BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of a Request by Aquila, Inc. and its Operating Division Aquila Networks-PNG for Approval of the Transfer of Shipper Services Contracts to an Affiliate, EnergyOne Ventures, L.P.

ISSUE DATE: August 10, 2004

DOCKET NO. G-011/AI-04-61

ORDER APPROVING TRANSFER OF CONTRACTS WITH STIPULATION

PROCEDURAL HISTORY

On November 21, 2003, the Commission issued its ORDER FINDING JURISDICTION AND REQUIRING AQUILA TO REQUEST APPROVAL OF THE SALE OF ITS SHIPPER SERVICES OPERATIONS. The Order found that the Commission had the authority to review Aquila, Inc.'s transfer of its Shipper Services to Energy One Ventures, L.P. (EOV) as an affiliated interest transaction under Minn. Stat. § 216B.48 and required that Aquila request approval of the sale of its Shipper Services operations and the transfer of property and information from Aquila to EOV within 60 days from the date of the Order.

On January 12, 2004, Aquila and its Division Aquila Networks-PNG (collectively Aquila) filed a petition requesting that the Commission approve the assignment of customer contracts for the provision of nonregulated Shipper Services to EOV. Aquila noted that the assignment was effective on September 30, 2002.

On April 30, 2004, the Department of Commerce (DOC) filed comments recommending that the Commission deny Aquila's request for approval of the transfer of its Shipper Services contracts.

On May 20, 2004, Aquila filed reply comments.

On May 27, 2004, the DOC filed comments modified as to the application of trade secret designations. These comments recommended that the Commission: 1) deny Aquila's request for approval of the transfer of its Shipper Services contracts; and 2) find that it is unreasonable to charge regulated customers for firm upstream entitlements that are not available at their demand, and that this matter will be pursued in other dockets.

The matter came before the Commission on July 29, 2004.

FINDINGS AND CONCLUSIONS

I. The Commission's Order

The Commission's November 21, 2003 Order required Aquila to request approval of the sale of its Shipper Services operations and the transfer of property and information from Aquila to EOV. It required Aquila to demonstrate: a) the transfer and sale did not strand Minnesota ratepayers with unnecessary costs; b) the transfer and sale did not affect regulated service or reliability by disposing of assets that are necessary for utility operations; and c) the transfer and sale did not otherwise negatively impact the remaining unsold portion of Aquila and/or its Minnesota regulated customers.

II. Aquila's Request

Aquila requested approval of its assignment of Shipper Services contracts by Aquila Networks-PNG to EOV pursuant to the Commission's Order. Aquila specifically stated that it was not requesting approval of the merger of EOV into Cornerstone Energy, Inc. (Cornerstone), which, Aquila argued, was not an affiliate transaction and was not subject to Commission approval.

Aquila described the transaction as the assignment of all of Aquila Networks-PNG's right, title and interest in the Shipper Services contracts, under which non-regulated natural gas supplies were provided to customers. At essentially the same time that the Shipper Services contract were assigned to EOV, EOV was merged into Cornerstone and Aquila's interests in both the Shipper Services business and in EOV were terminated. The transaction was effective September 30, 2002.

Aquila addressed the specific information required by the Commission's November 21, 2003 Order as follows:

- Stranded Costs

Aquila argued that the assignment of the Shipper Services contracts did not strand Minnesota ratepayers with unnecessary costs. It argued that the assignment of Shipper Services contracts to EOV had no impact on Minnesota ratepayers. Aquila stated that the assignment made EOV responsible for performing Aquila Networks-PNG's obligations under the contracts and that no other assets were transferred to EOV.

In addition, Aquila stated that it released to Cornerstone pipeline capacity and third-party storage that had been used to support Shipper Services volumes and that the capacity releases were sold to Cornerstone at full value. It argued that while Aquila Networks-PNG provided regulated and unregulated Shipper Services using an integrated operation, the costs were reviewed and revenue adjustments were made in Aquila Networks-PNG's rate case.[1]

[1] *In the Matter of a Petition by Peoples Natural Gas Company and Northern Minnesota Utilities, Divisions of UtiliCorp United Inc., for Authority to Increase Natural Gas Rates in Minnesota and to Consolidate the Two Utilities,* Docket No. G007, 011/GR-00-951.

- Effect on Regulated Service or Reliability

Aquila argued that the only assets that were assigned to EOV were the non-regulated natural gas purchase and sale contracts related to the Shipper Services business. None of the contracts were related to utility operations.

- Impact on the Remaining Unsold Portion of Aquila and/or Its Minnesota Regulated Customers

Aquila stated that the assignment of the Shipper Services contracts was a step in Aquila's overall strategy of selling its nonregulated businesses and concentrating on its utility company operations. It argued that this assignment of Shipper Services contracts, as one step in this overall strategy, will have a positive effect on the remaining unsold portion of Aquila and the Minnesota regulated customers.

Finally, Aquila stated that the only purpose of assigning the Shipper Services contracts to EOV was to simplify the sale to Cornerstone and for this reason the assignment was done without compensation.

III. The DOC's Comments

The DOC stated its primary concern was with the effect the transfer of Aquila's nonregulated upstream business had, or may have, on the regulated upstream services necessary to provide reasonably priced and reliable natural gas service to regulated firm sales service customers.

The DOC argued that Aquila did not demonstrate that the transfer and sale did not strand Minnesota ratepayers with unnecessary gas costs, that the transfer and sale did not affect regulated service or reliability, and that the transfer and sale did not otherwise negatively impact the remaining unsold portion of Aquila.

