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AUG 15 2003

Missouri Public
Service Commission

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the matter of the Application by Aquila, Inc. for)
authority to assign, transfer, mortgage or encumber) Case No. EF-2003-0465
its franchise, works or system.)

**JOINT MOTION FOR SUMMARY DISPOSITION
AND REQUEST FOR ORAL ARGUMENT**

COME NOW the Office of the Public Counsel ("Public Counsel"), the State of Missouri, Sedalia Industrial Energy Users' Association and AG Processing Inc. (hereinafter "Joint Movants") and pursuant to 4 CSR 240-2.117 et. seq. file their Motion for Summary Disposition requesting that the Commission summarily dispose of Aquila's Application to secure its Missouri utility assets as collateral for its \$430 million Term Loan and related First Mortgage Bonds. In support of their Motion for Summary Disposition of Aquila's Application Joint Movants state as follows:

1. On April 30, 2003 Aquila, Inc. filed its Verified Application pursuant to Section 393.180 and 393.190.1 RSMo 2000 and 4 CSR 240-2.060(1) and (7) seeking Commission approval to encumber its Missouri assets in accordance with the Term Loan (attached as Appendix 3 to its Verified Application); the Indenture (attached as Appendix 4 to its Verified Application); and the First Supplemental Indenture (attached as Appendix 5 to its Verified Application).

2. On July 24, 2003 this Commission issued its Order Rescheduling Hearing setting this matter for hearing October 20 through October 24 and October 27. Pursuant to 4 CSR 240-2.117(1)(A) Joint Movants are filing this motion more than sixty (60) days prior to the scheduled hearing in this matter.

NP

UNDISPUTED FACTS

3. Aquila is a Delaware corporation with its principal office and place of business at 20 West 9th Street, Kansas City, Missouri. Aquila is authorized to conduct business in Missouri through its Aquila Networks-MPS and Aquila Networks-L & P operating divisions. (Aquila Verified Application ¶ 5).

4. Aquila is an “electrical corporation,” a “gas corporation,” a “heating company” and a “public utility” as those terms are defined in Section 386.020 RSMo. 2000. Consequently, it is subject to the jurisdiction and supervision of the Commission as provided by law. (Aquila Verified Application ¶ 6).

5. On April 9, 2003, Aquila entered a new \$430 million three-year Term Loan Facility and Letter of Credit Facility (sometimes hereinafter “the Term Loan”). (Aquila Verified Application ¶ 10).

6. On or about April 1, 2003 Aquila entered into a new \$100 million 364 day term loan. (Aquila Verified Application ¶ 10).

7. The collateral for the 364-day loan is Aquila’s equity interest in its Australian assets (“WAPL”), first priority lien of two peaking facilities and Aquila’s equity interest in the IPP investments and a junior lien in the Canadian collateral. (Dobson Direct p. 9, l. 18-21).

8. The 364-day loan, its proceeds and collateral, have no bearing or impact on Aquila’s Application except that the Independent Power Projects (“IPPs”) investments defined as collateral may at a later date be utilized as collateral for the non-utility working capital portion of the Term Loan. (Robertson Affidavit ¶ 16, attached hereto as Highly Confidential Appendix A).

9. In connection with the Term Loan, Aquila issued First Mortgage Bonds Under its Indenture of Mortgage and Deed of Trust dated April 1, 2003, to Bank One Trust Company, N.A.

(Trustee (“the Indenture”) and its First Supplemental Indenture thereto dated April 9, 2003, to Bank One Trust Company, N.A., Trustee (“the First Supplemental Indenture”). (Aquila Verified Application ¶ 10).

10. Initially, the \$430 million 3-year term loan was secured with collateral from the Nebraska and Michigan domestic utilities, a pledge of the capital stock of the holding company of Aquila’s Canadian utilities, and a silent 2nd lien on the equity’s interest in the holding company of Aquila’s IPP investments. (Dobson Direct p. 9, l. 15-18).

11. Aquila has determined that \$250 million of the \$430 million Term Loan is needed to support the ongoing working capital requirements for the domestic utility business. (Dobson Direct p. 10, l. 9-11; Affidavit of Ted Robertson ¶ 8).

12. Aquila has committed to separating the proceeds of the Term Loan and related collateral to ensure that the utility customer and assets are not supporting the non-utility debt requirement, i.e. Aquila has committed to having non-utility collateral cover the outstanding collateral obligations of the remaining \$180 million non-utility portion of the \$430 million Term Loan. (Dobson Direct p. 10, l. 21-25; Affidavit of Ted Robertson ¶ 9).

13. Pursuant to Section 5.13 of the Term Loan in order that the non-regulated operations of Aquila used as collateral can be released as collateral, Aquila contracted to pursue “commercially reasonable” efforts to encumber the assets of its domestic regulated utility companies. Section 5.13 states:

** _____

Emphasis added by Joint Movants.

14. In compliance with Section 5.13 of the Term Loan Aquila filed applications in Colorado, Iowa, Minnesota, Kansas and Missouri seeking approval to encumber utility assets in these various jurisdictions. (Dobson Direct p. 16, l. 14-16).

15. On or about July 11, 2003 the Colorado Public Utilities Commission approved a settlement allowing Aquila to collateralize its Colorado jurisdictional utility assets. (A copy of the Order approving the settlement and authorizing collateralization and Aquila's press release acknowledging approval is attached as Appendix B).

16. The fair value of Aquila's Colorado utility assets is ** ____ ** million. (Source: BearingPoint, Inc. Valuation as of May 31, 2003. A copy is attached as Highly Confidential Appendix C.).

17. The combined fair value of Aquila's Michigan and Nebraska utility assets is **
 ____ ** million. (BearingPoint, Inc. Valuation as of March 31, 2003. A copy is attached as Highly
 Confidential Appendix D.).

18. Based upon the collateral principles used by the lending institutions, Aquila only needs ** _____ ** million of utility collateral to support the \$250 million of working capital

needed to operate the domestic utility business. (Dobson Direct p. 16, l. 19-21; Affidavit of Ted Robertson ¶ 10).

19. The Colorado, Michigan and Nebraska utility assets combined provide Aquila's creditors with ** ____ ** million in collateral. This amount is far in excess of the ** ____ ** million of utility collateral Aquila needs to support its \$250 million in working capital requirements for the domestic utilities. (Affidavit of Ted Robertson ¶ 15).

20. Pursuant to the Term Loan agreement Aquila is **not** required to get approval to collateralize all of its domestic utility property. Aquila is only required to use its commercially reasonable efforts to do so. (Term Loan Section 5.13; Affidavit of Ted Robertson ¶ 17).

21. Aquila has already received the \$430 million in proceeds from the Term Loan. (Affidavit of Ted Robertson ¶ 18).

REQUEST FOR ORAL ARGUMENT

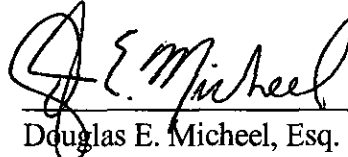
22. After the thirty (30) days set-out for responses in opposition to this Motion in 4 CSR 240-2.117(C) have passed, Joint Movants request the Commission set this matter for oral argument.

WHEREFORE, Joint Movants request that the Commission grant their request for summary disposition of Aquila's Application and dismiss said Application and for any other relief the Commission deems appropriate.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

BY:



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BY:



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**SEDALIA INDUSTRIAL ENERGY USERS'
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been faxed, mailed or hand-delivered to the following counsel of record on this 15th day of August 2003:

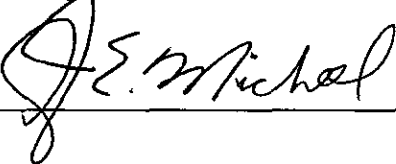
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/s/ **Douglas E. Micheel**



**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the matter of the Application by Aquila, Inc. for)
authority to assign, transfer, mortgage or encumber) Case No. EF-2003-0465
its franchise, works or system.)

