23, 2004, but, due to a copying problem, was not able to file with the Commission by the close of business on September 23, 2004. Staff indicates that no party will be prejudiced by its late filing and requests the Commission to accept its RRR.

3. The language of § 40-6-114(1), C.R.S., is clear: “After a decision has been made by the commission ... any party thereto may *within twenty days* thereafter, or within such additional time as the commission may authorize upon request made within such period, make application for [RRR].” Therefore, the time limit within which to file RRR or seek an extension of time to file RRR is statutory. We have no discretion to waive such a statutory timeline. Consequently, we must deny Staff’s motion to accept its late-filed RRR. We will therefore not consider the substance of its RRR

4. CGHT filed a Motion to Strike Parts of Staff’s RRR on September 30, 2004. Because we denied Staff’s motion to accept its late-filed RRR, it is unnecessary to consider the merits of CGHT’s motion. We therefore deny CGHT’s motion as moot. Likewise, we will not consider any other parties’ responses to Staff’s RRR.

**C. Application for Rehearing, Reargument, or Reconsideration Filed by the Office of Consumer Counsel.**

5. The OCC requests reconsideration of that part of our decision that classifies a portion of the distribution plant costs in Federal Energy Regulatory Commission Accounts 364 through 368 as customer-related. Specifically the OCC requests that these costs be classified as demand-related.

6. According to the OCC, the applicable question the Commission must determine is whether it is fair to classify a portion of the distribution system as customer-related and allocated to customer classes based on the number of customers in the class.

7. The OCC contends that whatever additional cost is added for the distribution system to comply with the National Electric Safety Code (NESC) is identical to the cost for the line that serves 1 MW of load to one customer as for the line that serves 1 MW of load to 1,000 customers. The OCC asserts that neither Aquila witness Stowe, nor any other witness, testified that NESC requirements had no more direct relationship to the number of customers served than to demand placed on the system by those customers. According to the OCC, no witness provided testimony that the distribution plant is designed based upon the number of customers served. The OCC argues that it is most equitable to allocate distribution plant on the basis of demand, because safety compliance costs vary directly with demand and not at all with customer count.

8. We are not persuaded by OCC's arguments here. We considered, and rejected, these same arguments in our initial decision. Therefore, we deny the OCC request to reconsider our decision to classify a portion of the distribution plant in Accounts 364 through 368 as customer-related.

**D. Application for Rehearing, Reargument, or Reconsideration Filed by the Public Intervenors.**

9. The Public Intervenors request reconsideration of that portion of our decision requiring the intervening parties to provide comments within 15 days as to whether the filing we required Aquila to make by October 4, 2004 complies with our directives in Commission Decision No. C04-1060. Public Intervenors indicate that additional time to review and comment on Aquila's filing is necessary, and as such request that the Commission allow 25 days for the intervening parties to file comments.

10. The Public Intervenors assert that the 15-day response period is insufficient given the magnitude of information Aquila will file and the analysis required to determine if the parties concur that Aquila has complied with our directives in Decision No. C04-1060.

11. The Public Intervenors also assert that they reserve all due process rights regarding our requirement that Aquila prepare and file a completely new disaggregated lighting cost of service that will form the basis of new lighting rates in this docket. According to the Public Intervenors, based on the current procedural schedule they will have no opportunity to cross-examine Aquila's witnesses or present answer testimony on the record regarding this study.

12. We find good cause to grant the Public Intervenors' request for reconsideration to allow additional time for intervening parties to file comments on Aquila's filing. The request for an additional ten days to file comments is timely and reasonable. We also take this opportunity to clarify that we may require further proceedings if issues are raised over the disaggregated lighting cost of service study and the associated lighting rates.

**E. Application for Rehearing, Reargument, or Reconsideration Filed by CGHT.**

13. CGHT requests reconsideration of our decision to require a follow-on proceeding before an Administrative Law Judge (ALJ) for purposes of determining the rate design for an interruptible tariff and a reallocation of costs to all rate classes. CGHT finds such a proceeding inconsistent with and would substantially delay the prescribed implementation schedule for Aquila's Phase II rates. CGHT requests that the Commission direct Aquila to adopt the interruptible rates and associated cost reallocation proposals presented in CGHT witness Baron's testimony and vacate the follow-on proceeding.

