

Decision No. C04-0245

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-309SEG

~~Decision No. C03~~

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

~~DOCKET NO. 03A-071SEG~~ 03A-309SEG

IN THE MATTER OF THE APPLICATION OF AQUILA, INC., FOR AN ORDER
AUTHORIZING THE ISSUANCE OF \$150 MILLION OF CONVERTIBLE LONG-
TERM DEBT SECURITIES AND \$100 MILLION OF COMMON EQUITY.

**ORDER OF THE COMMISSION
GRANTING MOTION TO AMEND
DECISION NO C03-0888**

Mailed Date: March 10, 2004
Adopted Date: March 10, 2004

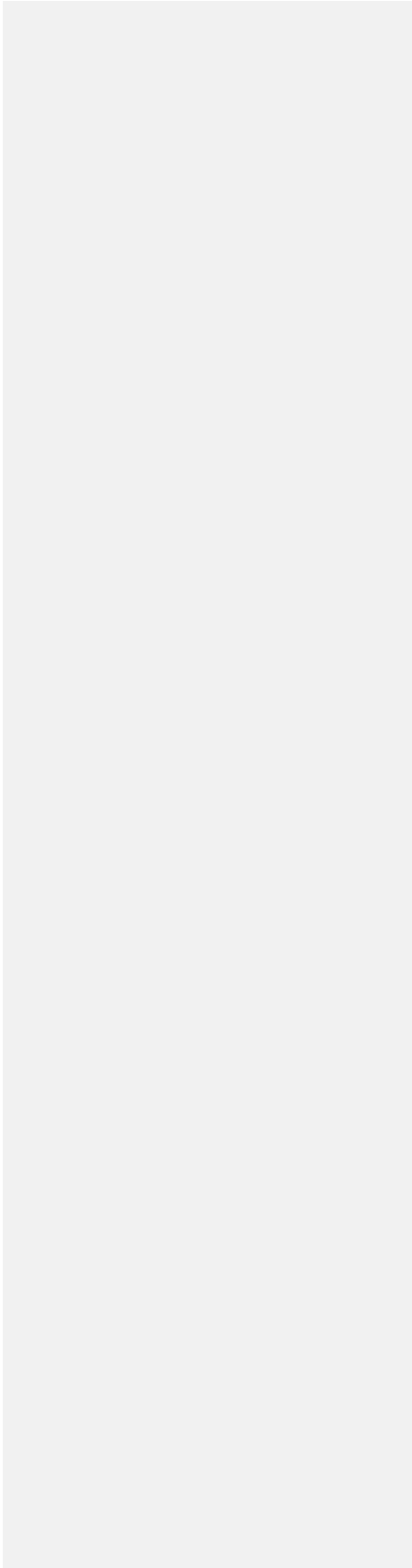
I. BY THE COMMISSION

A. Statement

1. Aquila, Inc. (Aquila or the Applicant), a Delaware corporation, filed with this Commission on July 18, 2003, an Application for an order authorizing it to issue up to and including \$150 million of long-term debt securities (convertible long-term debt securities), all of which would be convertible to Common Stock at a later date, and \$100 million of Common Stock.

3-2. Since no petitions to intervene were filed in opposition to the Application, the Commission decided the Application under its modified procedure as a non-contested and unopposed matter, pursuant to 140-6-109(5), C.R.S., and Rule ~~723-1-24-4~~ Code of Colorado Regulations 723-1-24, of the Commission's Rules of Practice and Procedure.

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3. Decision No. C03-0888, issued on August 8, 2003, granted Aquila's Application and authorized the issuance of up to and including \$150 million of convertible long-term debt securities and \$100 million of Common Stock.

4. On February 27, 2004, Aquila filed a Motion to Amend Decision No. C04-0888, requesting that the Commission amend one of the findings of fact. Now being fully advised in the matter, we will grant the motion and amend Decision No. C03-0888 as requested.

B. Findings of Fact

5. Paragraph I.B.14 of Decision No. C03-0888, pages 4 and 5, made the following Finding of Fact, based upon a similar statement in the Application:

14. Applicant cannot predict the order in which it will issue the convertible long-term debt securities or the Common Stock. These issuances will depend on market conditions, prudent financing practices, and capital structure requirements, among other things. The convertible long-term debt securities and/or Common Stock will be issued in one or more series over a two-year period commencing upon receipt of all required regulatory approvals, but any debt or equity securities issued pursuant to the conversion or remarketing of debt issued pursuant to this application will be issued on the dates for such conversion or remarketing, which dates will be not less than two or more than six years from the date of issuance of the underlying security.

This Finding of Fact and the statement in the Application upon which it was based were in the nature of background facts regarding how Aquila anticipated the convertible long-term debt securities would be issued. Therefore, in the Order's Conclusions of Law and Ordering Paragraph, the Commission did not require that the securities be issued within the anticipated

timeframe of “not less than two or more than six years.” See Decision No. C03-0888, ¶¶s I.C.25-26 and II.A., pages 8 and 9.¹

6. In its Motion, Aquila has advised the Commission that since August 2003, however, the situation in the market has changed. At the time the application was filed, Aquila believed that the conversion period would be “not less than two or more than six years from the date of issuance of the underlying security.” Aquila submits, however, that as a result of changes in market conditions since Aquila’s filing of the Application and the entry of Decision No. C03-0888 that the securities cannot be issued with the conversion timeframe originally anticipated. Aquila asserts that the requested amendment is necessary to ensure that the Aquila convertible debt offering is consistent with other convertible debt offerings currently available in the market.