AFFIDAVIT OF TED ROBERTSON

Ted Robertson, being sworn, says:

1. My name is Ted Robertson. I am employed by the Office of the Public Counsel as a Public Utility Accountant III. I hold a bachelors of science degree in accounting from Southwest Missouri State University. My business address is 200 Madison Street, Suite 650, Jefferson City, Missouri 65101.

2. I have testified as an expert witness on accounting and other issues related to public utilities in numerous cases before the Missouri Public Service Commission. I am the Public Counsel technical expert assigned to review Aquila's Application in the above referenced proceeding.

3. In the course of my duties I have reviewed Aquila's Application including the Attachments thereto, propounded discovery and reviewed responses to Public Counsel data requests and participated extensively in the Informal Interviews conducted in this matter July 16 through July 18, 2003.

4. I have reviewed Joint Movants' Motion For Summary Disposition and its Suggestions in Support.

5. As part of its financial plan to restore its financial health, Aquila on or about April 30, 2003 Aquila, Inc. filed an Application (subsequently titled as Case No. EF-2003-0465) with the

7. As required by Section 5.13 Aquila has filed requests to encumber the assets of its domestic regulated utility companies in Colorado, Kansas, Iowa, Minnesota and Missouri.

8. Aquila has determined that \$250 million of the \$430 million Term Loan is needed to support the ongoing working capital requirements for the domestic utility business.

9. Aquila has committed to separating the loan and collateral to ensure that the utility customers and assets are not supporting the non-utility debt requirement of \$180 million. Thus, Aquila has committed to having \$180 million of non-utility collateral to cover the outstanding obligations of the \$430 million Term Loan. (MPSC data request 39, Informal Interview Transcript pps. 581-583 and 591 attached as Schedule TR-1).

10. In order to satisfy the collateral agreements for \$250 million of the \$430 million loan, Aquila seeks to encumber domestic utility assets with a minimum "fair value" of ** ____ ** times the \$250 million (** ____ ** million). The fair value is to be determined via an appraisal process and does not necessarily equate to rate base value. (Informal Interview Transcript pps. 569-570 attached as Highly Confidential Schedule TR-2). However, Aquila is seeking to encumber all the actual assets of each of its individual domestic regulated utility divisions.

11. Because the states of Michigan and Nebraska did not have laws requiring Aquila to seek approval from a regulatory body prior to encumbering those utility assets, those assets were encumbered at the time of the initial transaction between Aquila and Credit Suisse First Boston. (MPSC data request 68 attached as Highly Confidential Schedule TR-3).

12. BearingPoint, Inc. as required by the Term Loan conducted a "fair value" appraisal of the domestic utility assets located in Michigan and Nebraska. As a result of that "fair value" appraisal BearingPoint, Inc. determined the asset value to be ** ____ ** million.

13. On or about July 11, 2003 the Colorado Public Utilities Commission approved a settlement allowing Aquila to encumber (collateralize) its Colorado jurisdictional utility assets.

14. BearingPoint, Inc. as required by the Term Loan conducted a "fair value" appraisal of the Colorado jurisdictional utility assets. As a result of that "fair value" appraisal BearingPoint, Inc. determined that asset value to be ** ____ ** million.

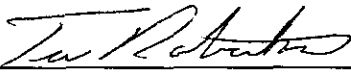
15. The encumbered assets "fair value" for collateral purposes for Michigan, Nebraska and Colorado total ** ____ ** million. Per Rick Dobson's direct testimony and Section 5.13 of the Term Loan that ** ____ ** million is now ** ____ ** million more collateral than Aquila needs to support the stated \$250 million working capital requirements for domestic utilities.

16. The 364-day loan, its proceeds and collateral, have no bearing or impact on Aquila's Application except that Independent Power Projects ("IPPs") investments defined as collateral may at a later date be utilized as collateral for the non-utility working capital portion of the term loan. (Informal Interview Transcript pps. 554 and 557 attached as Schedule TR-4).

17. Pursuant to the Term Loan agreement Aquila is not required to get approval to collateralize all of its domestic utility property. Aquila is only required to use its commercially reasonable efforts to do so. (Informal Interview Transcript p. 565 attached as Schedule TR-5).

18. Aquila has already received the proceeds of the Term Loan. (Informal Interview Transcript p. 590 attached as Schedule TR-6).

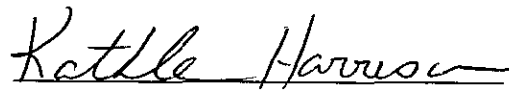
Further Affiant sayeth not.



Ted Robertson, C.P.A.
Public Utility Accountant III

Subscribed and sworn to me this 15 day of August 2003.

KATHLEEN HARRISON
Notary Public - State of Missouri
County of Cole
My Commission Expires Jan. 31, **2006**


Kathleen Harrison
Notary Public

My commission expires January 31, 2006.

COPY

AQUILA, INC.
CASE NO. EF-2003-0465
DATA REQUEST NO. MPSC-39

DATE OF REQUEST: June 4, 2003
DATE RECEIVED: June 4, 2003
DATE DUE: June 24, 2003
REQUESTOR: Joan Wandel

QUESTION:

1. Will the regulated assets in Nebraska and Michigan currently pledged as part of the collateral for the 3-year Term Loan be considered available by the Company to secure at least a portion of the non-regulated amount of the 3-year Term Loan since those states do not require Commission approval?
2. If, by chance, one or more of the state commissions gave a blanket approval to the Company's application requesting permission to pledge the regulated assets, would those assets be available to secure the portion of the 3-year Term Loan identified as needed for non-regulated working capital, i.e. the \$180 million portion factored up by the 1.67 conversion factor or \$300.6 million?

RESPONSE:

1. No. It is not Aquila's intent to use regulated assets to secure nonregulated debt as described in Mr. Dobson's testimony. While the loan document itself does not segregate the collateral requirements, Aquila has done so internally and intends to maintain sufficient collateral for both the regulated and nonregulated requirements. Mr. Dobson's testimony specifically addresses this issue.
2. If Aquila receives approval to pledge additional regulated assets, then those assets would be viewed by the lenders as collateral for the entire \$430 million loan and therefore the interest rate could be reduced from 8.75% to 8%. However, as stated above, Aquila intends to internally align regulated collateral support with regulated working capital needs and nonregulated collateral support with nonregulated working capital needs.

ATTACHMENT: NA

ANSWERED BY: Mike Cole

JUL 11 2003

Schedule TR-1

1 through our commissions? Not trying to imply
2 anything.

3 All I'm doing is saying that we have
4 people watching that, and they are wanting to
5 see what kind of commitments are going to be
6 made. And it's just human nature.

7 MR. ROBERTSON: Are you through?

8 MR. EMPSON: Yes, sir.

9 MR. ROBERTSON: Okay. Don't call me
10 sir. Its sounds way too formal. I get
11 called a lot worse than that.

12 MR. EMPSON: Didn't mean to be negative.

13 MR. ROBERTSON: I'll move on to just a
14 similar subject, but off the favorable
15 financing aspect.

16 With regard if you take the \$430 million
17 of the term loan, you separate it into the
18 250, you have the 180 left, can you explain
19 to me why regulated assets should be utilized
20 to collateralize a loan, specifically
21 regarding the 180 million difference over the
22 250, specific to or associated with
23 non-regulated businesses, and why it's not a
24 detriment to ratepayers to do that?

25 MR. EMPSON: We're not asking that. And

1 I know what -- we are trying to line up -- we
2 need \$250 million of working capital to
3 support our utility operations. We're trying
4 to get sufficient assets to support that.
5 While we have that 180 million, we are going
6 to maintain proper collateral to support the
7 \$180 million on the non-regulated side. If
8 we do not have proper collateral of
9 non-regulated assets to do that, we will
10 retire that portion of the debt.

11 Eventually, that 180 is going to go
12 away, and all we'll have left is the
13 \$250 million for utility purposes,
14 collateralized by utility property.

15 MR. ROBERTSON: Okay. We got into a
16 subject here that maybe I was completely
17 confused on, and I just want to clarify that
18 with you based on what us just said.

19 As far as the \$180 million is concerned
20 of that 430 million term loan, you're going
21 to use collateral of non-regulated operations
22 for that, to collateralize that amount. In
23 the event that you sell those assets that
24 don't have collateral anymore, you're going
25 to use I guess the proceeds of those sales to

1 repay that 180 down to the base of 250.

2 MR. EMPSON: That is correct.

3 MR. ROBERTSON: That's what you're
4 saying?

5 MR. EMPSON: That is correct. And
6 you'll see that in the documents I just gave
7 you that we filed in Minnesota, because that
8 was a point of confusion with the Department
9 of Commerce in Minnesota.

10 An element that adds to that confusion,
11 I believe, Ted, is that when we're saying if
12 we want to get the reduction in interest
13 rates, we have to basically overcollateralize
14 on the utility side, put more assets in there
15 so basically the lenders see that we have
16 enough collateral to support the 430, even
17 though we'll have also enough collateral to
18 support the 180.

19 So we're going to have more collateral
20 in that pool than we actually need, but our
21 intent is we will have enough collateral at
22 all times to support the 180 that is
23 non-regulated; and if we don't, we will
24 retire that debt down to a level that we do.

25 MR. ROBERTSON: Let's take that a little

1 questions in section 11, and there's not a
2 lot, but do you guys want to go ahead with
3 that or does Staff have a preference on
4 something else?

5 MR. BOUDREAU: Let's go off the record
6 for this discussion.

7 (Off-record discussion held)

8 MR. BOUDREAU: We're back on the record.

9 MR. ROBERTSON: This is Ted Robertson
10 again.

11 Jon was talking about the
12 collateralization of the 180 million-dollar
13 piece of the 430-dollar term loan being
14 backed by non-regulated assets for collateral
15 fair value. Is that requirement defined
16 anywhere in the 430 million-dollar term loan
17 agreement that you have to do that?

18 MR. EMPSON: No, it is not. We have
19 committed to do that in Rick Dobson's
20 testimony, but it is not defined that way in
21 the term loan.

22 MR. ROBERTSON: And what page is that on
23 in Rick's testimony? Do you know that
24 offhand?

25 MR. EMPSON: I don't.

SCHEDULE TR-2
HAS BEEN DEEMED
HIGHLY CONFIDENTIAL
IN ITS ENTIRETY.

SCHEDULE TR-3
HAS BEEN DEEMED
HIGHLY CONFIDENTIAL
IN ITS ENTIRETY.

1 credit downgrades and reduction in its stock
2 value?

3 MR. DOBSON: Yes.

4 MR. ROBERTSON: Okay. The next question
5 has to do with the new 364-day bridge loan,
6 and basically this series of questions is
7 just to try to get this part of the loan or
8 this loan agreement out of the picture
9 altogether and by that, let me say this: The
10 loan is not a player in the question of
11 commission approval of collateral except that
12 certain collateral for this loan is also
13 collateral for the 430 million-dollar term
14 loan and letter of credit facility?

15 MR. DOBSON: Correct.

16 MR. ROBERTSON: And that the bridge
17 loan, it was borrowed by the Australian
18 affiliate and it was secured by certain
19 capital stock of the UtiliCorp Asia, UtiliCo
20 Canada, MPS Company, and a couple IPPs?

21 MR. DOBSON: Correct.

22 MR. ROBERTSON: Okay. And can you
23 explain to me as far as the IPPs are
24 concerned, they seem to be collateral for
25 both the bridge loan and the

Schedule TR-4

1 MR. DOBSON: We had an interest rate
2 swap -- are you talking about the breakage?

3 MR. ROBERTSON: All you called it, you
4 called it an interest rate swap in your
5 response to the DR, and it didn't identify
6 what that was. You said you used the money,
7 the proceeds to retire non-regulated
8 obligations for two synthetic leases and an
9 interest rate swap, in addition to a
10 non-regulated power tolling agreement.

11 MR. DOBSON: I do recall now. What we
12 did is we had also hedged the interest rate
13 related to those peaker debt with an interest
14 rate swap. That swap was out of the money by
15 the tune of about 17.8 million, I think, and
16 we also had to pay that off too.

17 MR. ROBERTSON: Okay. That's great. I
18 just want it clarified that that 364-day
19 bridge loan has nothing to do with the
20 request or application that you're seeking
21 from the commission in this state.

22 MR. DOBSON: That's correct.

23 MR. ROBERTSON: Other than the IPPs have
24 some collateral implications.

25 MR. DOBSON: That's correct.

1 MR. DOBSON: The letter of credit
2 facility is in effect embedded in the
3 430 million-dollar facility. What it
4 basically says is that we can post letters of
5 credit inside the realm of the 430, but we
6 also have to post cash related to that. So
7 they're really one in the same.

8 So the size of the facility is 430, but
9 we can post cash collateralized LCs out of
10 the facility if we choose to do so.

11 MR. ROBERTSON: Do the lenders have to
12 put up any more moneys to fund that letter of
13 credit facility?

14 MR. DOBSON: No, they don't.

15 MR. ROBERTSON: The collateralization of
16 the five states, I guess, five domestic
17 states, is it your opinion that the lenders
18 of the term loan have required you to
19 collateralize those assets in order to get
20 the proceeds of the loan?

21 MR. DOBSON: It's my opinion -- this is
22 Rick Dobson -- my opinion that we have to
23 make a, in my words, a good faith effort to
24 obtain that approval.

25 MR. ROBERTSON: Again, and I've asked

1 then as I am now.

2 MR. ROBERTSON: Okay. This question I
3 think I asked earlier, but you can just give
4 me a yes or no on it.

5 You already have access to the money,
6 the proceeds of the loan to use as working
7 capital, and you have access and you have it
8 in possession; isn't that correct?

9 MR. DOBSON: Correct.

10 MR. EMPSON: That is correct.

11 MR. ROBERTSON: In your opinion, is the
12 Company currently providing safe and reliable
13 service to the customers of the Missouri
14 regulated utilities; and if you're not, can
15 you tell me all of the instances whereby
16 those requirements have not been met?

17 MR. EMPSON: I believe we are. We're
18 providing safe, reliable service to our
19 customers.

20 MR. ROBERTSON: And you intend to do so
21 in the future; is that correct?

22 MR. EMPSON: Yes, we do.

23 MR. ROBERTSON: Believe it or not, I was
24 able to knock down everything else we had to
25 in topic seven. We still have some more



Other Aquila Companies

--> choose a company

Aquila Locations

--> choose a country



Aquila (ticker: ILA, exchange: New York Stock Exchange) News Release - July 11, 2003

Aquila Obtains Approval from Colorado Public Utilities Commission to Collateralize Utility Assets

KANSAS CITY, Mo.--(BUSINESS WIRE)--July 11, 2003--Aquila, Inc. (NYSE:ILA) today announced that it has received approval from the Colorado Public Utilities Commission to pledge its utility assets in the state as collateral for the working capital requirements of Aquila's utility operations.

The company requested permission on May 1 to add the assets of its Colorado operations to an existing pool of regulated and non-regulated assets currently securing a \$430 million loan, the majority of which is supporting Aquila's utility operations.

Colorado's Commission Trial Staff and Aquila entered into a settlement agreement on June 6. An administrative law judge conducted a hearing on the settlement and issued a recommended order approving the settlement on June 20. The recommended decision became final today.

The decision allows Aquila to use debt secured by its assets to meet the traditional working capital needs of a utility, including the purchase of natural gas and electricity supplies, upgrade of its distribution systems, maintenance of power plants, and other activities that enhance Aquila's ability to provide safe, reliable energy service.

"We're pleased with the outcome and with the mutual agreement that we were able to reach with the Commission Trial Staff, which was approved by the Colorado Public Utilities Commission," said Jon Empson, Aquila's senior vice president of Regulatory, Legislative and Gas Supply Services. "The settlement is in the best interests of our customers and Aquila, and creates a win-win situation that helps us deliver on our ongoing commitment to provide safe, reliable and competitively priced service to our customers."

As required by its loan agreements, Aquila also has requested approval to use its utility assets in other states to provide additional collateral for its \$430 million loan. Requests are pending in Iowa, Minnesota, Kansas and Missouri.

Securing debt with utility assets was a common practice in the 1980s and early 1990s. During the economic boom of the mid- to late-1990s, the practice faded when the cost differential between secured and non-secured debt was insignificant. Until the latter part of the 1980s, Aquila primarily issued secured debt to support its utility operations.

Stipulations in the final Commission order include Aquila's agreement to:

- Use a predetermined hypothetical capital structure for future electric or natural gas rate filings that rely on a test year containing all or part of 2003, 2004 and 2005.
- Apply proceeds from the actions described in Aquila's financial plan to reduce debt and other financial obligations for both its non-regulated and non-domestic utility operations, subject to cash for working capital needs.
- Not start any new non-regulated business ventures through 2005.
- Defer its request to extend the pledge of Colorado utility assets to secure future replacement of long-term debt until after it finalizes similar applications in Iowa, Kansas,

Appendix B

- Comply with various reporting requirements designed to determine Aquila's progress in implementing its financial plan and provide notice of material deviations from its plan.
- Comply with various reporting requirements relating to quality of service for the company's natural gas and electric operations.

"Our objective was to provide the states with a full and detailed explanation of Aquila's plans to restore financial stability while ensuring that these steps would not have any adverse impact on our utility customers," said Empson. "The agreement we were able to reach with the Commission accomplishes that."

Based in Kansas City, Missouri, Aquila operates electricity and natural gas distribution networks serving customers in seven states and in Canada, the United Kingdom and Australia. The company also owns and operates power generation assets. More information is available at www.aquila.com.

CONTACT: Aquila, Inc.
Media Contacts:
Carl Petz, 816-467-3323
Media Relations, 816-467-3000
Investor Contacts:
Neala Clark, 816-467-3562

SOURCE: Aquila, Inc.

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Decision No. R03-0694

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-177SEG

IN THE MATTER OF THE VERIFIED APPLICATION OF AQUILA, INC. FOR AN ORDER
AUTHORIZING A PLEDGE OF, AND THE CREATION OF LIENS ON, ITS ASSETS
LOCATED IN THE STATE OF COLORADO IN ORDER TO SECURE LONG-TERM DEBT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
APPROVING STIPULATION AND
SETTLEMENT AGREEMENT**

Mailed Date: June 20, 2003

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. The captioned application of Aquila, Inc. (Aquila), was filed with the Colorado Public Utilities Commission (Commission) on May 1, 2003. Public notice of the application was given on May 5, 2003, when the Commission issued its Notice of Application Filed.

2. A timely intervention was filed in this proceeding by the Staff of the Colorado Public Utilities Commission (Staff).

3. The matter was originally set for hearing on May 23, 2003. However, the hearing was subsequently rescheduled to June 17, 2003, at the request of the parties. See, Decision No. R03-0557-I. That decision also established a procedural schedule governing this case.

4. On June 6, 2003, the parties submitted a Stipulation and Settlement Agreement (Stipulation) along with a Joint Motion to Approve Stipulation and Settlement Agreement, to Vacate Remaining Procedural Dates, and to Waive Response Time (Motion). The Motion indicated that the parties had reached an agreement settling all disputed issues in this matter as

Before the Public Utilities Commission of the State of Colorado

Decision No. R03-0694

DOCKET NO. 03A-177SEG

more particularly set forth in the Stipulation, a copy of which is attached to and made a part of this decision.

5. On June 10, 2003, those portions of the Motion requesting that the June 17, 2003, hearing date and the previously established procedural schedule be vacated, that any hearing to be conducted in connection with the Stipulation be held on June 17, 2003, and that the response time to the Motion be waived, were granted. *See*, Decision No. R03-0632-1.

6. A hearing was held in connection with the Stipulation on June 17, 2003. Appearances were entered on behalf of Aquila and Staff by their respective counsel. Aquila presented testimony in support of the Stipulation from Jon Empson, its Senior Vice President, Regulatory, Legislative, and Gas Supply Services, and Beth Armstrong, its Chief Financial Officer for Domestic Utility Operations. Eric Jorgensen, one of the Commission's Financial Analysts, presented testimony in support of the Stipulation on behalf of Staff. Exhibit 1, the Stipulation; Exhibit 2, the pre-filed direct testimony and exhibits of Rick Dobson, Aquila's Senior Vice President and Interim Chief Financial Officer; and Exhibit 3, Mr. Empson's pre-filed direct testimony and exhibits, were marked, offered, and admitted into evidence.¹

7. By this application, Aquila seeks a Commission order authorizing a pledge of, and the creation of liens on, its assets located in the State of Colorado in order to secure the payment of a \$430 million three-year term loan (the Loan), and to secure future replacement debt offerings for working capital requirements not to exceed \$430 million.² The Loan is designed

¹ Mr. Dobson and Mr. Empson's direct testimony and exhibits were originally filed in this matter on May 1, 2003, along with the application.

² The Loan was closed on April 11, 2003, pursuant to authority previously granted by the Commission in Decision No. C03-0299 in Docket No. 03A-071SEG.

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to provide Aquila with sufficient short-term liquidity to implement the provisions of a Debt Reduction and Financial Plan (Financial Plan). The Financial Plan, the specifics of which are set forth in Confidential Exhibit 1 of Mr. Dobson's pre-filed testimony (Hearing Exhibit 2), is designed to restructure, retire, or replace existing Aquila debt by, among other things, selling certain assets and buying out certain tolling contracts. The ultimate goal of the Financial Plan is to return Aquila to a capital structure reflective of a gas and electric utility and to restore its debt rating to investment grade.

8. The Loan is currently secured by Aquila utility assets located in Michigan and Nebraska along with a pledge of the capital stock of the holding company of Aquila's Canadian utilities. However, the proceeds from any sale of Aquila's Canadian assets must be used to repay the Loan. The resulting loss of the Canadian collateral as security for the Loan would render the utility assets in Michigan and Nebraska insufficient to support the Loan under collateral principles used by Aquila's lending institutions. This, along with the probable need to replenish the Loan back to the \$430 million level and to post sufficient collateral for such borrowing, is one reason for Aquila's need to secure Colorado utility assets (as well as those in other states) as additional security for the Loan.³

9. In addition, Aquila believes that its utility assets should support the working capital requirements for its utility operations. It has determined that approximately \$250 million of the Loan is needed to support the ongoing working capital requirements of its domestic utility business. See, Confidential Exhibit 3 of Mr. Dobson's pre-filed testimony (Hearing Exhibit 2). The remaining \$180 million supports its non-regulated businesses. Aquila is separating the Loan

³ In addition to the Colorado application, Aquila has applications pending with four other states (Iowa, Kansas, Minnesota, and Missouri) seeking approval to pledge utility assets to secure the Loan.

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and collateral into these two components to ensure that its utility customers and its regulated utility assets are not supporting its non-utility debt requirements. This will be accomplished by Aquila holding the Loan funds at the corporate level and charging its subsidiaries a BBB investment grade utility interest rate for their use of such funds when needed for working capital. The difference between the investment grade financing cost and the actual cost of the Loan will be retained at the corporate level. Again, this is designed to ensure that there will be no adverse impact to Aquila's utility customers from the non-investment grade financing charges to be paid by Aquila on the Loan.

10. As additional support for the application, the borrowing rate on the Loan will be reduced from 8.75 percent to 8 percent if it pledges additional utility assets as collateral.

11. The significant terms of the Stipulation are as follows: (1) Aquila's agreement to use a hypothetical capital structure for future electric or natural gas rate cases relying on a test year containing all or a part of 2003, 2004, and 2005; (2) Aquila's agreement to use the proceeds of the actions described in the Financial Plan to reduce debt and other financial obligations on its non-regulated and non-domestic utility operations, subject to cash working capital needs; (3) Aquila's agreement not to start any new unregulated business ventures; (4) the parties' agreement to defer Aquila's request to extend or "roll-over" the pledge of Colorado utility assets to secure future replacement long-term debt offerings for working capital requirements not to exceed \$430 million until after the disposition of similar applications in Iowa, Minnesota, Kansas, and Missouri;⁴ (5) Aquila's agreement to comply with various reporting requirements designed to ascertain its progress in implementing the Financial Plan; (6) Aquila's agreement to

⁴ In order to accommodate the deferral of this portion of the application, Aquila requests a waiver of the statutory deadlines imposed by § 40-1-104(5), C.R.S.

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provide notice of material deviations from the Financial Plan, violations or defaults relating to the covenants in its indentures, the Loan, or orders issued by other states approving the pledge of assets to secure the Loan; and (7) Aquila's agreement to comply with various reporting requirements relating to the quality of its natural gas and electric utility service.

12. The witnesses appearing at the hearing clarified certain portions of the Stipulation. Specifically, Mr. Empson clarified potential confusion concerning paragraph 11 of the Stipulation wherein the parties request that a ruling on a portion of the application be deferred. As filed, the application requested the ability to extend or "roll-over" the asset pledge to be secured in connection with the Loan for the purpose of securing future replacement long-term debt offerings for working capital requirements not to exceed \$430 million. Mr. Empson explained that the "extension" and "roll-over" terminology used in paragraph 11 refers to the possible extension of the Loan beyond its three-year term with Aquila's current lenders. The parties have agreed to defer the issue of whether Colorado utility assets can be pledged to secure such an "extension" or "roll-over" pending the disposition of similar applications by the other states referred to in paragraph 11. Approval of the Stipulation would, however, allow Aquila to pledge Colorado assets in connection with "replacement" debt not to exceed \$430 million within the three-year term of the Loan. Mr. Empson, explained that such a debt offering would constitute an entirely new loan with different lenders than those issuing the Loan. Mr. Empson's interpretation of paragraph 11 was confirmed by the Staff's witness, Mr. Jorgensen.

13. Mr. Empson also clarified that the reporting requirements contained in paragraph 12 of the Stipulation are to continue for the full period encompassed by the Financial Plan; that under paragraph 12.a. of the Stipulation Aquila intends to provide updates to the Financial Plan; that under paragraph 9 of the Stipulation it is Aquila's intent to use the proceeds

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of the actions described in the Financial Plan to reduce debt relating to its non-regulated and non-domestic utility operations (subject to cash working capital needs); that the term "scheduled milestone" used in paragraph 13.a. of the Stipulation refers to the dates contained in the table shown on page 11 of the Financial Plan; that the term "expected value" used in paragraph 13.a. of the Stipulation refers to the estimated proceeds to be realized from the sale of certain assets as described in the Financial Plan; that the reporting requirements set forth in paragraph 15.b.iii) and iv) of the Stipulation are in addition to those that may be imposed by the quality of service plan to be developed in connection with Aquila's Phase I electric rate case in Docket No. 02S-594E; and that the "first report" reporting requirement imposed by paragraph 15.c. of the Stipulation is to be provided within 60 days of Commission approval of the Stipulation. Mr. Empson also confirmed that the "separation" of regulated utility debt/assets from non-regulated debt/assets discussed above ensures that Aquila will not be using Colorado ratepayer funds to subsidize its non-regulated activities in violation of § 40-3-114, C.R.S.

14. Ms. Armstrong clarified the reporting requirements imposed on Aquila by paragraph 12.a. of the Stipulation and, specifically, the manner in which the format described in Attachment A of the Stipulation will facilitate those reporting requirements.

15. Mr. Jorgensen testified that the concerns with the application previously expressed by Staff in its intervention were fully resolved by the Stipulation. Specifically, he indicated that Aquila's agreement to use the hypothetical capital structure called for by the Stipulation and its intent to separate regulated utility debt/assets from non-regulated debt/assets for the purpose of allocating finance costs would ensure that the requested pledge of Colorado utility assets would not negatively impact the rates paid by Colorado ratepayers. Nor, under these circumstances, would authorizing the pledge of assets result in the use of Colorado

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ratepayer funds to subsidize its non-regulated activities in violation of § 40-3-114, C.R.S. He was also satisfied that the reporting requirements imposed on Aquila by the Stipulation would ensure that approval of the requested pledge of assets would not negatively impact the adequacy and reliability of Aquila's Colorado regulated utility service. He also indicated that, as a practical matter, the relatively short time period for implementation of the Financial Plan mitigated against many of the concerns raised by Staff in its intervention.

16. The parties believe that granting the application, subject to the terms of the Stipulation, is in the public interest. Having reviewed the Stipulation, the application, the pre-filed testimony and exhibits submitted by Aquila in this matter, and the testimony presented by the parties at the hearing, the undersigned agrees. Subject to the conditions contained in the Stipulation, approval of the pledge of Aquila's Colorado utility assets to secure the Loan will greatly assist Aquila's efforts to implement the Financial Plan and, ultimately, should serve to return it to a capital structure reflective of a gas and electric utility and to restore its debt rating to investment grade. Aquila's agreement to use the hypothetical capital structure called for by the Stipulation and to separate regulated utility debt/assets from non-regulated debt/assets for the purpose of allocating finance costs ensure that the requested pledge of Colorado utility assets will not negatively impact the rates paid by Colorado ratepayers. These measures will also ensure that the requested pledge of assets will not result in the use of Colorado ratepayer funds to subsidize Aquila's non-regulated activities in violation of § 40-3-114, C.R.S. Finally, Aquila's compliance with the reporting requirements imposed by the Stipulation will serve to ensure that the pledge of assets will not negatively impact the adequacy and reliability of Aquila's Colorado regulated services. It is found and concluded, therefore, that the Stipulation is in the public interest and should be accepted and approved.

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17. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. The Stipulation and Settlement Agreement filed by Aquila, Inc., and the Staff of the Public Utilities Commission on June 6, 2003, is accepted and approved without modification. The Stipulation and Settlement Agreement, a copy of which is attached hereto as Appendix A, is incorporated into this Order as if fully set forth herein.

2. Subject to the terms and conditions set forth in the Stipulation and Settlement Agreement, Aquila, Inc., is hereby authorized to pledge and create liens on its assets located in the State of Colorado in order to secure the payment of a \$430 million three-year term loan and to secure the future replacement debt offerings for working capital requirements not to exceed \$430 million.

3. Aquila, Inc., is hereby granted a waiver of the deadlines imposed by § 40-1-104(5), C.R.S., with regard to the deferral of a Commission decision in connection with that portion of the application referred to in paragraph 11 of the Stipulation and Settlement Agreement.

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

5. The Commission shall retain jurisdiction of this proceeding and take such action and enter orders as may appear necessary to effectuate this Order.

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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.

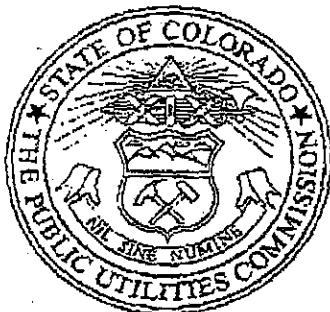
8. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

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(SEAL)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

DALE E. ISLEY

Administrative Law Judge

ATTEST: A TRUE COPY

Bruce N. Smith
Director

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-177SEG

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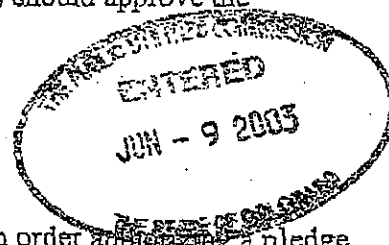
IN THE MATTER OF THE VERIFIED APPLICATION OF AQUILA, INC., FOR AN ORDER
AUTHORIZING A PLEDGE OF, AND THE CREATION OF LIENS ON, ITS ASSETS
LOCATED IN THE STATE OF COLORADO IN ORDER TO SECURE LONG-TERM DEBT

STIPULATION AND SETTLEMENT AGREEMENT

Aquila, Inc. (Aquila or the Company) and Staff of the Colorado Public Utilities
Commission (Staff), by and through their respective undersigned counsel, and for good and
valuable consideration, enter into this Stipulation and Settlement Agreement (Agreement) to
stipulate and to settle all disputed issues regarding Aquila's Verified Application for an order
authorizing a pledge of, and the creation of liens on, its assets located in the State of Colorado in
order to secure long-term debt. Aquila and Staff (collectively, Parties) respectfully submit that
this Agreement is just and reasonable, that it results in a fair disposition of this docket, and that,
therefore, the Colorado Public Utilities Commission (Commission) should approve the
Agreement without hearing.

INTRODUCTION

1. On May 1, 2003, Aquila filed the Application for an order authorizing a pledge
of, and the creation of liens on, its assets located in the State of Colorado in order to secure the
payment of a \$430 million three-year term loan and to secure the future replacement debt
offerings for working capital requirements not to exceed \$430 million. Entering into the \$430
million term loan, and the securitization of the loan with domestic utility assets required by the
lenders, was a critical first step to ensure that Aquila has sufficient liquidity in the near term, so



that Aquila can continue to implement the final steps of Aquila's Debt Reduction and Restructuring Plan (Financial Plan). The ultimate goal of Aquila's Financial Plan is to return the Company to a capital structure reflective of a gas and electric utility and to restore its debt rating to investment grade. This goal requires the restructuring, retirement, or replacement of existing debt. Subject to obtaining permission from the various state regulatory commissions, including this Commission, the replacement debt referenced in this Application will be secured by a collateral pool that will include Aquila's utility assets, including utility assets located in Colorado.

2. This Application is one of five (5) applications that were filed concurrently by Aquila in the States of Colorado, Iowa, Kansas, Minnesota and Missouri to secure regulatory approval for Aquila to pledge all of its electric and natural gas utility assets located those states, in order to secure the payment of the \$430 million three-year term loan and to secure the future replacement debt offerings for working capital requirements, not to exceed \$430 million. At the present time, utility assets in Michigan and Nebraska and certain Canadian utility assets primarily secure the \$430 million term loan. Aquila has determined internally that about \$250 million of the \$430 million is needed to support the ongoing working capital requirements for Aquila's domestic utility business. However, based upon the collateral principles used by the lending institutions, the assets in Michigan and Nebraska are not sufficient in value to support a \$430 million loan. Therefore, Aquila had to use the Canadian investment both to support the remaining \$180 million portion of the loan and to fill the gap on the required collateral for Aquila's \$250 million domestic utility working capital requirement.

3. The financial institutions only required Aquila to have pledged sufficient assets in total to secure the \$430 million loan. The entire \$430 million is available to Aquila, and the

credit facility does not "break out" portions of the loan on a state-by-state basis. In compliance with the terms of the loan, Aquila must pledge sufficient collateral to secure the credit facility up to the full amount of \$430 million. The determination by Aquila itself that \$250 million of the \$430 million amount is required for its future domestic utility cash working capital needs was based upon Aquila's historical and anticipated domestic utility working cash needs. Aquila has separated the loan and collateral to ensure that the utility customers and assets are not supporting the non-utility debt requirements. It is Aquila's intent to maintain a proper alignment of domestic utility collateral with domestic utility loan needs and non-domestic utility and non-regulated business collateral with their loan needs. The Commission's approval of this Agreement and the Application will greatly contribute to Aquila's success in implementing its Financial Plan.

4. On May 4, 2003, Aquila caused a Notice concerning the filing of this Application to be published in *The Colorado Springs Gazette* and in *The Pueblo Chieftain*, newspapers of general or local circulation in Aquila's service area. That Notice indicated that the pledge of Colorado assets was needed to secure the payment of a \$430 million term loan issued by Aquila pursuant to authority granted by the Commission on March 25, 2003 in Docket No. 03A-071SEG by Decision No. C03-0299, to secure future replacement debt offerings for working capital requirements in amounts not to exceed \$430 million. On May 5, 2003, the Commission issued its Notice that the application had been filed.

5. On May 15, 2003, Staff filed its notice of intervention and entry of appearance. Aquila and Staff are the only parties to this docket. Since the date of the filing, Staff has conducted a thorough review and investigation of the filing and the supporting testimony and

exhibits. Aquila and Staff have also conducted extensive discussions and settlement negotiations.

THE SETTLEMENT

6. Staff and Aquila agree that the Application should be granted, including the terms and conditions to which the parties agree herein. They also agree that the approval of this Agreement is just, reasonable and not contrary to the public interest.

7. Aquila and Staff agree that the terms of this Agreement should be included in the Commission's decision granting this Application as terms and conditions of approval of the Application and the relief requested therein.

8. Aquila agrees that, in future electric or natural gas rate cases relying on a test year containing all or a part of the years 2003, 2004 and 2005, it will use a hypothetical capital structure. In future electric rate cases the capital structure used in Docket No. 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. Aquila also agrees to maintain the debt allocation and pricing process described in the Direct Testimony of Jon Empson, pages 2-5, filed in this Docket. Staff and Aquila agree that the continued use of hypothetical capital structures and debt assignment provides Aquila's Colorado utility customers with financial protection during this period of transition through December 31, 2005.

9. Aquila agrees that proceeds from the actions described in the Financial Plan should be used to reduce the debt and other outstanding financial liabilities on Aquila's balance sheet relating to the nonregulated and nondomestic utility operations. The recording of the receipt of proceeds from an asset sale transaction on Aquila's books of account will occur within seven (7) business days of month end, and after cash working capital needs are met, Aquila will

record the retirement of such debt from its books of account within seven (7) business days of month end. Aquila will notify Staff of the application of the funds in the updates discussed below.

10. Aquila agrees that during the three (3) year time period reflected in the Financial Plan (*i.e.*, 2003 through 2005), Aquila will not start any new unregulated business ventures.

11. Aquila and Staff agree that Aquila has a critical need for long-term financial stability so that reliable service to its Colorado customers will continue to be provided, as Aquila has done for many years. Staff agrees to work with Aquila in the effort to ensure Aquila's long-term financial stability as an operating utility in Colorado. In the Application, Aquila requested the ability to extend the asset pledge granted in this docket to secure future replacement long-term debt offerings for working capital requirements not to exceed \$430 million. Aquila would prefer an agreement here to the extension or roll-over of the current \$430 million credit facility, as long as the same terms and conditions set forth in this Agreement and in the Commission's approval order in this Docket are also adopted. However, Staff would prefer to defer any agreement to the extension or roll-over of the current \$430 million credit facility, as long as the same terms and conditions set forth in this Agreement and in the Commission's approval order in this Docket are also adopted, until after the four (4) other States (Iowa, Kansas, Minnesota and Missouri) have disposed of the pending similar applications. Therefore, Staff and Aquila agree that the Commission in its Decision approving this Agreement should not deny the extension or rollover relief requested in the Application. Rather, the decision on that issue would be deferred until Staff and Aquila jointly file a motion in this Docket requesting disposition of that issue. Aquila agrees to advise Staff within seven (7) business days of the entry of final orders in each of the four other state application of the disposition of those applications by the respective state

commissions. Within forty-five (45) days after Aquila advises Staff of the disposition by the fourth state commission, Staff and Aquila will file an appropriate pleading with the Commission requesting disposition of the extension or rollover relief requested in the Application. For purposes of approval of this Paragraph No. 11, Aquila waives the statutory limit of Colo. Rev. Stat. § 40-1-104(5) only for purposes of determining the extension or rollover relief requested in the Application.

