Decision No. C04-1494

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-617SEG

IN THE MATTER OF THE APPLICATION OF AQUILA, INC., FOR AN ORDER AUTHORIZING AQUILA, INC., TO EXTEND THE TERMS OF TWO EXISTING, SHORT-TERM CREDIT FACILITIES TO A MATURITY DATE OF MORE THAN TWELVE MONTHS AFTER THE DATE OF ISSUANCE.

ORDER OF THE COMMISSION
GRANTING VERIFIED APPLICATION

Mailed Date: December 15, 2004
Adopted Date: December 15, 2004

I. BY THE COMMISSION

A. Statement

1. Aquila, Inc. (the Applicant, Aquila, or the Company), a Delaware corporation, filed with this Commission on December 1, 2004 an Application, along with Exhibits A through L, requesting an order granting Aquila the authority to extend, to a maturity date of more than 12 months after the date of issuance or until September 19, 2009, the terms of the following existing short-term credit facilities: (a) a 364-day, $110 million revolving credit agreement with certain lenders and Credit Suisse First Boston (CSFB), as administrative agent; and (b) a 364-day, $220 million credit agreement with certain lenders and CSFB, as administrative agent. Applicant expects the existing short-term securities to be extended without any other modification to the 364-day credit facilities.

2. The Commission issued notice of filing of the Application on December 3, 2004, and set the Application for hearing at 9:00 a.m. on Friday, December 17, 2004, in the Commission Hearing Room, Office Level 2, 1580 Logan Street, Denver, Colorado. Additionally,

the Company has caused Notices of the filing of this Application to be published on December 3, 2004 in *The Pueblo Chieftain*, a newspaper of local circulation in the Applicant's area of service, and on December 4, 2004 in *The Gazette Telegraph*, also a newspaper of general circulation in the Applicant's service area, in accordance with Rule 4 *Code of Colorado Regulations* (CCR) 723-1-56 of the Rules of Practice and Procedure, 4 CCR 723-1.

3. On December 8, 2004, Applicant filed a Supplement to the Verified Application, by which Aquila added two paragraphs to the Verified Application. In the following new Paragraph No. 6.5 Aquila stated:

> 6.5. Aquila submits that the operation of the interest rate spread determination and rate reduction described in the foregoing Paragraph No. 6 and in Exhibit K will not involve any foreign exchange rate exposure resulting from the conversion of foreign currencies into dollars (*e.g.*, Euros into US dollars). However, in the event that there would be any unforeseen foreign exchange rate exposure in the operation of such interest rate spread determination and rate reduction, Aquila agrees to keep Colorado ratepayers exempt from the effects of any foreign exchange rate exposure.

In new Paragraph 9.5, Aquila stated:

> 9.5 Aquila agrees to continue to use the hypothetical capital structures and the debt assignment process, as described in this paragraph.
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> a. Aquila agrees that, in future electric and natural gas rate cases, it will use a hypothetical capital structure until the date it has regained its investment grade status. In future electric rate cases the capital structure used in Docket 02S-594E of 47.5% equity and 52.5% debt will be used. In future natural gas rate cases the hypothetical capital structure of 50% equity and 50% debt will be used.
>
> b. Aquila also agrees to maintain the debt allocation and pricing process described as follows: Since 1988, Aquila has maintained a capital allocation process that was specifically designed to insulate and separate each of its regulated utility operating units from the other activities of Aquila. Aquila‘s regulated utility operating units receive capital based upon what a comparable utility would receive. Based on the needs of the business unit, Aquila assigns specific debt issuances to those business units receiving the proceeds of the issuance and that assignment is not changed until

corporate retires the debt series. As part of this internal capital allocation process, Aquila's customers would continue to be charged debt that reflect costs of comparable utilities with a BBB investment grade rating.

c. Aquila believes that the continued use of hypothetical capital structures and this debt assignment process, as described herein, provides Aquila's Colorado utility customers with financial protection during the transition period back to an investment grade rating.

4. No petitions to intervene were filed in opposition to the Application, therefore the Commission has the authority to determine the Application under its modified procedure as a non-contested and unopposed matter pursuant to § 40-6-109(5), C.R.S., and Rule 4 CCR 723-1-24, of the Commission's Rules of Practice and Procedure. The hearing on the Application, set for December 17, 2004, will be vacated.

B. Findings of Fact

5. Applicant is a public utility as defined in § 40-1-103, C.R.S. Applicant, a Delaware corporation, is engaged, in the State of Colorado, principally in the generation, purchase, transmission, distribution, and sale of electricity and in the purchase, distribution, and sale of natural gas in various areas.