7. Aquila requests that the Commission amend the findings of fact in Decision No. C03-0888, ¶ I.B.14, pages 4 and 5, as follows, in order to permit Aquila a better opportunity to issue the authorized securities:

14. Applicant cannot predict the order in which it will issue the convertible long-term debt securities or the Common Stock. These issuances will depend on market conditions, prudent financing practices, and capital structure requirements, among other things. The convertible long-term debt securities and/or Common Stock will be issued in one or more series over a two-year period commencing upon receipt of all required regulatory approvals, but any debt or equity securities issued pursuant to the conversion or remarketing of debt issued pursuant to this application will be issued on the dates for such conversion or remarketing,

¹ In the Order, we imposed three conditions to the approval of the securities issuance, unrelated to the anticipated conversion time-frame. These conditions were:

- a. Aquila will use the proceeds from the issuance of the convertible debt to reduce or replace existing liabilities;
- b. Aquila will not issue the convertible debt unless the issuance results in a reduction to the Company’s interest expense (or liability costs to the extent cash proceeds are used to reduce or replace existing liabilities rather than debt); and
- c. Aquila will use the proceeds from the issuance of common equity to reduce liabilities or to maintain required working capital.

See Decision No. C03-0888, ¶ II.A.4, page 9. These conditions are unaffected by this Order to amend the decision.

and may occur at any time that the underlying debt security is still outstanding.

8. Aquila also filed an application with the Federal Energy Regulatory Commission (FERC) for authority to issue the same securities as those approved in Decision No. C03-0888 (FERC Docket No. ES03-43-004). Since Aquila's FERC application is still pending, on February 3, 2004, Aquila amended its FERC application to reflect current market conditions, consistent with the amendment requested in its motion in this docket.

C. Discussion.

9. Section 40-6-112, C.R.S., permits us to amend any of our decisions, after notice to the public utility affected and after opportunity to be heard. After the amended decision is served on the public utility, it shall have the same affect as the original decision. We agree with Aquila that the requested amendment to a Finding of Fact is not material to the Ordering Paragraphs in Decision No. C03-0888, that it constitutes an adjustment to the facts based upon opportunity and market conditions, and that it does not require any additional notice.

10. Section 40-6-112, C.R.S., provides the most efficient vehicle by which we can adjust the Order to recognize current market conditions, which Aquila believes have changed since the filing of the Application and entry of Decision No. C03-0888 on August 8, 2003. Aquila does not believe a hearing on the proposed amendment to Decision No. C03-0888, ¶ I.B.14 is necessary, and has waived its right to a hearing under § 40-6-112, C.R.S., for the purpose of allowing us to act upon and grant this motion expediently. We agree that no hearing on the requested amendment is needed.

11. The amendment to be ordered herein, regarding the timeframe for Aquila's issuance of the convertible long-term debt securities and Common Stock, is in the public interest

and will remove any doubt in the future about the securities Aquila was authorized to issue by Decision No. C03-0888. The amendment will help ensure that Aquila's convertible debt offering is consistent with other convertible debt offerings currently available in the market. The amendment of Decision No. C03-0888, ¶ I.B.14, requested by Aquila and ordered herein, will ~~se securities~~ permit Aquila a better opportunity to issue the authorized securities under current market conditions.

12. The amendment and the issuance of the authorized securities are necessary for the operations of Aquila's business, will not impair its ability to operate its business, and is reasonably necessary and appropriate for Aquila's corporate purposes.

13. This docket was non-contested and Aquila was the only party. Therefore, it is also appropriate to waive the usual response time to this motion and to enter this Order without further delay.

~~24-14.~~ The amendment regarding the timeframe for Aquila's issuance of the ~~convertible long-term debt securities and Common Stock~~ should be authorized and approved. The amendment is for a lawful object and is consistent with the public interest.

~~C.D.~~ **Conclusions**

~~25-15.~~ The issuance pursuant to Decision No. C03-0888, as amended herein, of up to and including \$150 million of long-term debt securities, all of which would be convertible to Common Stock at a later date, and \$100 million of Common Stock, may be issued on the dates for such conversion or remarketing of debt, and may occur at any time that the underlying debt security is still outstanding.

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2-6-16. The amendment will ~~se securities~~ permit Aquila a better opportunity to issue the authorized securities under current market conditions, and therefore, is reasonably required and necessary for Applicant's proper corporate financing. The amendment is consistent with the public interest and with the Public Utilities Laws of the State of Colorado and should be authorized and approved.

II. ORDER

A. The Commission Orders That:

1. The Motion of Applicant Aquila, Inc., to amend Decision No. C03-0888, ¶ I.B.14, is granted.
2. Decision No. C03-0888, ¶ I.B.14, pages 4 and 5, is amended as follows:

14. Applicant cannot predict the order in which it will issue the convertible long-term debt securities or the Common Stock. These issuances will depend on market conditions, prudent financing practices, and capital structure requirements, among other things. The convertible long-term debt securities and/or Common Stock will be issued in one or more series over a two-year period commencing upon receipt of all required regulatory approvals, but any debt or equity securities issued pursuant to the conversion or remarketing of debt issued pursuant to this application will be issued on the dates for such conversion or remarketing, and may occur at any time that the underlying debt security is still outstanding.

2-3. The other findings of fact and conclusions in Decision No. C03-0888, not amended by this Order, shall remain in effect.

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9-4. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 10~~th~~, 2004.**

~~THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO~~

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~~Commissioners~~

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners