

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Brian J. Moline, Chair
 John Wine
 Robert E. Krehbiel

In the Matter of the Application of Aquila, Inc.)
for an Order to Permit the Company Establish) Docket No. 03-AQLG-1076-TAR
Rates for a Weather Normalization Adjustment.)

ORDER GRANTING JOINT MOTION
AND
APPROVING STIPULATION AND AGREEMENT

NOW, the above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) on the Joint Motion to Approve Stipulation and Agreement (Joint Motion) filed by Aquila, Inc., d/b/a Aquila Networks-KGO (Aquila), and the Commission Staff (Staff). Having examined its files and records, and being duly advised in the premises, the Commission finds as follows:

I. BACKGROUND

1. On June 19, 2003, Aquila, pursuant to K.S.A. 66-117 and K.S.A. 66-1.200 *et seq.*, filed its Application with the Commission seeking an Order permitting Aquila to establish a Weather Normalization Adjustment (WNA) mechanism beginning with the 2003-2004 heating season.

2. On June 25, 2003, the Commission entered its order suspending Aquila's Application for not more than two-hundred-forty (240) days from the date of filing the Application, June 19, 2003, until February 14, 2004.

3. On June 26, 2003, the Citizens' Utility Ratepayer Board (CURB) filed a petition to intervene in this matter and on July 9, 2003, the Commission entered its Order granting CURB's intervention.

4. Aquila and Staff entered into a Stipulation and Agreement dated September 10, 2003 (Stipulation and Agreement) and on September 11, 2003, Aquila and Staff filed their Joint Motion to Approve Stipulation and Agreement, including as Attachment A thereto the Stipulation and Agreement. The terms of the Stipulation and Agreement modify the WNA mechanism proposed by Aquila in its Application and the resulting WNA rider is incorporated as Exhibit A to the Stipulation and Agreement. CURB has not joined in the Stipulation and Agreement or the Joint Motion, but does not oppose the Joint Motion.

5. On September 11, 2003, Staff filed the Memorandum of Drs. Soojong Kwak and John Cita in support of the Stipulation and Agreement.

II. DISCUSSION

6. Aquila and Staff stipulate and agree that Aquila's WNA mechanism shall be conditioned by the following terms as set forth in the Stipulation and Agreement:

“4. Aquila and Staff stipulate and agree as follows:

A. Aquila WNA Rider

If the Commission approves the instant Stipulation and Agreement, then the Commission would effectively approve Aquila's proposed WNA Rider attached hereto as Exhibit A, which has incorporated modifications agreed to by Staff and Aquila. The agreed upon modifications are set forth in paragraph 4C herein. The initial WNA Calculation Period would begin October 1, 2003, ending September 30, 2004. The initial WNA Factors would appear on monthly bills rendered after November 1, 2004, making the WNA Rider fully effective with sales service rendered on and after October 1, 2003, as provided in the Application. The WNA Factor shall appear as a separate item on customers' monthly bills.

B. Customer Education Materials

In order to describe and explain the WNA Factors which will appear on customers' bills, Aquila agrees to work closely with the Commission's Staff, including the Public Affairs and Consumer Protection Division in developing and implementing consumer education materials, and will provide copies of any and all such customer education materials to Staff for review and comment, prior to its use.

C. Modifications to the WNA Filing that Have Been Agreed to by Staff and Aquila

(1) Coefficients. Staff and Aquila agree that the Coefficients set forth in Exhibit B hereto shall be included and used in the calculation of WNA Factors instead of the Coefficients that were proposed and included in Aquila's Application.

(2) Determination of Normal Weather. For purposes of determining "normal" weather, the "30-year normals" published by NOAA will be utilized for the following weather stations: Dodge City, Garden City, Goodland, Hutchinson, Lawrence, Liberal and Wichita.

D. WNA-Related Risk Adjustment to ROE in Future Rate Case

Aquila and Staff agree that implementation of a WNA Rider may influence the local distribution company's weather-related risk and, therefore, its financial risk. Staff specifically reserves its right to take the position in Aquila's future rate cases that any reduced risk associated with the implementation of the WNA Rider should be considered in the determination of the utility's return on equity (ROE) and that it could be appropriate for the Commission to lower the Company's allowed ROE to reflect this reduction in weather-related risk. Aquila specifically reserves its right when determining the appropriate ROE in future rate cases to consider the experience of other local distribution utilities that may or may not have WNA Riders and to take the position that the Commission would be justified in making no change to the Company's ROE as a result of having a WNA Rider.”

