



MINNESOTA  
DEPARTMENT OF  
COMMERCE

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June 30, 2003

**PUBLIC DOCUMENT  
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Burl W. Haar  
Executive Secretary  
Minnesota Public Utilities Commission  
350 Metro Square Building  
121 7<sup>th</sup> Place East  
St. Paul, Minnesota 55101-2147

**RE: Comments of the Minnesota Department of Commerce**  
Docket No. G007,011/S-03-681

Dear Dr. Haar:

Attached are the comments of the Minnesota Department of Commerce (Department) in the following matter:

A petition submitted by Aquila, Inc. pursuant to Minnesota Statute 216B.49, subdivision 3, requesting Minnesota Public Utilities Commission (Commission) approval to encumber Aquila Networks-Peoples and Aquila Networks-NMU Minnesota utility property to secure the payment of a \$430 million loan (together with the First Mortgage Bonds, the Term Loan Facility) and to secure the future replacement debt offerings for working capital requirements not to exceed \$430 million.

The petition was filed on April 30, 2003 by:

Jon R. Empson  
Senior Vice President  
Aquila, Inc.  
1815 Capitol Avenue  
Omaha, Nebraska 68102

The Department herein responds to the Aquila, Inc.'s (Aquila, or the Company) initial petition and subsequent written and oral responses to Department Information Requests. The Department recognizes that the Company filed "Supplemental Direct Testimony" on June 18, 2003, however, the Department has not had sufficient time to fully review this additional information prior to submitting its comments. The Department expects that Aquila can include this information in its Reply Comments and the Department can then address this discussion if so requested to by the Commission.

Enforcement: 1.800.657.3602  
Energy Information: 1.800.657.3710  
[www.commerce.state.mn.us](http://www.commerce.state.mn.us)

Licensing: 1.800.657.3978  
Unclaimed Property: 1.800.925.5668 Schedule TJR-30.1  
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As to the current comments, the Department recommends that the Minnesota Public Utilities Commission deny Aquila, Inc.'s request to encumber Minnesota regulated property. The Department is available to answer any questions the Commission may have

Sincerely,



MARCUS D. GROSS  
Rates Analyst

MDG/ja  
Attachment



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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE  
MINNESOTA DEPARTMENT OF COMMERCE

DOCKET NO. G007,011/S-03-681

I. SUMMARY OF AQUILA, INC.'S REQUEST

Pursuant to Minnesota Statute (Minn. Stat.) 216B.49, subdivision (subd. 3) and Minnesota Rules (Minn. R.), 7825.1200, 7825.1400, and 7825.1500, Aquila, Inc. (Aquila, or the Company) requests Minnesota Public Utilities Commission (Commission) approval to encumber Aquila Networks-Peoples and Aquila Networks-NMU Minnesota utility property to secure the payment of a \$430 million loan (together with the First Mortgage Bonds, the Term Loan Facility) (Term Loan Facility) and to secure the future replacement debt offerings for working capital requirements not to exceed \$430 million.<sup>1</sup>

On April 9, 2003, Aquila entered into the \$430 million three-year Term Loan Facility and a 364 day \$100 million loan that replaced an amount outstanding under the Company's prior revolving credit facilities and retired other maturing debt obligations.<sup>2</sup> In connection with the Term Loan Facility, Aquila has issued First Mortgage Bonds under its Indenture of Mortgage and Deed of Trust, dated as of April 1, 2003, to Bank One Trust Company, N.A., Trustee (the Indenture) and its First Supplemental Indenture thereto dated April 9, 2003, to Bank One Trust Company, N.A. Trustee (the First Supplemental Indenture). The Indenture, as amended and supplemented by the First Supplemental Indenture, constitutes a first mortgage lien on the property of Aquila. Currently, Aquila's regulated utility assets located in Michigan and Nebraska are subject to the lien of the Indenture.<sup>3</sup>

<sup>1</sup> Subd. 3. Commission approval required. It shall be unlawful for any public utility organized under the laws of this state to offer or sell any security or, if organized under the laws of any other state or foreign country, to subject property in this state to an encumbrance for the purpose of securing the payment of any indebtedness unless the security issuance of the public utility shall first be approved by the commission. Approval by the commission shall be by formal written order.

<sup>2</sup> The \$100 million loan can be increased to \$200 million under certain circumstances, but would continue to be secured exclusively by non-domestic utility property.

<sup>3</sup> Michigan and Nebraska do not have state laws that require Commission approval for encumbrance of regulated assets.

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According to Aquila, this Term Loan Facility is needed due to the Company's particular financial difficulties and the financial difficulties and requirements of the energy sector at large. Prior to the difficulties experienced by companies in the energy sector, Aquila was a diversified utility. The Company owned:

- Domestic and international utility networks;
- Merchant services (including wholesale energy and risk management services);
- Other energy industry investments (including electric generation, gas storage and gathering facilities); and
- Telecommunication operations.

The Company states that as a result of Enron Corporation's perfidy and the uncertainty resulting from the California energy crisis, creditors began to have concerns about the financial conditions of merchant energy companies. Thus, Moody's Investors Service (Moody's) and Standard and Poor's Corporation (S&P) developed more stringent credit guidelines for marketing and trading companies.<sup>4</sup> Specifically, Moody's and S&P were looking for merchant companies to have operating cash flow and/or access to additional liquidity substantially beyond traditional levels.

These guidelines raised the requirements for liquidity and balance sheet strength for merchant companies that Aquila could not meet nor sustain on an ongoing basis. Consequently, on August 2, 2002, the Company made the decision to voluntarily exit the merchant business. This decision left the Company with many stranded assets, which contain significant residual risk. Also, as Aquila attempted to shore up its balance sheet in the face of the energy-wide credit crunch, the Company was forced to sell many assets into a "buyer's" market, which resulted in sizeable book losses.

According to the Company, the deteriorating market conditions forced Aquila to violate certain interest coverage ratio covenants in the bank credit revolver. In the process of negotiating a new credit revolver and gaining a waiver of the covenant violation for the banks, Aquila had to agree to several conditions, including a commitment to make a reasonable effort to gain state regulatory approval to secure a new credit revolver with utility assets. This instant petition constitutes the Company's efforts to secure the Commission's approval to encumber Minnesota regulated assets.

## II. DEPARTMENT'S ANALYSIS

The Department's analysis of this filing contains three Sections:

- financial review of Aquila;
- discussion of the Term Loan Facility and its purpose; and

<sup>4</sup> Aquila Merchant Services became one of the largest providers of wholesale energy and risk management services in North America. Aquila ceased merchant operations after August 2, 2002.

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- effects of encumbrance.

Two main principles guide the Department's analysis:

- 1) A clear accounting separation must exist between any Minnesota utility's regulated and nonregulated activities. Regulated ratepayers are only responsible for paying the costs associated with providing regulated utility service to these customers. Requiring regulated ratepayers to assume responsibility for debts that were incurred to support nonregulated businesses violates the separation principle.
- 2) The encumbrance of Aquila's regulated assets in Minnesota must be in the interest of Aquila's Minnesota ratepayers.

Aquila has stated that encumbrance of regulated assets will produce two positive benefits for the Company. First, the Company will receive a 75 basis point reduction in the interest rate of the Term Loan Facility. Second, Aquila will use the funds above and beyond those required for domestic utility working capital needs to buy back more expensive outstanding debt. However, the Company failed to show how Minnesota ratepayers would profit from these two benefits specifically, and benefit from the encumbrance of Aquila's Minnesota assets in general.

Aquila's financial difficulties have been caused by its nonregulated operations. As DOC Attachment 1 shows, Aquila's regulated operations have been the only solid money making business for Aquila. "Telecommunications" and "Merchant Services," two lines of business in which Aquila became involved in since the late 1990's, have cost Aquila millions of dollars.

Any discussion of Aquila's request must begin with an analysis of Aquila's current financial position. The Department provides such an analysis below.

#### A. *REVIEW OF AQUILA'S FINANCIAL STANDING*

On January 15, 2003, the Aquila Financial Inquiry docket (Initial Comments) (Docket No. G007,011/CI-02-1369) was heard by the Commission. At that meeting, Mr. Randal Miller (Aquila Vice President Finance and Treasurer) explained the Company's plan for regaining its investment grade bond rating and its overall long-term financial viability. This section provides an overview of how the Company's financial situation has changed since that meeting.

##### *1. Change in Financial Condition of Aquila*

One measure of a company's financial soundness is rating agencies' bond "ratings" for that particular company. These ratings reflect the relative risk of investing in a certain company. In its Initial Comments in Aquila's financial review, the Department included Aquila's Senior Unsecured bond rating. At that time the Company's ratings were:

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Moody's:	Ba2
Fitch Ratings (Fitch):	BBB-
S&P:	BBB-

Only Moody's rating was non-investment grade at that time. Both Fitch and S&P were one step above non-investment grade.

As of May 30, 2003, Aquila's current Senior Unsecured bond ratings are:

Moody's:	Caal
Fitch:	B-
S&P:	B

All three of the bond ratings fell below investment grade. In fact, all three of the ratings are several steps below investment grade.

In assigning a rating to Aquila's new \$430 million three-year secure credit facility Moody's stated recently:

Aquila's ratings reflect (1) weak cash flow generation relative to total debt despite recent asset divestitures; (2) asset sales proceeds which do not reduce debt incurred to purchase the same assets; (3) liquidity concerns related to unwinding its trading business; and (4) the quality of the collateral as mostly stock in subsidiaries. The ratings reflect Moody's concern that asset sales do not allow sufficient cash flow to repay parent debt to a level consistent with the expected cash generation of the remaining businesses.

The non-investment grade of Aquila's debt and the discussion by Moody's indicate that Aquila may not be able to repay its debt obligations in a timely manner.

Another measure of financial soundness is the S&P Long Term Issuer Credit Rating Ratios. Standard and Poor's Compustat service provides these ratios. The Department included the fiscal year 2001 (FY01) information in its Initial Comments in Docket No. G007,011/CI-02-1369 as DOC Attachment 4. The same information for fiscal year 2002 (FY02) is included in these Comments as DOC Attachment 2. Of special interest are the "Pretax Interest Coverage" and "Cash Flow Interest Coverage" measures. As can be seen in DOC Attachment 2, both of these measures for FY02 are negative. These ratios indicate that Aquila does not have the income before taxes or the cash flow to cover its interest payments. Also, as can be seen in DOC Attachment 2, both of these measures for Aquila are comparable to measures for other utility companies that are in default.

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Also, as shown in DOC Attachment 3, the S&P sample Credit Scores show that Aquila's financial position has deteriorated when compared to the Company's financial position in FY01. As can be seen, all the Aquila "Implied Scores" are "BB" or are "Below B."<sup>5</sup> These ratings imply current financial adversity and a relative vulnerability to default.

## 2. *Asset Sales*

The most significant change since the Commission meeting of January 15, 2003, in which Aquila's financial standing was discussed before the Commission, has been Aquila's continued divestment of non-core assets. The following have been major divestments since January:

- On April 22, 2003, Aquila announced that it would sell all of its Australian interests for approximately US\$589 million, which after fees, expenses, and taxes is projected to yield net cash proceeds of US\$445 million at closing.<sup>6</sup>
- On May 13, 2003, Aquila announced that it had terminated its 20-year tolling commitment with Acadia Power Partners LLC for \$105.5 million. Aquila paid Acadia \$105.5 million to release Aquila from all of its obligations under the toll. The transaction returned to Aquila \$45 million in posted collateral and eliminates \$843 million in payments due to Acadia over the remainder of the 20-year term. Aquila entered into the contract with Acadia in 2000.<sup>7, 8</sup>

<sup>5</sup> According to Standard & Poor's Compustat Data Guide, "B indicates a greater vulnerability to default but currently have the capacity to meet interest payments and principal payments. Adverse business, financial, or economic conditions will likely impair capacity or willingness to pay interest principal. S&P also assigns the B rating to debt subordinated to senior debt that is assigned an actual or implied BB or BB- rating.

<sup>6</sup> These interests include:

- United Energy, managed and 34%-owned by Aquila, is an electric distribution utility in Melbourne, Victoria. United Energy also manages the gas distribution of Multinet Gas, in which Aquila has a 25.5% interest. United Energy and Multinet Gas distribute energy to 578,000 electric customers and 630,000 natural gas customers in areas of metropolitan Melbourne.
- Uecomm, 66%-owned by United Energy, owns fiber-optic communications networks. Uecomm serves corporate, government, and wholesale customers in five major Australian cities.
- Alinta Gas, 45%-owned by Aquila and United Energy jointly, is the major supplier and distributor of natural gas in the state of Western Australia. AlintaGas has 463,000 gas distribution customers in Western Australia, including the city of Perth.

<sup>7</sup> Under the toll, Aquila supplied the natural gas to a combined cycle power plant in Eunice, Louisiana, and paid fixed capacity payments for the right to sell into the wholesale market 580 megawatts of power generated by the plant.

<sup>8</sup> Aquila accessed the additional \$100 million available under the 364-day bridge facility for the funds to buyout this contract with Acadia.

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- On May 22, 2003, Aquila and FirstEnergy announced plans to sell their Aquila Sterling Ltd. Joint venture to Scottish and Southern Energy for \$70 million. Aquila owns 79.9 percent of this joint venture and will share in the proceeds with FirstEnergy. Aquila's share is expected to net the Company about \$14 million.<sup>9</sup>

These non-core asset sales will free up needed liquidity and resources for regulated assets, but the Company continues to have to take book losses on the sales, as assets are sold for less than the original purchase price. As Moody's states above these non-core asset sales are, "asset sales proceeds which do not reduce debt incurred to purchase the same assets."

### 3. Summary

The Department's analysis concludes that based on Aquila's current financial circumstances, as discussed above, the Company has not shown it is likely to generate sufficient cash flow to meet its future debt payment requirements.

#### B. OVERVIEW OF TERM LOAN FACILITY

##### 1. Loan Facility

As discussed above, the combination of Aquila's August 2002 decision to exit the merchant business and the rapid divestiture of non-core assets that resulted in net book losses, caused the Company to breach several loan agreement covenants for maintaining specified interest coverage ratios. In order to avoid a mandatory repayment of the loans, Aquila received waivers of these breached covenants from a series of banks. The waivers and bank revolvers expired on April 12, 2003. Aquila's total debt due on April 12, 2003, was approximately [TRADE SECRET DATA HAS BEEN EXCISED].<sup>10</sup>

In order to refinance these outstanding obligations, Aquila entered into a new \$430 million, three-year secured credit facility, comprising a term loan facility and a pre-funded letter of credit facility.<sup>11</sup> Aquila also entered into a \$200 million, 364-day bridge facility, comprising up to \$100 million payable at closing and an option to draw an additional amount of up to \$100 million.<sup>12</sup>

<sup>9</sup> Aquila Sterling is the owner of Midlands Electricity, the fourth biggest electric utility in the United Kingdom. Midlands Electricity serves 2.4 million network customers and also owns interests in 884 megawatts of generating capacity in the United Kingdom, Turkey, and Pakistan.

<sup>10</sup> On that date, Aquila had [TRADE SECRET DATA HAS BEEN EXCISED].

<sup>11</sup> The three-year Term Loan Facility is secured by a pledge of certain utility network assets in Nebraska and Michigan, the stock of the holding company for the Canadian utility operations, and a junior lien on certain of the Company's independent power projects (IPPs).

<sup>12</sup> The bridge facility was borrowed by UuliCorp Australia, Inc., a wholly-owned subsidiary of Aquila, and is non-recourse to Aquila. The bridge facility will not be supported by an Aquila parent guarantee.



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This facility is intended effectively to serve as an advance on the planned sale of the Company's Australian investments and is secured by the pledge of the stock of certain of Aquila's Australian holding companies, certain Independent Power Projects (IPPs), as well as a junior lien of the Canadian operations.

