

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye	Chair
Ellen Gavin	Commissioner
Marshall Johnson	Commissioner
Phyllis A. Reha	Commissioner
Gregory Scott	Commissioner

In the Matter of an Inquiry Into Possible Effects  
of the Financial Difficulties at Aquila, Inc. on  
Peoples Natural Gas Company and Northern  
Minnesota Utilities Company and Their  
Customers

ISSUE DATE: February 14, 2003

DOCKET NO. G-007,011/CI-02-1369

ORDER APPROVING JOINT  
RECOMMENDATION

**PROCEDURAL HISTORY**

On September 4, 2002, the Commission issued its ORDER REQUIRING RESPONSES directing Aquila, Inc. (Aquila) to answer a list of questions about the relationship between Aquila, Peoples Natural Gas Company (Peoples) and Northern Minnesota Utilities Company (NMU).

On September 18, 2002, Aquila filed its response.

On October 22, 2002, the Minnesota Department of Commerce (the Department) filed comments.

On November 1, 2002, the Commission received reply comments from Aquila and the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG). The RUD-OAG comments pertained to Commission authority in the event of an Aquila bankruptcy.

The Commission met on January 15, 2003 to consider this matter. At that hearing, Aquila, the Department and RUD-OAG made a joint recommendation to the Commission.

**FINDINGS AND CONCLUSIONS**

**I. BACKGROUND**

Aquila, Inc. (formerly UtiliCorp United, Inc.) is an international energy and service company. It currently operates two business groups: Merchant Services (which includes Wholesale Services and Capacity Services) and Global Networks (which includes Domestic Networks and International Networks). Aquila's Domestic Networks provide natural gas or electricity in seven

states, including Minnesota. Peoples and NMU are two divisions within Aquila that provide retail gas distribution service in Minnesota. Aquila's International Networks has electric or natural gas operations in Canada, the United Kingdom, Australia, and New Zealand.

Aquila's credit ratings have declined in recent months due to various factors, including business and financial risks. At the same time, Aquila is undertaking a major refocusing of its business activities. The bond ratings agencies, stock analysts, and the financial press express concern about Aquila's financial condition.

Aquila's financial difficulties may have the potential to adversely affect Peoples and NMU and their customers. Potential effects include reduced access to short-term operating capital, reduced access to longer-term capital, higher costs of capital, and decreased service quality.

## **II. ISSUES**

### **A. Cost of Capital**

#### **1. Department Comments**

Aquila raises money by issuing stock (equity) and bonds (debt), and then distributes the funds – and the resulting finance costs – among its operating divisions. According to the Department, as Aquila's financial difficulties have increased, lenders have demanded a higher interest rate on debt issued to Aquila, increasing the cost of raising capital through debt. The Department is concerned that Aquila might try to recover these increased capital costs, especially borrowing costs, from Minnesota ratepayers during its next rate case.

Furthermore, the Department notes that Aquila has not made a capital structure filing since 1998<sup>1</sup> and has issued debt without seeking Commission approval, arguably in violation of Minnesota Statutes § 216B.49.

To guard against the possibility that Aquila would try to recover increased finance costs from Minnesota ratepayers, and to further explore Aquila's recent finance activities, the Department offered several recommendations.

First, the Department recommended that the Commission direct Aquila to analyze in its next rate case the extent to which Aquila's financial situation has influenced Peoples' and NMU's cost of common equity. Aquila should also disclose each instance that it issued debt since January 1, 2002, and the cost of that issuance. This disclosure should include whatever information is necessary to permit the Commission to gauge the effect of Aquila's financial problems on its cost of borrowing. Aquila should provide sufficient information to permit the Commission to estimate what the debt and equity costs for Peoples and NMU would have been but for the effects of Aquila's other operations.

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<sup>1</sup> *In the Matter of a Petition by UtiliCorp United, Inc. for Minnesota Public Utilities Commission Certification to Invest in a Foreign Utility*, Docket No. G-007, 011/S-98-682.

Second, the Department recommended that the Commission direct Aquila to report any significant financial events and provide notice of and access to any reports made to federal agencies in the future.

Finally, the Department recommended that Aquila file reply comments explaining why Aquila did not file for Commission approval of its most recent debt issuance. Aquila should also provide a list of the dates and amounts of all issuances since its most recent capital structure filing in 1998 and explain why Aquila did not file for Commission approval as required by Minnesota Statutes § 216B.49.