7. The instant Application represents the third request of a natural gas public utility seeking Commission approval of a WNA mechanism. The first such request submitted by Kansas Gas Service Company (Kansas Gas Service), with minor modifications, was approved pursuant to the Commission's Order entered October 27, 2000 in Docket No. 01-KGSG-229-TAR. The second request for approval of a WNA mechanism was submitted by Atmos Energy (Atmos). Atmos' requested WNA mechanism is essentially equivalent to the WNA mechanism approved for Kansas Gas Service with two basic differences. In Atmos' WNA mechanism, the "WNA factor" is updated monthly rather than annually and there is no true-up term associated with Atmos' WNA factor. Atmos' WNA mechanism was approved pursuant to the Commission's Order entered May 27, 2003 in Docket No. 03-ATMG-539-TAR. Aquila's Application, the third request for a WNA mechanism, is very similar to the WNA mechanism approved for Kansas Gas

Service differing only in the following particulars: (i) estimation of heat sensitive factors and (ii) weather station selection. Staff Memorandum at p. 1.

8. The general reasons for implementing a WNA mechanism remain unchanged from those existing at the time the first WNA mechanism was approved by the Commission. According to Staff, those reasons include a closer match between the annual recovered revenue and annual allowed revenue, less volatile revenue recovery, and an improved ability of utilities to forecast actual budgets and perform long term planning. Implementation of a WNA mechanism may reduce shareholder exposure to weather risk as well, possibly leading to lowered shareholder required return on equity (ROE), further translating to a lower cost of service, thus lower rates. Staff Memorandum at p. 2. Staff has specifically reserved the right to take the position in Aquila's future rate cases that any reduced risk associated with the implementation of the WNA mechanism should be considered in determining the utility's ROE and that it could be appropriate for the Commission to lower the company's allowed ROE to reflect this reduction in weather-related risk. Stipulation and Agreement at p. 3.

III. FINDINGS AND CONCLUSIONS

9. Aquila is a certified public utility authorized to transact the business of a natural gas public utility within the state of Kansas. The proposed WNA mechanism would be implemented as a tariff rider and, therefore, would constitute a change in the effective tariff rates. Thus, the Commission has jurisdiction over Aquila and the subject matter herein pursuant to K.S.A. 66-104, K.S.A. 66-117 and K.S.A. 66-1,200 *et seq.*

10. The Commission has the power to approve a non-unanimous settlement, *Farmland Industries Inc. v. Kansas Corporation Comm'n*, 24 Kan. App.2d 172, 186 (1997). However, the Commission must make an independent judgment based on substantial competent evidence that the settlement proposal will establish just and reasonable rates, efficient and sufficient service, and

just and reasonable practices, rules and regulations. *Id.* at 186. In making this determination, the Commission takes into consideration the immediate and future impact upon consumers.

11. Aquila and Staff entered into the Stipulation and Agreement as an appropriate and reasonable means of concluding this matter. The Stipulation and Agreement expresses the parties' agreement with regard to necessary modifications to the WNA mechanism proposed in Aquila's Application. As a result of these modifications, the WNA factor will more accurately reflect the temperature sensitivity of Aquila's customers. The more accurate the WNA factor, the smaller the expected true-up due to WNA implementation. In support of the Stipulation and Agreement, Staff has filed its Memorandum providing a thorough analysis of the requested WNA, as modified by the Stipulation and Agreement, and concludes that, as a matter of policy, implementation of WNA mechanisms remains reasonable. In Staff's opinion, the Commission could find approval of the Stipulation and Agreement to be consistent with the public interest. CURB has not joined in the Stipulation and Agreement, but does not oppose the Joint Motion.

12. The Commission concurs with the position taken by Staff in its Memorandum. Implementation of a WNA mechanism is reasonable and in the public interest. However, the tariff rider for the proposed WNA mechanism, at footnote 8, creates ambiguity with respect to further review and midstream adjustments. The tariff rider, at footnote 8, should be corrected as follows:

8. The WNA Account Balance may be periodically reviewed by the Company and by the Commission. The WNA factor may be revised by the Commission if it appears at any time on review that the WNA Account Balance at the end of WNA Collection Period will be substantial.

The Commission therefore approves the proposed WNA mechanism, as conditioned by Stipulation and Agreement, and as corrected above.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The parties' Joint Motion is hereby granted and the Stipulation and Agreement is hereby approved and incorporated in this Order by reference.

B. Aquila's Application for a WNA mechanism and WNA rider is hereby approved, as conditioned by the terms of the Stipulation and Agreement and as corrected above.

C. Aquila shall file its WNA rider, incorporating the correction provided above, with the Commission for approval within thirty (30) days of the date of this Order.

D. A party may file a petition for reconsideration of this Order within fifteen (15) days of service. If the order is served by mail, three (3) days are added to the above time period.

E. The Commission retains jurisdiction of the subject matter and parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Moline, Chair; Wine, Comm.; Krehbiel, Comm.

Dated: SEP 12 2003

ORDER MAILED

SEP 12 2003

 Executive Director

Susan K. Duffy
Executive Director

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