On April 11, 2003, Aquila successfully issued the \$430 Term Loan Facility collateralized by regulated assets in the states of Nebraska and Michigan and by the stock of its Canadian holding company. The above discussed loan agreements allowed Aquila to meet all of its April 12, 2003, obligations of [TRADE SECRET DATA HAS BEEN EXCISED]. The difference between Aquila's obligations and the total loan amount was only [TRADE SECRET DATA HAS BEEN EXCISED], which is less than the stated amount needed for domestic utility working capital of \$250 million. However, as the Company explained to the Department in a June 5, 2003, conference call, this [TRADE SECRET DATA HAS BEEN EXCISED] was combined with cash on hand to provide the Company with the needed domestic utility working capital.

## 2. *Operation and Use of Credit Facility*

There is a delay in the time between when Aquila purchases and pays suppliers for natural gas supplies and electric power purchases and when the cost for these purchases can be collected from Aquila's customers. Thus, Aquila must have access to working capital to maintain its operations. The Company has stated that it needs a credit facility of \$250 million for domestic utility working capital needs across all of its jurisdictions.

The Company stated that it has conducted a study to ensure that \$250 million is the proper amount of working capital that the domestic utilities require. Aquila has included this Working Capital Requirements Study (Study) as Exhibit 3 of Rick Dobson's Direct Testimony. The Study itself is trade secret, but its purpose is to show the amount of working capital Aquila will require for its domestic utility business. The Department reviewed the Study and found it to be reasonable. Further, the Department's review of the Study determined that the assumptions used are reasonable.

However, the Term Loan Facility would be used for more than just to support domestic working capital needs. The Company has stated that \$250 million of the \$430 million Term Loan Facility would be available for regulated use and \$180 million of the \$430 million Term Loan Facility would be available for nonregulated use. The Company has discussed selling its nonregulated assets, so it is not clear to the Department from Aquila's filing for what purpose the \$180 million portion of the Term Loan Facility would be used. The Company has provided no information to show that any of the \$180 million would go to support domestic regulated utility operations.

As stated in Section I. *Summary of Aquila, Inc.'s Request*, Aquila is using the regulated utility assets in Michigan and Nebraska, a pledge of the capital stock of the holding company of Aquila's Canadian utilities, and a junior lien on the equity interest in the holding company of Aquila's IPP investments as collateral for the \$430 million Term Loan Facility. However, the Company wants to divest its non-core assets, thus it wants to release the pledge of the capital

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stock of the holding company of Aquila's Canadian utilities and sell those properties. The Company expects to generate [TRADE SECRET DATA HAS BEEN EXCISED] from this sale, of which [TRADE SECRET HAS BEEN EXCISED] would be used to pay back debt of the Canadian holding company. Additional proceeds from this sale would be used to repay outstanding Aquila debt.

Under the terms of the Term Loan Facility, once Aquila sells the Canadian assets, the \$430 million Term Loan Facility would be reduced because the Michigan and Nebraska regulated assets could only support a \$200 million term loan facility. Thus, Aquila wants to substitute its other regulated utility assets in Missouri, Iowa, Minnesota, Kansas, and Colorado as collateral for the Term Loan Facility and maintain the \$430 million loan capacity. Aquila's plan is that if it gains the various commission approvals to pledge these regulated assets, the assets would be encumbered and pledged directly to support the \$430 million Term Loan Facility.

In a conference call with Company representatives on June 5, 2003, the Department sought to clarify how the extra \$180 million portion of the Term Loan Facility would be used. The Company responded that after the sale of the Canadian assets, the Company would have some IPP's and some "remaining capacity service activity" on the nonregulated side. After further discussion with the Company, the Department concluded that the \$180 million portion would not be used to support these nonregulated activities but, instead, would be used to buy back more expensive outstanding debt, albeit debt largely resulting from nonregulated activity.

Once the Canadian properties are sold, Aquila wants 100 percent of the \$430 million Term Loan Facility to be supported by regulated assets. In its initial filing in this matter, Aquila made the argument that it is only "fair" to have regulated assets supporting a credit facility utilized strictly for its needs.

This argument is flawed. First, regulated assets, as shown by the Company in its Study, would require, in a worst case scenario, a \$250 million credit facility. The Company's request in this docket is for a \$430 million credit facility, \$180 million more than required for regulated assets. Second, Aquila's need for credit facilities is the result of its failed nonregulated businesses. Such debt should not be backed up by regulated assets.

Aquila's proposal belies its claimed separation of regulated and nonregulated activities. While it claims to agree regulated assets should support a credit facility for use by regulated operations and nonregulated assets should support a credit facility for use by nonregulated operations, the Company's plan ensures that no nonregulated assets will be left among Aquila's business interests. Thus, no nonregulated assets would be available to support the extra \$180 million portion of the Term Loan Facility. Aquila has made it known that if the various state commissions do not approve the encumbrance requests then the dollar amount of the Term Loan

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Facility would have to be "waterfalled" down to an amount less than \$430 million. To the Department, this is what should happen, as it is unreasonable for regulated assets to be used to support a credit facility for use by nonregulated operations.

Moreover, the Company is seeking to encumber regulated assets in order to use a credit facility, in part, to buy back debt that was, by and large, taken on by Aquila to pay for its various nonregulated activities. Such a request conflicts with the important principle of a strict accounting separation between the regulated and nonregulated operations of a utility. The idea of separation "to protect ratepayers from unwarranted costs" has been acknowledged by the Commission on numerous occasions, including the Order for Aquila's Financial Inquiry docket (Docket No G007,011/CI-02-1369).

Aquila has offered no compelling reason(s) that would justify violation of the principal of separation. Therefore, the Department recommends rejection of Aquila's request for approval to encumber Minnesota regulated assets.

### C. EFFECTS OF ENCUMBRANCE

This Section discusses the implications of an encumbrance on Minnesota regulated property. The implications that will be discussed would potentially come about as a result of an Aquila bankruptcy filing. In no way is the Department expecting, forecasting, or otherwise predicting that Aquila may face bankruptcy. Any discussion of the impacts of a potential bankruptcy is included as a "worst case scenario" analysis.

#### 1. Practical Implications of Encumbrance

As defined, an encumbrance is simply a lien or claim on property. The Department's concerns focus on the implications of a lien on Minnesota regulated property. As Aquila states on page 4 of its "Petition for Approval,"

As explained below, pledging utility assets does not increase the risk to ratepayers, as a utility's assets are always available to debtors. The act of securing debt with utility assets is primarily a tool to improve the position of lenders over general creditors. Thus, it is important to the issuers of debt, but does not increase the risk for ratepayers.

Thus, according to the Company an encumbrance does not entail any risk in and of itself; the risk is with debt. In this case, the encumbrance is concerned with the Term Loan Facility, which is just one small part of the Company's overall debt. The Company claims that this encumbrance gives the Term Loan Facility creditors first claim to Aquila's assets, in the context of a bankruptcy proceeding.

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An important issue, however, is whether or not the encumbrance somehow allows the creditor to seize and dispose of Aquila's regulated assets outside the protection of a bankruptcy proceeding. In Article IX in the *Indenture of Mortgage and Deed of Trust* agreement between Aquila and Bank One Trust Company, the Trustee (Bank One) may, in the event of default "enter upon and take possession of, the Mortgaged Property." Thus, if default occurs outside the protection of a bankruptcy proceeding then Aquila's Minnesota ratepayers will be disadvantaged vis-a-vis bankruptcy. The specifics are discussed further below.

## 2. *Default vs. Bankruptcy*

In response to Department Information Request No. 9 (DOC Attachment 4), the Company was asked if the Trustee could take possession of the encumbered assets without a bankruptcy proceeding. The Company responded:

Yes, the contract gives the trustee that right. Unsecured creditors have a similar right to take possession of Aquila's assets and sell them for the purpose of satisfying judgements obtained against Aquila for defaulting on its obligations to them.

The practical reality is that if a secured or unsecured creditor attempted to take possession of Aquila's assets for the purpose of satisfying Aquila's defaulted obligations to that creditor, Aquila would file for bankruptcy protection. The automatic stay provision of the bankruptcy code would require the creditor to immediately halt its collection efforts. Aquila would then be permitted to retain its assets and operate its business while it developed a reorganization plan in accordance with the bankruptcy code.