14. According to CGHT, the record contains substantial, unrefuted evidence in the form of Mr. Baron's testimony to support his proposed interruptible rates and the associated cost

reallocation. CGHT argues that the parties have already had full opportunity to present their positions on this matter during the proceedings. CGHT further argues that Staff had the opportunity but chose not to comment on whether Mr. Baron's proposal would result in a net benefit for all customers. CGHT maintains that Mr. Baron's proposed rates will result in a net benefit to all customers.

15. CGHT points out that a follow-on proceeding would require substantial additional resources and would delay the implementation of new rates. CGHT insists that the record contains the information the Commission indicated should be taken into account in designing an interruptible rate: interruption history, load curtailment needs, and the amount paid by Aquila for generation capacity. CGHT presents an overview of the evidence on record pertaining to those three issues. CGHT posits that it is likely that no additional factual evidence exists on those three issues.

16. We find good cause to grant CGHT's request for reconsideration and adopt the interruptible rates and associated cost reallocation proposals presented in CGHT witness Baron's testimony; therefore, we vacate the follow-on proceeding. We find that Mr. Baron's proposal is based on interruption history, load curtailment needs, and the amount paid by Aquila for generation capacity during the test year. Further, Mr. Baron's interruptible credit amount represents the cost to purchase additional capacity to serve the load that Aquila interrupted during the test year. Mr. Baron proposes to reallocate the interruptible credit amount to all customers. We find this line of reasoning compelling. Therefore, we conclude that an interruptible rate and a reallocation of costs as proposed by Mr. Baron will result in a net benefit to all of Aquila's customers.

17. We find that our decisions here necessitate a modification of the procedural schedule. We therefore direct Aquila to file by November 1, 2004, supplemental information as necessary to its October 4, 2004 filing in order to incorporate an interruptible rate design consistent with the discussion above.

18. We direct intervening parties to file comment on both Aquila's October 4, 2004 and November 1, 2004 filings by November 30, 2004. Within 15 days of receipt of the parties' comments, the Commission will issue a decision on compliance. Our decision on compliance may indicate further proceedings are required to resolve issues on the disaggregated lighting cost of service study, lighting rates, or compliance with the directives of Decision No. C04-1060, as well as this Order.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The motion of Commission Staff for leave to late-file its Application for Rehearing, Reargument, or Reconsideration is denied.

2. The motion of Cripple Creek & Victor Gold Mining Company, Goodrich Corporation, Holcim (U.S.) Inc., and the Trane Company to strike parts of Commission Staff's Application for Rehearing, Reargument or Reconsideration is denied as moot.

3. The Application for Rehearing, Reargument, or Reconsideration of Commission Decision No. C04-1060 filed by the Office of Consumer Counsel is denied consistent with the discussion above.

4. The Application for Rehearing, Reargument, or Reconsideration of Commission Decision No. C04-1060 filed by the Fountain Valley Authority, the Board of Water Works of

Pueblo, Colorado, and the City of Canon City, Colorado is granted consistent with the discussion above.

5. The Application for Rehearing, Reargument, or Reconsideration of Commission Decision No. C04-1060 filed by Cripple Creek & Victor Gold Mining Company, Goodrich Corporation, Holcim (U.S.) Inc., and the Trane Company is granted consistent with the discussion above.

6. Aquila, Inc. shall file by November 1, 2004, supplemental information, as necessary, to its October 4, 2004 filing to incorporate an interruptible rate design consistent with the discussion above.

7. Intervening parties shall file comments on both Aquila, Inc.'s October 4, 2004 and November 1, 2004 filings by November 30, 2004.

8. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
October 6, 2004.**

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Commissioners

COMMISSIONER CARL MILLER  
NOT PARTICIPATING.