

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer
Marshall Johnson
Ken Nickolai
Thomas Pugh
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Aquila Networks-PNG s
Refusal to Grant Swift and Company s Request
for an End-User Allocation Agreement

ISSUE DATE: December 22, 2004

DOCKET NO. G-011/C-04-1983

ORDER APPROVING WITHDRAWAL AND
REQUIRING TARIFF FILING

PROCEDURAL HISTORY

In August of 2004 Swift and Company (Swift) filed an informal complaint with the Commission s Consumer Affairs Office (CAO) indicating it had requested an end user allocation agreement (EUAA) from Aquila, Inc. (Aquila) but Aquila had refused.

On September 14, 2004, as part of the CAO informal resolution process, Aquila stated that it was unable to offer the EUAA as requested by Swift.

On October 20, 2004, Swift requested that the Commission take formal action and order Aquila to grant Swift an EUAA. Swift stated that its Worthington, Minnesota pork facility, which is served by Aquila, was unable to access services available from the Northern Natural Gas Company (Northern) interstate pipeline without an EUAA.

On December 15, 2004, Aquila requested that this matter be removed from the December 16, 2004 Commission agenda meeting and that no further action be taken because it had granted Swift the relief it requested.

On December 15, 2004, Swift requested that its complaint be withdrawn because Aquila offered an EUAA, as Swift requested.

This matter came before the Commission on December 16, 2004.

FINDINGS AND CONCLUSIONS

I. Background

In the Commission's ORDER APPROVING WITHDRAWAL OF COMPLAINT AND OPENING TWO NEW DOCKETS,¹ regarding a complaint by Pro-Corn, LLC (Pro-Corn) that Aquila refused to enter into an EUAA with Northern and Pro-Corn, the Commission allowed Pro-Corn's complaint to be withdrawn pursuant to a settlement agreement between the parties. However, in its Order the Commission stated:

... However, the Commission recognizes that there may be other similarly situated customers that may benefit from entering into an end user allocation agreement with Aquila. In order to facilitate the use of end user allocation agreements by others, the Commission will require that Aquila treat all future requests for such end user allocation agreements in a nondiscriminatory manner.

II. Position of Aquila

At hearing, Aquila stated that it was concerned about harm to its sales customers if it granted the EUAA. Aquila stated that it had contacted Northern immediately prior to the agenda meeting to discuss this concern. Based on Northern's response Aquila determined that there would be no harm to its customers and granted Swift's request for an EUAA.

At hearing, Aquila argued that as long as there would be no harm to its ratepayers, Aquila would continue to enter into an EUAA, when requested. Aquila stated that it would put language in its tariff to that effect but requested that it not be required to set a rate for the EUAA. Aquila argued that Swift was only the second transportation customer to request an EUAA and Aquila believed that there would be few other customers that will request the EUAA. To develop an appropriate rate for the EUAA under these circumstances would be burdensome for Aquila.

III. Position of the Department of Commerce

At hearing, the Department of Commerce (DOC) indicated that the Company's proposal regarding its tariff was reasonable. The DOC indicated that although there may be a number of transportation customers eligible for an EUAA, the eligible customers will not necessarily want it. The DOC indicated that only customers with a certain level of gas buying sophistication would be interested in these agreements and able to meet the requirements to enter into an EUAA.

¹ *In the Matter of the Complaint of Pro-Corn, LLC Against Aquila, Inc. (Formerly UtiliCorp United, Inc.)*, Docket No. G-007,011/C-02-1602 (March 21, 2003).

IV. Commission Action

The Commission will accept Swift s request to withdraw its request for formal action by the Commission. Since this is not the first instance of Aquila refusing a request to enter into an EUAA until the Commission intervened, the Commission will require Aquila to revise its transportation tariff to provide for the availability of EUAAs. This will ensure that others who may want to enter into an EUAA with Aquila will have the opportunity to do so.

The Commission accepts Aquila s proposal that it revise its tariff to include the availability of EUAAs but without setting forth a price associated with the EUAA. This will relieve Aquila of having to determine an appropriate rate but still require Aquila to give notice in its tariff of the availability of EUAAs. The Commission accepts this proposal as reasonable given the small number of customers Aquila projects will request EUAAs.

ORDER

1. Swift s request to withdraw its request for formal action is granted.
2. Aquila shall file, within 90 days of the date of this Order, revised tariff language that will provide for the availability of end user allocation agreements.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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