

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer
Marshall Johnson
Ken Nickolai
Phyllis A. Reha
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Aquila, Inc.'s Request to Use
Aquila Networks-PNG and Aquila Networks-
NMU Utility Property to Secure Indebtedness

ISSUE DATE: January 12, 2004

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ORDER DENYING RECONSIDERATION
AND CLARIFYING ORDER ON OWN
MOTION

PROCEDURAL HISTORY

On October 22, 2003, the Commission issued its ORDER DENYING REQUEST FOR AUTHORITY TO ENCUMBER MINNESOTA ASSETS.

On November 12, 2003, Aquila asked for clarification and rehearing and, in the alternative, a contested case proceeding.

On November 21, 2003, the Minnesota Department of Commerce (the Department) submitted its answer opposing Aquila's request for rehearing. The Department does not believe there is a need for a contested case hearing or for the Commission to amend its October 22, 2003 Order.

On November 24, 2003, the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG) submitted its answer opposing Aquila's request for rehearing and a contested case.

On December 1, 2003, Aquila submitted a reply to the Department and RUD-OAG comments.

The Commission met to consider this matter on January 6, 2004.

FINDINGS AND CONCLUSIONS

I. PETITION FOR REHEARING

The Commission has reviewed the record and the arguments of all parties. The Commission finds that the petition for reconsideration does not raise new issues, does not point to new and relevant evidence, does not expose material errors or ambiguities in the original Order, and does not otherwise persuade the Commission that it should rethink its original decision. The Commission concludes that its original decision that the encumbrance of Minnesota assets would constitute overcollateralization and that such overcollateralization is not in the public interest is the one most consistent with the facts, the law, and the public interest, and will therefore deny the petition for reconsideration.¹

II. CLARIFICATION ON OWN MOTION

In its petition, Aquila requested a correction of statements in the Commission's October 22, 2003 Order that suggest Aquila had already received the benefit of the lower 8.00% interest rate at the time the Commission issued its Order. Aquila stated that it expects the rate on its Term Loan Facility will be reduced as soon as its Iowa assets are appraised and pledged as collateral. In addition, Aquila stated that its Canadian assets may not be included in the pool of assets used to secure the Term Loan Facility and that the availability of the Colorado assets did not lower the rate on the Term Loan Facility.

The Company did not claim that these matters were significant to the Commission's ultimate decision. On its own motion, however, the Commission will clarify its Order with respect to these two points.

First, footnote 2 of the Order addresses the relationship of the Company's Canadian assets to the collateralization of the Term Loan Facility. The Commission finds that this relationship is better described in Aquila's November 6, 2003 10-Q filing with the Securities and Exchange Commission (SEC). The Commission, therefore, adopts the 10-Q description and Footnote 2 is clarified accordingly.

Second, the Order states at page 3:

Due to the availability of the Colorado assets, Aquila will *remain* entitled to the full amount of the \$430 million Term Loan Facility and to *continue to* pay the lower interest rate (eight percent) even after the Company sells its Canadian assets.

¹ At the Company's request, the Commission clarifies that this denial will not bar the Company from filing for Commission consideration any future proposal that a portion ("fair share") of the Company's Minnesota assets be pledged as collateral in support of the Company's loan facility.

In these circumstances, the principal reasons advanced by the Company for its request [i.e. *to continue* to be entitled to the full \$430 million facility and at the lower (eight percent) interest rate] have been fulfilled. [Emphasis added.]

Footnote 2 also indicates that Aquila had been achieving the lower (8 percent) interest rate. It now appears that it would have been more precise for the Order to say the following:

Although Aquila's loans have not yet received the benefit of the lower interest rate, it would have, due to utility commission decisions in other jurisdictions, adequate assets available to allow it to collateralize the Company loans in an amount adequate to secure the lower (8 percent) interest rate.

Footnote 2 and page 3 of the Order will be clarified accordingly.

ORDER

1. Aquila's petition for reconsideration is denied.
2. The October 22, 2003 Order is clarified as set forth in the text of this Order.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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