

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: AQUILA, INC., d/b/a AQUILA NETWORKS	DOCKET NO. WRU-05-18-225
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**ORDER APPROVING SETTLEMENT, GRANTING WAIVER REQUEST, AND
REQUIRING ADDITIONAL NOTICE**

(Issued June 3, 2005)

PROCEDURAL BACKGROUND

On April 14, 2005, Aquila, Inc., d/b/a Aquila Networks (Aquila), filed with the Utilities Board (Board) a request for a waiver of the provisions of Iowa Code § 476.77 and 199 IAC 32 that require Board review for any acquisition, sale, lease, or any other disposition, directly or indirectly, including by merger or consolidation, of the whole or any substantial part of a public utility's assets. Aquila states it has repositioning plans that include the sale of natural gas assets in Michigan, Minnesota, and Missouri, and electric assets in Colorado, Kansas, and Missouri. The waiver request was identified as Docket No. WRU-05-18-225.

Aquila states it cannot predict the order of these sales or when the sales might occur. The net proceeds of the sales will be applied primarily to reduce Aquila's debt and the sale of assets is one of several steps Aquila is taking to address its financial needs and to improve its credit profile. Aquila committed to filing a written report with the Board by letter when any of the assets indicated above are sold.

On April 15, 2005, Aquila and the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a motion requesting the Board approve a settlement agreement resolving all outstanding issues concerning the request for waiver. In the settlement agreement, Aquila agrees to the following conditions:

1. To use the proceeds from the proposed divestiture of non-low-a assets primarily to reduce debt or other significant financial liabilities in a cost-effective manner.
2. To file updating reports within 15 days of completing any transaction.
3. Aquila will not attempt to recover from its low-a customers any specific costs associated with the divestiture transactions.
4. Aquila will accept any reasonable ratemaking treatment by the Board in order to insulate low-a customers from any potential adverse impact on rates, service, or service quality resulting directly from the divestiture of non-low-a properties.

SETTLEMENT AGREEMENT

Subrule 199 IAC 7.2(11) provides that the Board will not approve a settlement unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. The Board finds that the settlement agreement presented by Aquila and Consumer Advocate is reasonable, is consistent with the law, and in

the public interest, except that the Board will add one additional requirement to the terms of the settlement agreement. The Board will require Aquila to give notice to the Board when it files for approval of a sale in another state. This notice will provide the Board the opportunity to request information about the proposed sale prior to the completion of the transaction.

The settlement agreement is in the public interest since it provides protections for Iowa customers so that Iowa customers should not experience any adverse effects of the sale of non-Iowa utility assets by Aquila. The sale of non-Iowa assets is designed to reduce Aquila's debt and this should improve Aquila's financial position and benefit Iowa customers.

WAIVER REQUEST

Pursuant to Iowa Code § 476.77(4), the Board may waive the filing requirements if the Board finds a review of the reorganization is not necessary in the public interest. In 199 IAC 1.3, the Board has adopted four criteria for considering a waiver request. Although these criteria are not directly applicable to a § 476.77 waiver request, they provide a useful framework for analysis. The four criteria are: 1) the application of the rule would pose an undue hardship on the requesting party; 2) the waiver would not prejudice the substantial rights of any person; 3) the provisions of the rule are not specifically mandated by statute or another provision of law; and 4) substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the rule.

Aquila states it would suffer an undue hardship if a filing with the Board would delay approval by the state where the selected property is located and the retirement of current obligations through application of the proceeds of a sale would be in accordance with Aquila agreements and would not prejudice the substantial legal rights of any person. Aquila states that although the filing for Board approval is mandated by statute, provision is also made for the Board to waive its review. Finally, Aquila states that substantially equal protection of public health, safety, and welfare will be afforded by a means other than the provisions subject to the waiver.

The Board finds there is clear and convincing evidence presented by Aquila that meets the four criteria in rule 1.3 and supports granting of the waiver. Delay of a sale of non-Iowa assets to complete a review by the Board could cause Aquila undue hardship if the delay affected the sale. In addition, Aquila has agreed to protections for Iowa customers. The substantial legal rights of any person will not be prejudiced by the waiver and Iowa Code § 476.77 provides for waiver of the review by the Board. Finally, substantially equal protection of public health, safety, and welfare will be afforded by the settlement agreement.

Based upon the approval of the settlement agreement and satisfying the four criteria in rule 1.3, the Board finds that a review of the sale of out-of-state assets by Aquila is not necessary in the public interest. The settlement agreement provides reasonable protection of Aquila's Iowa customers and the additional notice should allow the Board to continue to adequately monitor Aquila's activities. Monitoring of

Aquila's actions to meet the goals in its new business plan is appropriate, since Aquila still faces some significant challenges to improve its financial integrity and ability to attract capital at reasonable prices.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The settlement agreement filed by the Consumer Advocate Division of the Department of Justice and Aquila, Inc., on April 15, 2005, is approved with one condition. Aquila, Inc., shall provide the Board notice of any sale of non-Iowa assets at the time it seeks regulatory approval in another state.

2. The request for waiver identified as Docket No. WRU-05-18-225 filed by Aquila, Inc., on April 14, 2005, is granted.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 3rd day of June, 2005.