12. Aquila agrees that, within fifteen (15) days after submitting its quarterly financial reports to the Securities and Exchange Commission (SEC), Aquila will file the following financial reports in this Docket:

a. Aquila will submit to Staff any updates to the confidential Financial Plan within fifteen (15) days of release of the updated Financial Plan. Aquila will report to Staff the progress made in implementing the actions detailed in the Financial Plan, including the use of sales proceeds to retire outstanding debt or other financial liabilities, through the Cash Flow Statement attachment described in Paragraph 12b below.

b. Aquila will submit a report, including Statements of Cash Flows. As part of this report, within the Statement of Cash Flows, Aquila will itemize activities from Investing Activities and from Financing Activities between regulated and unregulated items, and among unregulated items highlight and footnote the components of its Financial Plan. To facilitate the comparison of the Financial Plan with the itemized Statement of Cash Flows, the itemized Statement of Cash Flows shall use comparable items as are used in the Financial Plan. Attachment A to this Agreement is the format for this report to which Staff and Aquila have agreed.

13. Aquila agrees to submit a notice report to Staff, via a confidential letter to the Chief of Fixed Utilities, within seven (7) business days, if any of the following occur:

a. Material deviation from the Financial Plan. "Material deviation," as used herein, means either a scheduled milestone occurs in excess of three (3) months from the scheduled date for occurrence, or a dollar amount received is more than 10% less than an expected value.

b. Violation or event of default in (1) the covenants in Aquila's indentures, (2) the loan agreement for the April 9, 2003 \$430 million long-term debt facility, or (3) an order of another state utility regulatory commission approving the pledge of Aquila's assets located in that state to secure the \$430 million long-term debt facility.

c. Aquila files for protection of a federal bankruptcy court under any chapter of the federal bankruptcy laws.

14. In the event there is a bankruptcy filing, foreclosure, or liquidation involving Aquila's assets located in Colorado, or other need to transfer Aquila's assets located in Colorado, Aquila agrees to advise other parties to any such actions that the Colorado Public Utilities Commission would require the filing and approval of an application to transfer Aquila's assets located in Colorado, pursuant to Rule 723-1-55 of the Commission's Rules of Practice and Procedure (4 Colo. Code Regs. 723-1-55).

15. Aquila and Staff have agreed to the following relating to the development by Aquila of a Colorado natural gas quality of service plan:¹

a. Aquila agrees that during the three (3) year time period reflected in the Financial Plan (i.e., 2003 through 2005), Aquila will continue to maintain an adequate

quality of natural gas and electric service provided to its end-use customers in Colorado, as required by the standards set forth in the Colorado Public Utilities Law, as to quality of service to gas customers the Commission's rules regulating the service of gas utilities (4 *Colo. Code Regs.* 723-4) and the rules governing gas pipeline safety (4 *Colo. Code Regs.* 723-11), and as to quality of service to electric customers the Commission's rules regulating the service of electric utilities (4 *Colo. Code Regs.* 723-3).

b. Aquila and Staff agree to address quality of service issues by reviewing key outputs in four ways:

i) Staff will continue to review Aquila's performance and reporting under the requirements of the rules governing gas pipeline safety (4 *Colo. Code Regs.* 723-11). Unlike the electric industry, the natural gas industry already has a prescribed set of minimum requirements for operators in areas such as cathodic protection, leak survey, leak repair, odorization, and various other operational and maintenance activities. These standards are mandated under the Commission's rules governing gas pipeline safety (4 *Colo. Code Regs.* 723-11) and Title 49, Code of Federal Regulations, Part 192, and are audited on a periodic basis by the enforcement staff of the Commission.

ii) Aquila agrees to submit to Staff quarterly reports on natural gas utility quality of service. These reports will be based upon the monthly internal reports currently used by Aquila's senior management to monitor quality of service, so that Staff may also monitor the status of quality of service being provided by Aquila to its end-use natural gas customers in Colorado. These

¹ Aquila's development of a quality of service plan for its Colorado retail electric utility operations was addressed in the Settlement Agreement in Docket No. 02S-594E, Phase I of Aquila's electric general rate case, a

reports will include such measures as default ratio, meters read on time, meter reading error rate, emergency response greater than one hour, and unplanned outages.

iii) Aquila agrees to submit to Staff on a quarterly basis its reports currently used by Aquila's senior management to monitor electric quality of service. These reports will include measures such as generating station base and peak availability, generating station starting reliability, CAIDI, SAIDI, SAIFI, meters read on time, and default ratio.

iv) Aquila agrees to provide to Staff combined gas and electric measures for the centralized call center function, such as average speed of answering telephone calls.

c. Aquila agrees to provide the first report for Paragraph No. 15(b)(i) through (iv) above within sixty (60) days of the Commission's final decision approving this Application, and with the first submittal Aquila will also include three (3) years of historical data for each measure (when available), definitions of the measures, and the methodology for calculating the measures. Aquila also agrees to respond to any questions raised by Staff concerning these reports within ten (10) days of Aquila's receipt of the question. If Aquila needs additional time to respond to a specific question, it will so advise Staff. Aquila agrees to provide the reports specified in Paragraph No. 15(b)(i), Paragraph No. 15(b)(ii), and Paragraph No. 15(b)(iv) to Staff during the three (3) year time period reflected in the Financial Plan. Aquila agrees to an initial meeting with Staff within one hundred twenty (120) days of the Commission's final decision approving this

decision on which is currently pending before the Commission.

Application to review and discuss the materials provided by Aquila in accordance with Paragraph No. 15(b)(i), Paragraph No. 15(b)(ii), and Paragraph No. 15(b)(iv).

d. Additionally, Aquila and Staff agree to continue discussing the quality of Aquila's natural gas service in Colorado for the purpose of determining whether the review and monitoring of the foregoing gas-related outputs are sufficient to demonstrate a legally adequate level of quality of natural gas service, or whether further collaborative discussions are required to develop a formal application to approve a quality of service plan for Aquila's Colorado natural gas operations. However, neither this paragraph nor any other provision of this Agreement shall be construed to prohibit Staff from commencing any action in the future that it deems necessary concerning Aquila's quality of service.

GENERAL STIPULATIONS

16. Through active prehearing investigation and negotiation, the Parties have reached the agreement set forth herein resolving all contested and disputed issues in this docket in a manner which the Parties agree is just and reasonable and in the public interest. The Parties further agree that reaching agreement by means of negotiation and settlement rather than through litigation is in the public interest.

17. The Parties agree to present, to support, and to defend this Agreement before the Commission and the courts. The Parties further agree, if necessary, to present testimony and exhibits to the Commission to secure the approval of this Agreement.

18. The Parties hereby agree that all pre-filed testimony and exhibits shall be admitted into evidence in this docket without cross-examination. This Agreement reflects compromise and settlement of all issues raised or that could have been raised in this docket.

19. 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 either of the Parties. In the event the Commission modifies this Agreement in a manner unacceptable to either Party, that Party shall have the right to withdraw from this Agreement and proceed to hearing on the issues that may be appropriately raised by that Party in this docket. The withdrawing Party shall notify the Commission and the Parties to this Agreement by e-mail within three (3) business days of the Commission modification that the Party is withdrawing from the Agreement and that the Party is ready to proceed to hearing; the e-mail notice shall designate the precise issue or issues on which the Party desires to proceed to hearing (Hearing Notice).

20. Within three (3) business days of the date of the Hearing Notice from the withdrawing Party, the Parties shall confer to arrive at a comprehensive list of issues that shall proceed to hearing and a list of issues that remain settled as a result of the first Party's withdrawal from this Agreement. Within five (5) business days of the date of the Hearing Notice, the Parties shall file with the Commission a formal notice containing the list of issues that shall proceed to hearing and those issues that remain settled and a proposed procedural schedule for the filing of answer and rebuttal testimony and exhibits and proposed hearing dates. Hearing shall be scheduled on all of the issues designated in the formal notice filed with the Commission as soon as practicable.

21. 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, except as may be necessary in any proceeding to enforce this Agreement.

22. 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 contested, or could have been contested, among the Parties in this proceeding.

23. The Parties specifically agree and understand that this Agreement represents a negotiated settlement in the public interest with respect to the various issues presented by this Docket, for the sole purpose of the settlement of the matters agreed to in this Agreement. No Party or person shall be deemed to have approved, accepted, agreed to, or consented to any concept, theory or principle underlying or supposed to underlie any of the matters provided for in this Agreement, other than as specifically provided for herein. Notwithstanding the resolution of the issues set forth in this Agreement, none of the regulatory principles herein contained shall be deemed by the Parties to constitute a settled practice or precedent in any future proceeding, except as otherwise specifically provided in Paragraph Nos. 8 through 15 of this Agreement.