6. Copies of Applicant's Certificate of Authority, issued by the Colorado Secretary of State on September 27, 2002, and of Applicant's Certificate of Incorporation and amendments containing its Articles of Incorporation were filed, respectively, as Exhibits B and C to the Application, are accepted, and will be on file with the Commission until the Applicant files amended corporate documents.

7. Applicant is engaged, generally, as an electric and natural gas utility company operating in seven states in the mid-continent of North America. Through Aquila Networks, the Company serves approximately 452,000 retail electric distribution customers in three states:

Colorado, Missouri, and Kansas; and approximately 879,000 retail natural gas distribution customers in Colorado, Missouri, Kansas, Nebraska, Iowa, Michigan, and Minnesota.

8. This Commission has jurisdiction over Applicant and the subject matter of this Application.

9. Pursuant to Applicant's Certificate of Incorporation, as amended, the Board of Directors of Applicant is authorized to approve the issuance of up to 400 million shares of Common Stock, par value of $1 per share; up to 20 million shares of Class A Common Stock, $1 par value, in one or more series; and up to 10 million shares of Preference Stock, without par value, in one or more series. On September 30, 2004, there were issued and outstanding 241,714,000 shares of Common Stock, no shares of Class A Common Stock, and no shares of Preference Stock.

10. As of September 30, 2004, the aggregate principal amount of long-term debt of Applicant was $2,298,900,000 issued in Applicant's various indentures of trust, purchase agreements, and bonds.

11. As of September 30, 2004, Applicant had short-term indebtedness totaling $220 million. During the 12-month period ending September 30, 2004, Applicant incurred total interest charges of approximately $265,677,000.

12. When the Application was filed, Applicant’s senior unsecured debt was rated “B-” by Standard & Poor’s Rating Group (Standard & Poor’s) and “B2” by Moody’s Investor Services. On August 18, 2004, Standard & Poor’s raised Aquila’s corporate credit rating from CCC+ to B- and removed the rating from CreditWatch. On September 13, 2004, Moody’s Investors Service upgraded Aquila’s senior unsecured debt to B2 from Caa1 and announced that

Aquila's rating outlook is stable. The Commission finds these upgrades to Aquila's credit rating to be positive developments.

13. On September 20, 2004, Aquila entered into two short-term credit facilities: (a) a 364-day, $110 million revolving credit agreement with certain lenders and CSFB, as administrative agent; and (b) a 364-day, $220 million credit agreement with certain lenders and CSFB, as administrative agent. The 364-day credit facilities bear interest at the London Inter-Bank Offering Rate plus 5.75 percent, subject to reduction if Aquila's credit rating improves. Pursuant to § 40-1-104(4), C.R.S., each of these credit agreements constitute short-term debt for which no prior Commission approval was required. Pursuant to provisions in the facilities negotiated by Aquila, the maturity dates of the 364-day credit facilities will be extended automatically until September 19, 2009, if Aquila is able to obtain the necessary regulatory approvals from the Federal Energy Regulatory Commission, the Kansas Corporation Commission and this Commission to extend the maturities by approximately four years. Execution copies of the 364-day, $110 million revolving credit agreement and the 364-day, $220 million credit agreement were attached to the Application as Exhibit A.

14. Aquila reported that it has borrowed the full amount of the term loan and received $211.3 million of net proceeds after upfront fees and expenses on the two facilities. As of November 15, 2004, Aquila had not drawn on the 364-day, $110 million revolving credit facility. The Commission finds that these facts support Aquila's statement in the Application that its request for authority to extend the term of these facilities does not arise from any financial emergency or through any inability of Aquila to retire or to renew the subject short-term credit facilities.

15. The purpose of Applicant's request is to obtain authority from this Commission to extend to a maturity date of more than 12 months after the date of issuance, or until September 19, 2009, the terms of the Applicant's existing short-term credit facilities: (a) the 364-day, $110 million revolving credit agreement with certain lenders and CSFB, as administrative agent; and (b) the 364-day, $220 million credit agreement with certain lenders and CSFB, as administrative agent. The securities are expected to be extended on the same terms and conditions as the two existing 364-day credit facilities. Approval of this Verified Application by the Commission will have the effect of extending the terms of these existing, short-term credit facilities until September 19, 2009.

