

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

**IN THE MATTER OF THE VERIFIED )  
APPLICATION OF AQUILA, INC. D/B/A )  
AQUILA NETWORKS- WPC FOR AN )  
ORDER APPROVING AN ON-SITE SOLAR )  
RENEWABLE ENERGY CREDITS )  
PURCHASE CONTRACT )**

**DOCKET NO. 08A-166E**

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**STIPULATION AND SETTLEMENT AGREEMENT**

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This Stipulation and Settlement Agreement (“Settlement” or “Agreement”) is entered into by and between Aquila, Inc. d/b/a Aquila Networks- WPC (“Aquila” or “Applicant”) and the Colorado Office of Consumer Counsel (“OCC”). The Applicant and the OCC are referred to herein collectively as the “Settling Parties”. This Stipulation sets forth the terms and conditions by which the Parties have agreed to the resolution of all issues that have or could have been contested among the Parties in Docket No. 08A-166E. Each Party to this Stipulation pledges its support of this Stipulation and states that each will defend the Settlement reached by the Parties as reflected herein. Counsel for Aquila has authorized the undersigned counsel to sign this Stipulation on Aquila’s behalf.

Staff of the Public Utilities Commission (“Staff”) and BP Solar International (“BP Solar”) have also intervened in this proceeding, have reviewed the Settlement, and have given the undersigned counsel authorization to represent their respective organizations’ do not oppose the Agreement. Counsel for Staff and BP Solar likewise give their authorization for the undersigned counsel to represent that with this Agreement in place, neither Staff nor BP Solar has any further issues which need to be litigated and resolved.

## I. INTRODUCTION

This docket began on May 12, 2008, when Aquila, Inc. d/b/a Aquila Networks - WPC (“Aquila” or the “Company”) filed the Verified Application of Aquila, Inc. d/b/a Aquila Networks-WPC for an Order Approving an On-Site Solar Renewable Energy Credits Purchase Contract (“Application”).

On May 14, 2008, the Commission issued Decision No. C08-0492, Order Granting Motion for Shortened Notice, stating that Aquila’s Motion for Shortened Notice was granted and the notice was shortened on the Application to ten days.

The OCC intervened and requested a hearing in this docket on May 21, 2008, expressing the following concerns and reasons for its intervention: 1) to confirm that the winning bidder was BP Solar; 2) to determine whether the cost of the contract (along with other program costs) will be below the 2% rate cap; 3) to determine how this contract is “superior”<sup>1</sup> to the approved 2008 RES model contract; and 4) to confirm that it will generate sufficient RECs for 2008 compliance purposes.

On May 23, 2008, BP Solar petitioned for intervention in the docket, a request which was subsequently granted at the Prehearing Conference of June 11, 2008 (“Prehearing Conference”) by Administrative Law Judge Dale Isley (“ALJ”). BP Solar intervened as the party with whom Aquila has negotiated the contract which is the subject of these proceedings, and for that reason.

On June 4, 2008, the Staff filed its Notice of Intervention by Staff, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1403(b).

On June 11, 2008, all parties were present, either in person or via telephone, for the Prehearing Conference in this matter. Due to the press of time on the Commission with the

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<sup>1</sup> Aquila’s Application, pg. 5.

shortened notice period, at the Prehearing Conference the ALJ ordered a hearing be commenced on June 30, 2008, at which live testimony would be offered in lieu of pre-filed written testimony and oral summaries by counsel would act as substitute for written Post Hearing Statements of Position.

Between the time this Application was filed and the Settlement in Principle was achieved, the Parties conducted numerous informal discussions and shared large amount of information by side agreements. The efforts undertaken by the Settling Parties in this proceeding ultimately resulted in the Settling Parties reaching a settlement of all of the issues that were or could have been contested in this docket. In addition, Staff and BP Solar are in agreement with this Settlement, and state no issues that were or could have been raised in a hearing remain unresolved.

## **II. Terms And Conditions Of Settlement**

The Settling Parties agree that the Application at issue in this docket should be approved. The Settling Parties believe that the contract at issue is in the best interest of Aquila and the customers it serves.

The Settling Parties state approval of the Application is necessary for Aquila to meet its statutory requirements under C.R.S. § 40-2-124 *et seq.* (commonly referred to hereafter at the Renewable Energy Standard (“RES”)), specifically its acquisition of On-site Renewable Energy Credits (“SO-RECs”), in 2008. The approval of this Application also allows Aquila to make progress towards maintaining compliance in future years.

In recognition of the current Renewable Energy Credit (“REC”) position of Aquila, the Settling Parties agree that Aquila will issue a new Request for Proposal (“RFP”) for additional SO-RECs by July 31, 2008.

Aquila additionally agrees to develop and use bid evaluation “scoring sheets” for the RFP referenced above. These scoring sheets will identify and calculate values for quantitative factors and list qualitative factors of each compliant bid. The scoring sheets will also be made available to the Staff of the Commission and the Office of Consumer Counsel upon completion of the bid evaluation process.

On May 13, 2008 Aquila filed Aquila, Inc.’s Motion for Protective Order Affording Extraordinary Protection to Highly Confidential Information (“First Highly Confidential Motion”) which was granted by the ALJ at the Prehearing Conference (written order to be forthcoming). Subsequently, on June 6, 2008, Aquila filed Aquila, Inc.’s, Second Motion for Protective Order Affording Extraordinary Protection to Highly Confidential Information (“Second Highly Confidential Motion”). That Second Highly Confidential Motion was modified by BP Solar, and agreed to by consent of all the Parties, at the Prehearing Conference by oral motion. The ALJ stated at the Prehearing Conference, he would wait to see the written modification to the Second Highly Confidential Motion before ruling on the Second Highly Confidential Motion. The undersigned counsel is unaware of a ruling from the ALJ on the Second Highly Confidential Motion at this time.

With that background on the extraordinary protection to highly confidential information, the Settling Parties agree that the “scoring sheets” referenced above, will be afforded the same extraordinary protective treatment as was granted by the ALJ in the First Highly Confidential Motion and that all information exchanged between the parties in this docket that would be covered by the Second Highly Confidential Motion will be afforded the same extraordinary protective treatment as was granted by the ALJ in the First Highly Confidential Motion unless and until there is a ruling from the ALJ on the Second Highly Confidential Motion.

### III. Additional Miscellaneous Settlement Terms

This Agreement is made for settlement purposes only. No Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Agreement. Furthermore, this Agreement does not constitute agreement, by any Party, that any principle or methodology contained within this Agreement may be applied to any situation other than the above-captioned case. No precedential effect or other significance, except as may be necessary to enforce this Agreement or a Commission order concerning the Agreement, shall attach to any principle or methodology contained in the Agreement.

This Agreement shall not become effective until the issuance of a final Commission order approving the Agreement, which order does not contain any modification of the terms and conditions of this Agreement that is unacceptable to the Parties hereto. In the event the Commission modifies this Agreement in a manner unacceptable to any Party hereto, that Party shall have the right to withdraw from this Agreement and proceed to hearing on some or all of the issues that may be appropriately raised by that Party in this docket under a new procedural schedule. The withdrawing Party shall notify the Commission, and the other Parties to this Agreement, in writing within ten (10) days of the date of the Commission order that the Party is withdrawing from the Agreement (such notice being referred to as the "Notice"). A Party who properly serves a Notice shall have and be entitled to exercise all rights the Party would have had in the absence of the Party's agreeing to this Agreement. Hearing shall be scheduled on an expedited basis, as soon as practicable.

In the event that this 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 Agreement shall not be admissible into evidence in this or

any other proceeding. Moreover, in such an event, except as may be specifically provided for herein, neither anything said, admitted or acknowledged in the negotiations leading up to the execution of this Stipulation, nor the settlement terms and conditions contained herein, nor the Stipulation itself may be used in this or any other administrative or court proceeding by any of the Parties hereto, or otherwise..

Approval by the Commission of this Agreement shall constitute a determination that the Agreement represents a just, equitable and reasonable resolution of all issues that were or could have been contested among the Parties in this proceeding, except as otherwise specifically noted in this Agreement. Each Party hereto pledges its support of this Agreement and urges the Commission to approve same, without modification.

Except as otherwise specifically agreed upon in this Agreement, nothing contained herein shall be deemed as constituting a settled practice or of precedential value for the purposes of any other proceeding, and by entering into this Agreement.

Without prejudice to the foregoing, the Parties expressly reserve the right to advocate positions different from those stated in this Agreement in any proceeding other than one necessary to obtain approval of, or to implement, this Agreement or its terms and conditions. Nothing in this Agreement shall constitute a waiver by any Party with respect to any matter not specifically addressed in this Agreement.

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

The Parties agree to a waiver of compliance with any requirement of the Commission's Rules and Regulations to the extent necessary to permit all provisions of this Agreement to be carried out and effectuated.

The Parties state that they have reached this Stipulation by means of a negotiated process that is in the public interest, and that the results reflected in this Stipulation are just, reasonable and in the public interest. Approval by the Commission of this Stipulation shall constitute a determination that the Stipulation represents a just, equitable and reasonable resolution of all issues which were or could have been contested by the parties with respect to this Docket.

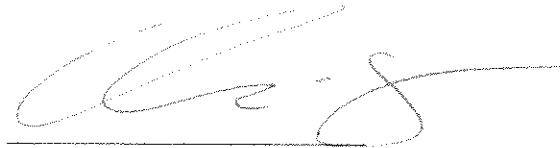
DATED this 25<sup>th</sup> day of June, 2008.

Respectfully Submitted,

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