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

CONCLUSION

For the reasons stated above, the Parties respectfully request that the Commission enter an order approving this Stipulation and Settlement Agreement finding and concluding that the Commission's approval of this Stipulation and Settlement Agreement represents a fair, just, and reasonable resolution of all disputed issues and all issues that could have been raised in this Docket.

DATED this 6th day of June 2003.

Accepted on behalf of
AQUILA, INC.:

By: _____
Jon R. Empson
1815 Capitol Avenue
Omaha, NE 68102

Approved as to form:

ABEL, BAND, RUSSELL, COLLIER,
PITCHFORD & GORDON, CHARTERED

By: _____
Steven H. Denman, CO Reg. #7857
240 South Pineapple Avenue.
Post Office Box 49948
Sarasota, FL 34230-6948
(941) 366-6660
(941) 366-3999 facsimile
(303) 623-6660 Denver number

Attorneys for Aquila, Inc.

Accepted on behalf of
STAFF OF THE COLORADO PUBLIC
UTILITIES COMMISSION:

By: Eric Jorgensen
Eric Jorgensen
1580 Logan Street, Office Level 2
Denver, CO 80203

Approved as to form:

OFFICE OF THE ATTORNEY GENERAL

By: John J. Roberts
David A. Beckett, Reg. No. 23098*
John J. Roberts, Reg. No. 30124*
Assistant Attorneys General
Business and Licensing Section
1525 Sherman Street, 5th Floor
Denver, Colorado 80203
Telephone: 303-866-5135
Facsimile: 303-866-5395

Attorneys for the Staff of the Colorado
Public Utilities Commission

* Counsel of Record

AG ALPHA:
AG File:

RG PUDFOTH
P:\RL\ROBEJ\FUC\03A-177SEG AQUILA PLEDGE\AQUILA\PLEDGESTIP_FINAL.DOC

Appendix A
Docket No. 03A-177SEG
Decision No. R03-0594
June 20, 2003
Page 14 of 20

DATED this _____ day of June 2003.

Accepted on behalf of
AQUILA, INC.:

By: Jon R. Empson
Jon R. Empson
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Omaha, NE 68102

Approved as to form:

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PITCHFORD & GORDON, CHARTERED

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Attorneys for Aquila, Inc.

Accepted on behalf of
STAFF OF THE COLORADO PUBLIC
UTILITIES COMMISSION:

By: Eric Jorgensen
Eric Jorgensen
1580 Logan Street, Office Level 2
Denver, CO 80203

Approved as to form:

OFFICE OF THE ATTORNEY GENERAL

By: David A. Beckett, Reg. No. 23098*
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Attorneys for the Staff of the Colorado
Public Utilities Commission

* Counsel of Record

DATED this 5th day of June 2003.

Appendix A
Docket No. 03A-1778EG
Decision No. R03-0694
June 20, 2003
Page 15 of 20

Accepted on behalf of
AQUILA, INC.:

Accepted on behalf of
STAFF OF THE COLORADO PUBLIC
UTILITIES COMMISSION:

By: _____
Jon R. Empson
1815 Capitol Avenue
Omaha, NE 68102

By: _____
Eric Jorgensen
1580 Logan Street, Office Level 2
Denver, CO 80203

Approved as to form:

ABEL, BAND, RUSSELL, COLLIER,
PITCHFORD & GORDON, CHARTERED

Approved as to form:

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Attorneys for the Staff of the Colorado
Public Utilities Commission

* Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within STIPULATION AND SETTLEMENT AGREEMENT upon all parties herein by depositing copies of same in the United States mail, first class postage prepaid, or as otherwise indicated, at Denver, Colorado, this 19th day of June 2003, addressed as follows:

Steven H. Denman, Esq.
ABEL, BAND, RUSSELL, COLLIER,
PITCHFORD & GORDON, CHARTERED
240 South Pineapple Avenue
Post Office Box 49948
Sarasota, FL 34230-6948

Jon E. Eupson
Senior Vice President
Aquila, Inc.
1815 Capital Avenue
Omaha, NE 68102

**Eric Jorgensen
Public Utilities Commission
1580 Logan Street, OL-2
Denver, CO 80203
BY INTERDEPARTMENTAL MAIL

**Randy Garrouette
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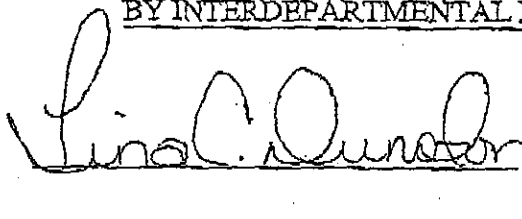
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Decision No. R03-0694
June 20, 2003
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BY INTERDEPARTMENTAL MAIL



Appendix A
Docket No. 93A-177SEG
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ATTACHMENT A

Aquila Inc.				
Cashflow Statement				
Quarter Ended March 31, 2003				
	(dollars in thousands)	U.S. Utilities	Other Non-Regulated	Consolidated Aquila Inc.
Line #	<u>Cashflow from Operations</u>			
1	Net Income			
2	Adjustments to reconcile net income (loss) to net cash:			
3	Depreciation & amortization expense			
4	Restructuring charges			
5	Impairments & Other Charges			
6	Cash paid on impairments & other chrg.			
7	Net chg. price risk mgn			
8	Deferred taxes & investment tax credits			
9	Equity in earn. of inve			
10	Dividends & fees from investments			
11	<u>Change in assets & liab.</u>			
12	A/R & A/P, net			
13	Restricted cash			
14	Inventory & Supplies			
15	Prepayments & Other			
16	Accrued & Other current liab			
17	Deferred Credits			
18	Deferred Charges & Other			
19	Customer funds on deposit			
20	Funds on deposit			
21	Other			
22	Total Cashflow From Operations			
23				
24	<u>Cashflow from Investing</u>			
25	Additions to Utility Plant			
26	Merchant Capital Expenditures			
27	Cash received on sale of assets			
28	Other			
29	Total Cashflow From Investing			
30				
31	<u>Cashflow From Financing</u>			
32	Issuance of common Stock			
33	Issuance of LTD			
34	Retirement of LTD			
35	Short-term borrowings			
36	Net chg in long-term gas contracts			
37	Other			
38	Total Cashflow From Financing			
39				
40	Inc (Dec) in Cash Equiv			
41	Cash-Begin-(December)			
42	Cash-Ending			
	Footnotes:			
	See detail explanation of bolded line items on the "Detail Info" worksheet.			

		Other Non-Regulated
<u>Line #</u>		
25	Canada utility capital expenditures	
26	Capacity Services (MEP) capital expenditures (Power plant construction commitments)	
	Cash received on sale of assets:	
	U.S. Networks--Sale of STI	
	Capacity Services--Cash rec on sale of AQP recorded as AR at year end	
	Wholesale Services--Cash received on sale of AECC classified as restricted cash at year end	
	Wholesale Services--Cash received on sale of AECC held as escrow at year end	
	Quanta Services--Cash received on sale of remaining Quanta shares	
27	Total Other Non-Regulated Cash received on sale of assets	
	Total Cash received on sale of assets	
	Retirement of LTD:	
	Capacity Services:	
	Raccoon Creek	
	Goose Creek	
	Total	
	less: non cash adj--cash collateral used to pay down debt (cash outflow in investing activity when posted earlier in year)	
	Total Capacity services	
	Canada	
	Australia	
	Corporate	
	UCS	
	Wholesale	
34	Total Other Non-Regulated Retired LTD	

APPENDIX C
HAS BEEN DEEMED
HIGHLY CONFIDENTIAL
IN ITS ENTIRETY.

APPENDIX D
HAS BEEN DEEMED
HIGHLY CONFIDENTIAL
IN ITS ENTIRETY.