16. The Commission finds that there will be significant benefits to Applicant and its ratepayers that will result from the extension of these existing short-term credit facilities, as compared to entering into two more replacement short-term credit facilities. First, Aquila negotiated the extension provisions into the existing short-term credit facilities. Second, the extension of the existing short-term credit facilities through September 19, 2009 will give Aquila certainty of this financing for approximately four more years. Through the extension of these existing short-term credit facilities, Aquila will have no significant near-term debt retirements or maturities.[1] Third, by extending the maturity dates of these two facilities to 2009, Aquila will avoid any additional legal or banking expenses related to the marketing, issuance, and/or syndication of replacement credit facilities. Fourth, such certainty in a utility's financing, including a lack of significant near-term debt maturities, is viewed favorably by the credit rating

[1] The Commission encourages Aquila to continue to reduce interest costs and to improve its balance sheet as market conditions warrant. The Commission recognizes that, in pursuit of those goals, Aquila may improve its creditworthiness and financial health through new financings and refinancing when such opportunities arise. Therefore, the Commission understands that after the extension of these credit facilities, but before the next significant single maturity of long-term debt in 2009, Aquila may need to request Commission approval of the issuance of other securities consistent with achieving those goals.

agencies, whereas the existence of near-term debt maturities is viewed negatively. Fifth, the existing short-term credit facilities provide, and if extended will continue to provide, that in the event that Aquila's credit rating improves from their current levels, the interest rate spread over the London Inter-Bank Offering Rate could decrease by as much as 425 basis points.[2]

17. Aquila believes that the operation of the interest rate spread determination and rate reduction described above (which is set forth in the Application Paragraph No. 6 and in Exhibit K) will not involve any foreign exchange rate exposure resulting from the conversion of foreign currencies into dollars (*e.g.*, Euros into US dollars). However, in the event that there would be any unforeseen foreign exchange rate exposure in the operation of such interest rate spread determination and rate reduction, Aquila agrees to keep Colorado ratepayers exempt from the effects of any foreign exchange rate exposure. The Commission finds Applicant's agreement to be reasonable.

18. Applicant has stated that no bond indenture or other limitations on interest and dividend coverage impact the issuance of the proposed securities.

19. The net proceeds of the extended 364-day credit facilities will be used for working capital, consistent with Aquila's corporate purposes. Aquila has stated that its corporate purposes include, but are not limited to, the construction, completion, extension, or improvement of facilities; the improvement or maintenance of service; the discharge or lawful refunding of obligations; and the reimbursement of monies actually expended for these purposes. On January 30, 2004, Aquila filed an electric Quality of Service Plan (QSP) with this Commission (Docket No. 04A-046E). On September 16, 2004, Aquila's filed direct testimony in support of

[2] A Pricing Schedule, Schedule III to both existing short-term credit facilities, describes the details of how this provision operates, and a copy was attached to the Application as Exhibit K.

its proposed QSP. The Commission has scheduled a two-day hearing, commencing February 23, 2005, to formally consider the provisions proposed in Aquila's electric QSP.

20. In its Supplement to the Verified Application, Applicant reaffirmed its continued commitment to use a hypothetical capital structure and its debt assignment process. This commitment is consistent with Aquila's ongoing efforts to focus on providing reliable service to its utility customers and ensure that steps taken to restore Aquila's financial stability would not have an adverse impact on its domestic utility business or its customers.

21. The Commission finds that the substantive points in the Supplement, quoted in paragraph 3 above, to which Applicant has committed are just and reasonable, and they will be made terms of the approval of this Application.

22. The authority requested herein and the extension to a maturity date of more than 12 months after the date of issuance, or until September 19, 2009, of the terms of the two existing short-term credit facilities, to wit: (a) the 364-day, $110 million revolving credit agreement with certain lenders and CSFB, as administrative agent; and (b) the 364-day, $220 million credit agreement with certain lenders and CSFB, as administrative agent, will have no adverse effect on Applicant or its financial condition, nor will the extension of the terms of these securities have any adverse effect upon the cost or quality of service provided to Applicant's Colorado ratepayers.

23. The extension to a maturity date of more than 12 months after the date of issuance, or until September 19, 2009, of the terms of the two existing short-term credit facilities, to wit: (a) the 364-day, $110 million revolving credit agreement with certain lenders and CSFB, as administrative agent; and (b) the 364-day, $220 million credit agreement with certain lenders and CSFB, as administrative agent, is for a lawful object, within Aquila's corporate purposes and

not contrary to, and is consistent with, the public interest. The extension of the terms of these securities is necessary for the operations of Aquila's business, will not impair its ability to operate its business, and is reasonably necessary and appropriate for the corporate purposes set forth above.

24. Neither the granting of this Application nor the extension of the terms of these securities will require the filing of a new Registration Statement with the Securities and Exchange Commission.

25. The extension of the terms of these securities would have no material adverse effect on the Applicant's existing capital structure.

26. Applicant has advised the Commission that the estimated costs related to the extension of the terms of these securities are estimated to be less than $100,000. The recovery of such costs will be subject to review by the Commission in any subsequent rate case proceeding.

27. The extension to a maturity date of more than 12 months after the date of issuance, or until September 19, 2009, of the terms of the two existing short-term credit facilities, to wit: (a) the 364-day, $110 million revolving credit agreement with certain lenders and CSFB, as administrative agent; and (b) the 364-day, $220 million credit agreement with certain lenders and CSFB, as administrative agent, is reasonably required and necessary for Applicant's proper corporate financing and should be authorized and approved.

C. Conclusions

28. The extension to a maturity date of more than 12 months after the date of issuance, or until September 19, 2009, of the terms of the two existing short-term credit facilities, to wit: (a) the 364-day, $110 million revolving credit agreement with certain lenders and CSFB, as administrative agent; and (b) the 364-day, $220 million credit agreement with certain lenders

and CSFB, as administrative agent, is consistent with the public interest and with the Public Utilities Laws of the State of Colorado.

29. The Commission finds that the continued use of hypothetical capital structures and the debt assignment process, as described in Paragraph No. 9.5 of the Supplement to the Verified Application, provides Applicant's Colorado utility customers with financial protection during the Applicant's transition period back to an investment grade rating.

30. The Commission finds that the conditions and commitments made by Applicant in the Verified Application and in the Supplement are just, reasonable, and consistent with the public interest.

31. The Application should be granted, and the extension to a maturity date of more than 12 months after the date of issuance, or until September 19, 2009, of the terms of the two existing short-term credit facilities, to wit: (a) the 364-day, $110 million revolving credit agreement with certain lenders and CSFB, as administrative agent; and (b) the 364-day, $220 million credit agreement with certain lenders and CSFB, as administrative agent, will be authorized and approved.

II. <u>ORDER</u>

A. The Commission Orders That:

1. The Application of Applicant Aquila, Inc. for an order authorizing the extension to a maturity date of more than 12 months after the date of issuance, or until September 19, 2009, of the terms of the two existing short-term credit facilities, to wit: (a) the 364-day, $110 million revolving credit agreement with certain lenders and Credit Suisse First Boston, as administrative agent; and (b) the 364-day, $220 million credit agreement with certain lenders and Credit Suisse First Boston, as administrative agent, is deemed complete, and is granted.

2. Aquila, Inc., is authorized to extend to a maturity date of more than 12 months after the date of issuance, or until September 19, 2009, of the terms of the two existing short-term credit facilities, to wit: (a) the 364-day, $110 million revolving credit agreement with certain lenders and Credit Suisse First Boston, as administrative agent; and (b) the 364-day, $220 million credit agreement with certain lenders and Credit Suisse First Boston, as administrative agent

3. Applicant will continue to use a hypothetical capital structure, pursuant to its agreement in Paragraph No. 9.5 of its Supplement to the Verified Application, in future electric or natural gas rate cases until such time it has regained its investment grade status. In future electric rate cases the capital structure used in Docket No. 02S-594E of 47.5 percent equity and 52.5 percent debt will be used. In future natural gas rate cases the hypothetical capital structure of 50 percent equity and 50 percent debt will be used.

4. Applicant will maintain the debt allocation and pricing process described in Paragraph No. 9.5 of its Supplement to the Verified Application, as follows: Since 1988, Aquila, Inc. has maintained a capital allocation process that was specifically designed to insulate and separate each of its regulated utility operating units from the other activities of Aquila, Inc. Aquila, Inc.'s regulated utility operating units receive capital based upon what a comparable utility would receive. Based upon the needs of the business unit, Aquila, Inc. assigns specific debt issuances to those business units receiving the proceeds of the issuance and that assignment is not changed until corporate retires the debt series. As part of this internal capital allocation process, Aquila, Inc.'s customers would continue to be charged debt costs that reflect representative costs for comparable utilities with a BBB investment grade credit rating.

5. Nothing herein shall be construed to imply any recommendation or guarantee of, or any obligation with respect to, said securities on the part of the Colorado Public Utilities Commission or the State of Colorado.

6. The Commission retains jurisdiction of this proceeding and may make such further order or orders in the matter as it may deem to be necessary and proper.

7. This Order shall be the initial Decision and Order of the Commission as provided in § 40-6-109(6), C.R.S.

8. The hearing set for Friday, December 17, 2004, is vacated.

9. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING December 15, 2004.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners

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