

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

DOCKET NO. 03A-272G

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IN THE MATTER OF THE APPLICATION OF AQUILA, INC., DOING BUSINESS AS  
AQUILA NETWORKS-PNG, FOR AN ORDER AUTHORIZING THE CREATION OF A  
MECHANISM TO ALLOW SHARING OF CAPACITY RELEASE CREDITS AND ASSET  
OPTIMIZATION MARGINS.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
DALE E. ISLEY  
GRANTING MOTION TO APPROVE  
SETTLEMENT AGREEMENT**

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Mailed Date: January 8, 2004

**I. STATEMENT**

1. The captioned application of Aquila, Inc., doing business as Aquila Networks-PNG (Aquila), was filed with the Colorado Public Utilities Commission (Commission) on June 25, 2003. Public notice of the application was provided on June 27, 2003. The Staff of the Commission (Staff) and the Colorado Office of Consumer Counsel (OCC) filed timely interventions in this matter.

2. The Commission deemed this application complete as of August 12, 2003. Aquila filed the direct testimony and exhibits of Mr. Shawn Gillespie, its Director of Gas Supply Planning and Operations—South Region, along with the application. It initially sought, therefore, a Commission decision in this matter within 120 days of August 12, 2003. *See*, § 40-6-109.5(1), C.R.S. However, the deadline imposed by that statute was subsequently extended twice, once by 70 days and again by 20 days, and then waived by Aquila. *See*, Decision Nos. R03-1000-I, R03-1106-I, and R03-1181-I.

3. A pre-hearing conference was held in this matter on September 2, 2003, at which time procedures and a procedural schedule governing this case were discussed. *See*, Decision No. R03-0976-I. The initial procedural schedule provided for hearings to be held on November 13 and 14, 2003. *See*, Decision No. R03-1000-I. However, the procedural schedule was modified several times at the request of the parties. These modifications ultimately resulted in the hearings being continued to February 18 and 20, 2004. *See*, Decision Nos. R03-1106-I, R03-1181-I, and R03-1314-I. January 8, 2004, was established as the date for a hearing in connection with any settlement agreement that might be filed in this matter. *See*, Decision Nos. R03-1314-I and R03-1446-I.

4. On December 30, 2003, Staff, with the concurrence of Aquila and the OCC, filed a Motion to Approve Settlement Agreement in Resolution of Proceeding and Request for Waiver of Response Time (Motion). A Settlement Agreement (Agreement) signed by the parties was filed contemporaneously with the Motion. The Motion indicates that the Agreement resolves all issues that were or could have been raised in this proceeding and requests that it be approved without modification.

5. On January 2, 2004, the undersigned administrative law judge advised the parties electronically that the Motion would be granted, that the January 8, 2004, hearing in connection with the Agreement would not be necessary, and that the February 18 and 20, 2004, hearing dates would be vacated.

## II. FINDINGS AND CONCLUSIONS

6. By this application, Aquila seeks Commission approval for the creation of a mechanism to allow the sharing of capacity release credits and asset optimization margins between it and its Colorado natural gas customers.

7. Paragraphs 8 through 12 of the Agreement provide background information relating to the manner in which Aquila's Colorado natural gas customers currently receive credit for unused firm capacity Aquila purchases from Colorado Interstate Gas Company (CIG) (capacity release credits) and an explanation of how it might extract additional value over and above such credits under the proposed Asset Optimization Plan (AOP).

8. Aquila purchases sufficient firm capacity from CIG to serve the annual peak day demand of its gas sales customers. Since prudently incurred capacity reservation costs are an element of Aquila's Colorado Gas Cost Adjustment (GCA) tariff rider, its Colorado customers subject to the GCA clause pay for contract demand costs. Capacity that is not needed on a daily basis is "released" to CIG at a capacity release rate up to a maximum tariff rate (approximately \$.3172 per Dekatherm (Dth)). CIG then credits the revenue associated with such capacity releases to Aquila, thereby reducing its transportation demand costs. Aquila passes onto its customers 100 percent of the capacity release credits obtained from CIG through its annual GCA filing.

9. There currently exists a basis differential in gas cost per Dth between the Rocky Mountain and Mid-Continent pipelines. Under the AOP, Aquila proposes to exploit this differential by using otherwise releasable capacity to purchase gas in the Rocky Mountain market and to transport and sell it as a bundled sale in the Mid-Continent market. This process is expected to generate a margin (asset optimization margin) between the costs incurred by Aquila

and the sale price it receives. It is anticipated that this margin will be greater than Aquila would otherwise receive by releasing the capacity back to CIG and securing the capacity release credits. Under the AOP, as modified by the Agreement, Aquila customers will continue to receive 100 percent of capacity release credits and will share asset optimization margins with Aquila equally.

10. The parties have agreed that the subject application should be granted subject to the terms and conditions of the Agreement. They further agree that the Agreement is just, reasonable, and is not contrary to the public interest.

11. Paragraph 15 of the Agreement describes the measures designed to ensure that, as a matter of regulatory principle, Aquila's Colorado customers will be no worse off than they were before implementation of the AOP. As such, Aquila will continue to release any excess capacity that cannot be utilized under the AOP and customers will continue to receive 100 percent of maximum rate capacity release credits. Sharing under the AOP will be limited to Aquila's value-added contribution arising from gas sales; *i.e.*, bundled gas sales outside Colorado capitalizing on the basis differential between the Rocky Mountain and Mid-Continent Regions with, initially, up to 10,000 Dth/day of delivery capacity to Forgan, Oklahoma, at a price higher than the capacity release credits. Sharing will not apply to capacity release credits.

12. In addition, Aquila's "obligation to serve" will not be affected by the AOP. Capacity will be returned to customers whenever it is needed even if this results in Aquila's inability to perform on a gas sales agreement in the Mid-Continent Region. Nor will the AOP affect the reliability of gas delivery to Aquila's customers. In this regard, the parties have agreed that reliability issues may be raised via the Commission's prudence review process; and, further,

that the Commission may order Aquila to make customer refunds if the AOP results in reliability problems notwithstanding the fact that the Commission's GCA Rules may not specifically provide for such refunds.

13. Paragraph 16 of the Agreement describes the measures designed to ensure that, as a matter of regulatory principle, the AOP will be completely independent of the GCA clause. Aquila has agreed to separate the AOP gas portfolio from the GCA mechanism/general system gas portfolio for the purpose of identifying gas pools dedicated to each portfolio and for the purpose of separately accounting for costs and revenues attributable to each portfolio. In addition, customers will not share in any losses from gas commodity sales under the AOP, penalties associated with non-delivery of gas sold under the AOP, or imbalance penalties attributable solely to the AOP. Further, non-collection of revenues under the AOP are to be borne by Aquila, provided that customers will receive maximum rate capacity release credits on all AOP transactions and Aquila and its customers will share asset optimization margins actually collected on an equal basis.

14. Paragraph 17 describes accounting procedures to be implemented in connection with the AOP. In general, these procedures are designed to ensure that AOP transactions will be appropriately itemized, recorded, and traceable to specific gas contracts, invoices for gas purchases, and bills for gas sales to enable Staff to audit Aquila's activities under the AOP. It also requires Aquila to provide Staff and the OCC with a written description of the allocation principles used in allocating gas purchases between different state jurisdictions.

15. Paragraph 18 of the Agreement provides a comprehensive description of the formula that will be used in calculating the asset optimization margins to be shared under the

AOP. As indicated previously, sharing is to be on a 50/50 basis and is to be recorded on a “deal-specific” basis every month that sharing occurs. Only positive asset optimization margins will be shared; *i.e.*, the “netting” of positive and negative margins will not be allowed.

16. Paragraph 19 of the Agreement deals with various miscellaneous matters, including termination of the AOP. In this regard, the AOP will terminate on June 30, 2006, unless the parties are unable to agree on the manner in which changes in Federal Energy Regulatory Commission rules prior to that time may require its modification or termination. In that case, Aquila has agreed to make an appropriate filing requesting termination. Paragraph 19 also provides that Aquila’s customers will bear no negative monetary impact if the AOP is subsequently determined to be invalid and that the Commission assumes no obligation to assist Aquila in defending legal actions challenging the validity of the AOP.

17. Finally, Paragraph 20 of the Agreement imposes additional information and reporting requirements relating to the AOP that are to be made in connection with Aquila’s Gas Purchase Plan and Gas Purchase Report (GPR) filings and in Commission Docket No. 03A-177SEG. It also obligates the parties to negotiate the additional items to be included in Aquila’s GPR relating to the AOP that may not currently be required in the Commission’s GCA Rules at 4 *Code of Colorado Regulations* 723-8.

18. Having considered the Agreement, as well as the pre-filed direct testimony and exhibits submitted in this matter, it is recommended that the Commission approve the Agreement as filed without modification. Under the AOP Aquila has the opportunity to extract additional value that would otherwise be lost through the current capacity release process. The sharing mechanism provides incentive for Aquila to maximize that value. If it is successful in doing so,

its customers will also benefit. Since Aquila's customers will continue to receive the maximum amount of capacity release credits and will share only if value is added, they should be no worse off than they were before implementation of the AOP. In addition, the AOP is not permanent. Unless extended through Commission approval, it will expire on a date certain. This provides a reasonable period of time for the Commission to evaluate the AOP's effectiveness and to elect not to continue it if it fails to deliver the benefits anticipated. For all the foregoing reasons, the Agreement is just and reasonable, is not contrary to the public interest, and should be approved.

19. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

### **III. ORDER**

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

1. The Motion to Approve Settlement Agreement in Resolution of Proceeding and Request for Waiver of Response Time filed on December 30, 2003, is granted.

2. Docket No. 03A-272G, being an application of Aquila, Inc., doing business as Aquila Networks-PNG, is granted, subject to the terms and conditions set forth in the Settlement Agreement filed on December 30, 2003.

3. The Settlement Agreement filed on December 30, 2003, is accepted and approved without modification. The Settlement Agreement, a copy of which is attached hereto as Appendix A, is incorporated into this Order as is fully set forth herein.

4. The parties shall comply with all terms of the Settlement Agreement.

5. Within 30 days of the effective date of this Order, Aquila, Inc., doing business as Aquila Networks-PNG, shall, file an advice letter citing this Decision as authority to implement, on not less than one day's notice, the tariff sheets attached to the Settlement Agreement as Attachment C.

6. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

7. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

8. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Administrative Law Judge