## **2. Aquila Position**

Regarding Aquila's borrowing history and its failure to seek Commission authorization for issuing debt, Aquila argues that § 216B.49 and prior Commission orders make it clear that Aquila does not need Commission authorization to issue debt.

But Aquila found the rest of the Department's recommendations agreeable. Regarding the provision of information in the next rate case, the reporting of significant financial events, and the provision of notice and access to federal filings, Aquila declared its willingness to accept the Department's recommendations.

## **3. RUD-OAG Position**

The RUD-OAG joins the Department in supporting the provision of information in the next rate case, the reporting of significant financial events, and the provision of notice and access to federal filings.

## **4. Commission Action**

The parties were not able to reach agreement about Aquila's obligation to seek Commission authorization before issuing debt. However, since Aquila is not currently proposing to issue securities, the Commission concludes that this issue need not be resolved at this time.

Setting that issue aside, the Commission approves of the Department's efforts to protect ratepayers from bearing unwarranted costs. Aquila's continuing cooperation will facilitate these efforts. Consequently, the Commission will approve Aquila's agreement to accept the Department's recommendations.

## **B. Service Quality**

### **1. Department Comments**

In response to its current economic challenges, Aquila has reorganized its operating units and proposed reducing operating expenses by \$100 million, including the elimination of many staff positions. The Department is concerned that these changes could result in lower service quality, effectively shifting the burden of Aquila's financial difficulties to Minnesota ratepayers.

The Department notes that Northern States Power Company and CenterPoint Energy Minnegasco have agreed to enter into service quality plans – identifying variables that reflect service quality; establishing standards for those variables; measuring those variables; and reporting on how those measures change over time, and how they compare to the standards.<sup>2</sup> The Department proposes that Aquila enter into a similar plan, measuring service quality prospectively and reporting the results quarterly.

## **2. Aquila Position**

At the hearing Aquila agreed to the Department’s proposal. Specifically, Aquila agreed to work with interested parties 1) to determine what information is available for evaluating Peoples’ and NMU’s past service quality, 2) to review that data, 3) to report to the Commission about People’s and NMU’s past service quality levels, 4) to enter into a service quality plan, and 5) to continue providing access to all service quality data.

## **3. RUD-OAG Position**

The RUD-OAG supports the agreement between Aquila and the Department.

## **4. Commission Action**

Minnesota ratepayers are entitled to receive the level of customer service for which they are paying. The Commission appreciates Aquila’s cooperation in establishing measures for that level of service, and in agreeing to provide that service into the future. The Commission will approve Aquila’s agreement in the matter.

## **C. Investment in Foreign Utilities**

The federal Energy Policy Act of 1992 exempts foreign utility companies from the provisions of the Public Utilities Holding Company Act (PUHCA).<sup>3</sup> But if a state-regulated holding company or public utility owns the foreign utility company, then the exemption does not apply unless each

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<sup>2</sup> *In the Matter of the Application of Northern States Power Company for Approval to Merge with New Century Energies, Inc.*, Docket No. E,G-002/PA-99-1031 ORDER APPROVING MERGER, AS CONDITIONED (June 12, 2000); *In the Matter of a Petition by Minnegasco, a Division of Reliant Energy Resources Corp., for Approval of Various Aspects of a Corporate Restructuring*, Docket No. G-008/PA-01-1694 (April 1, 2002) (directing the company to “file proposed gas service quality standards similar to those required of Northern States Power Company”).

<sup>3</sup> 15 U.S.C. § 79, as amended by the Federal Energy Policy Act of 1992, especially at § 79z-5b.

state commission with jurisdiction over the public utility certifies to the federal Securities and Exchange Commission (SEC) that the commission 1) has the authority and the resources to protect ratepayers subject to its jurisdiction and 2) intends to exercise that authority.

When seeking to buy foreign utility companies in the past, Aquila has asked the Commission to make such certifications. The Commission has granted these requests, albeit with conditions.<sup>4</sup>

## **1. Department Comments**

The Department expresses concern that the debts Aquila incurred to buy utilities beyond the United States might, in the event of an Aquila bankruptcy, result in creditors attaching Aquila's assets in Minnesota.

## **2. Aquila Position**

Aquila argues that it disclosed to the Commission and the Department the nature of its foreign investments, including any debt obligations, in accordance with federal law. Aquila asserts that the Commission, with the Department's support, approved those investments.