The DOC argued that Aquila has not demonstrated that it transferred to Cornerstone all of the nonregulated firm upstream assets and related costs. Aquila did not show what it transferred, and whether it transferred all, less, or more firm upstream assets and related costs than the nonregulated level associated with the customer service contracts transferred to EOV. The DOC argued that until Aquila shows that it transferred all of the firm upstream assets and fixed costs to Cornerstone, it has not shown that the transfer and sale did not strand the remaining regulated operations with unnecessary gas costs.

Further, the DOC stated that it appears that Aquila has released to Cornerstone some of the same firm upstream assets that it included in regulated gas costs. The DOC argued that it was unreasonable for Aquila to include the cost of reserving firm upstream services in regulated rates when those firm upstream services were not reserved for firm sales service.

The DOC also argued that if the sale of Aquila's Shipper Services business required Aquila to permanently transfer rights to firm upstream pipeline capacity that were previously available on demand to provide regulated sales service, then the sale of the Shipper Services business reduced the assurance of reliable regulated sales service.

The DOC indicated that the reliability issue for future heating seasons may best be addressed in PNG's and NMU's 2004 demand entitlement filings. The DOC indicated its intention to pursue, in the Gas Cost Dockets,[2] the issue of whether PNG and NMU inflated ratepayers' purchased gas adjustment rates for firm entitlements that were not available for ratepayers' use during the 2002-2003 fiscal year and the 2003-2004 fiscal year.

IV. Aquila's Reply to the DOC Comments

Aquila argued that the concerns the DOC stated do not relate to the affiliate transaction, which is the transfer of the Shipper Service contracts to EOV. Aquila argued that the DOC's concerns should be addressed in other Aquila Networks-PNG and Aquila Networks-NMU Gas-Cost Dockets.

Aquila argued that the sales customers were not harmed by the capacity releases. Rather, it argued, sales customers benefitted by being relieved of the need to pay for excess capacity. The DOC's concerns arise out of a non-affiliated transaction, the permanent release of capacity by Aquila to an unaffiliated entity (Cornerstone). Further, any questions concerning the capacity releases should be addressed in the appropriate Gas Cost Dockets.

Aquila argued that the current docket is intended to review only the affiliate transaction between Aquila and EOV. It argued that if the Commission withheld approval of the affiliate transaction it would serve no regulatory purpose.[3] For this reason, Aquila argued, this docket should be closed and any remaining concerns be addressed in the Gas Cost Dockets.

V. The Settlement

At hearing the parties agreed as follows:

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[2] *In the Matter of the Review of the 2003 Annual Automatic Adjustment of Charges for All Gas and Electric Utilities,* Docket No. G,E-999/AA-03-1264; *In the Matter of Aquila, Inc. d/b/a Aquila Networks-NMU's 2003 Annual True-up Filing,* Docket No. G007/AA-03-1379; *In the Matter of Aquila Inc. d/b/a Aquila Networks-PNG's 2003 Annual True-up Filing,* G011/AA-03-1380 (Gas Cost Dockets).

[3] See ORDER INITIATING REPEAL OF RULE GRANTING GENERIC VARIANCE, AND CLARIFYING INTERNAL OPERATING PROCEDURES (September 14, 1998) applying the pre-approval requirements of Minn. Stat. § 216B.48.

> The parties stipulate that, as a condition of settlement, approval of the transfer of Aquila's Shipper Services business to EOV and/or Cornerstone does not constitute a finding on the reasonableness of the transaction. In any future rate case or any other regulatory filing or proceeding, the Company will not seek to recover costs associated with the transfer of its Shipper Services business to EOV and/or Cornerstone. Aquila agrees that the Commission's acceptance of this settlement in this docket is not precedential in any way. Based on this Stipulation the Commission should approve the transaction for regulatory purposes.

VI. Commission Action

The Commission will accept the parties' settlement and will approve the transfer by Aquila of its Shipper Services contracts to EOV for regulatory purposes, with the Stipulation agreed to by the parties. The Stipulation addresses the Commission's concern that ratepayers be held harmless in any future rate case for any costs Aquila has incurred from the transfer of its Shipper Service business to either EOV or Cornerstone.

The Commission's acceptance of the parties' settlement with the Stipulation ensures that Aquila will not raise the issue of the recovery of costs from ratepayers in any future proceedings, but also gives certainty to Aquila that the transfer of its Shipper Services contracts to EOV will not be subject to future challenge based upon a denial of Aquila's approval request.

Finally, the issues raised by the DOC, including the pipeline capacity acquisition and release decisions made in the course of the divestiture of the Shipper Services business, remain open for Commission review in other dockets.

ORDER

1. The transfer of Aquila Networks-PNG's Shipper Services contracts are approved for regulatory purposes with the following stipulation:

   > The parties stipulate that, as a condition of settlement, approval of the transfer of Aquila's Shipper Services business to EOV and/or Cornerstone does not constitute a finding on the reasonableness of the transaction. In any future rate case or any other regulatory filing or proceeding, the Company will not seek to recover costs associated with the transfer of its Shipper Services business to EOV and/or Cornerstone. Aquila agrees that the Commission's acceptance of this settlement in this docket is not precedential in any way. Based on this Stipulation the Commission should approve the transaction for regulatory purposes.

2. This docket is hereby closed.

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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