Nevertheless, at the hearing Aquila acknowledged that the Commission's previous Orders granting certification applied only to the specific investments addressed in each specific Order and did not constitute a "blanket" certification for all Aquila acquisitions. Aquila agreed to provide advance notice of its intent to acquire interest in any new foreign utility company. And Aquila agreed to provide advance notice of its intent to acquire more interest in a foreign utility company than it had previously disclosed to the Commission. Finally, Aquila agreed to obtain separate certification for any additional investments in a foreign utility company if required by federal law, including SEC regulations.

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<sup>4</sup> *In the Matter of a Petition by UtiliCorp United Inc. for Minnesota Public Utilities Commission Certification to Invest in a Foreign Utility under 15 U.S.C. § 79z-5b*, Docket No. G-011/S-93-281 ORDER GRANTING LIMITED AND CONDITIONED CERTIFICATION (June 15, 1993); *In the Matter of a Petition by UtiliCorp United Inc. for Minnesota Public Utilities Commission Certification to Invest in a Foreign Utility under 15 U.S.C. § 79z-5b*, Docket No. G-011/S-94-907 ORDER GRANTING CERTIFICATION SUBJECT TO LIMITATIONS AND CONDITIONS (November 30, 1994); *In the Matter of a Petition by UtiliCorp United Inc. for Minnesota Public Utilities Commission Certification to Invest in a Foreign Utility under 15 U.S.C. § 79(c)*, Docket No. G-011/S-95-204 ORDER FINDING AUTHORITY, RESOURCES AND INTENT TO USE THEM AND REQUESTING FILINGS (June 9, 1995) and ORDER GRANTING CERTIFICATION (July 18, 1995); *In the Matter of a Petition by UtiliCorp United, Inc. for Certification to Invest in a Foreign Utility*, Docket No. G-007, 011/S-98-682 ORDER GRANTING CERTIFICATION WITH CONDITIONS (August 17, 1998).

### **3. RUD-OAG Position**

The RUD-OAG joins the Department in supporting Aquila's agreements.

### **4. Commission Action**

The Commission appreciates Aquila's cooperation in helping the Commission monitor its investments in foreign utilities. The Commission finds the agreements reached by the parties at the hearing are reasonable, and will approve them.

#### **D. Delegation to Executive Secretary**

The Commission will direct Aquila to comply with its agreements at the hearing, and will establish deadlines for doing so. If circumstances warrant changing a deadline, the parties may petition for an extension. The Commission will authorize its Executive Secretary to establish or change the times for filings and comments in this docket.

The Commission will so order.

### **ORDER**

1. Aquila shall, in its next rate case,
  - a. Identify all issuances of debt and associated costs from January 1, 2002, until its next rate case in a manner that will facilitate a potential adjustment to mitigate the impact of adverse market factors caused by Aquila's financial problems. Specifically, Aquila shall provide information sufficient to allow the Commission to evaluate what the debt and equity costs for Peoples and NMU would have been but for the effects of Aquila's other operations.
  - b. Provide a discussion and analysis of the effects of Aquila's financial situation on Peoples' and NMU's cost of common equity.
2. Aquila shall report any significant financial events, and shall provide notice of and access to any reports made to federal agencies from now on.
3. Aquila shall work with interested parties to review historical data and determine what information is available regarding Peoples and NMU's service quality and assure that the same type of data is made available in the future. Within 60 days of this Order Aquila shall file with the Commission a report on its historical level of service quality.

4. Aquila shall file a proposed gas service quality standards plan (including information on how service quality response times will be traced through regulated operations) similar to the plan required of Northern States Power Company in Docket No. E,G-002/PA-99-1031 *In the Matter of the Application of Northern States Power Company for Approval to Merge with New Century Energies, Inc.* within 60 days of this Order.
5. Aquila shall begin measuring its service quality prospectively using the service quality plan's mechanisms, and shall file the results quarterly.
6. The Commission clarifies that its previous Orders regarding investments in foreign utility companies apply only to the specific investments addressed in each specific Order and do not constitute a "blanket" certification for all Aquila acquisitions. Aquila shall provide advance notice of its intent to acquire interest in any new foreign utility company. Aquila shall provide advance notice of its intent to acquire more interest in a foreign utility company than it had previously disclosed to the Commission. And Aquila shall obtain separate certification for any additional investments in a foreign utility company if required by federal law.
7. The Commission delegates to its Executive Secretary the authority to establish or change times for filings and comments in this docket.
8. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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