The Company attempts to minimize the possible effect of default. It claims that default on the Term Loan Facility and a bankruptcy filing are the same thing. It claims that, although the Trustee could take immediate possession of Aquila's property in an event of default this really would not occur because Aquila would seek bankruptcy protection to prevent that from happening. Then the bankruptcy court would sort out the specifics of the disposition of the Company's assets.

The document's own terms speak for themselves. The Company does not have to file for bankruptcy in the event of default. It is the Trustee's right to seize the Company's assets in the "Event of Default" and Aquila does not have to file for bankruptcy protection in that situation.

Aquila's response to Information Request No. 9 supports the Company's statement from Page 4 of the Petition that the risk is not with any regulated asset encumbrance but rather with the debt of Aquila. In sum, the risk for the ratepayers does not appear to be any greater with encumbrance than without encumbrance in the event of bankruptcy.

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### 3. *Public Interest Standard*

The litmus test for the Department's recommendation for approval of the Company's request is that the approval would be in the public interest. Based on this standard, the Department must determine if the benefits of encumbrance (the purchase of more expensive outstanding Aquila debt with the \$180 million of the Term Loan Facility and the 75 basis point reduction in the interest rate on the Term Loan Facility) significantly improves the Company's financial position. To date, the Company has not provided sufficient information that would allow the Department to reasonably conclude that encumbrance is in the public interest. Thus, the Department recommends the Commission reject the Company's request for approval to encumber Minnesota regulated assets.

Further, the Department has always maintained that a clear accounting separation must exist between a utility's regulated and nonregulated operations. Aquila's current request violates that premise. Aquila has offered no compelling reason(s) that would justify violation of this separation principle. Therefore, the Department recommends rejection of Aquila's request for approval to encumber Minnesota regulated assets.

In summary, the Department cannot identify how the Company's request to encumber Minnesota regulated assets is in the public interest. The Department invites Aquila to address the Department's concerns that have been detailed herein in the Company's Reply Comments.

## III. CONCLUSIONS AND RECOMMENDATIONS

Based on its analysis, the Department concludes that Aquila's request for approval to encumber Minnesota regulated assets is not consistent with the public interest. Upon review of Aquila's request to encumber Minnesota regulated property, the Department recommends that the Commission deny the Company's request for approval, absent a showing in Aquila's Reply Comments of:

- A showing that encumbrance is in the public interest; and
- a compelling reason(s) to violate the principle of keeping a clear accounting separation between a utility's regulated and nonregulated activities.

/ja



Aquila

## 2002 & Q1 EBIT by Business Segment

(\$ Millions)	Full Year	Q1		Variance
	2002	2003	2002	
1) Global Networks Group:				
2) Domestic Networks	\$ 1,251.8	\$ 751.0	\$ 451.0	\$ 301.0
3) Quanta	(699.3)	(.2)	8.1	(8.3)
4) Communications	(256.1)	(4.2)	(7.0)	2.8
5) International Networks	(70.1)	10.6	33.6	(23.0)
6) Total Global Networks	(899.7)	81.2	79.7	1.5
7) Total Merchant Services	(671.0)	(101.3)	23.7	(125.0)
8) Corporate and Other	(37.7)	(1.1)	(16.7)	15.6
9) Total EBIT	\$(1,608.4)	\$(21.2)	\$ 86.7	\$ (107.9)
10) Interest Expense	249.5	65.1	48.6	(16.5)
11) Income Tax Benefit	(135.1)	(34.4)	(1.9)	32.5
12) Earnings (Loss) from Continuing Operations	\$(1,722.8)	\$(51.9)	\$ 40.0	\$ (91.9)

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FROM-WM DEPT OF COMMERCE

TUESDAY

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AQUILA INC

LONG TERM ISSUER CREDIT RATING RATIO

PICKER: BLA  
 STREET: DZUL

Industry Comparison

CURRENT RATING AS OF 8/14/03  
 SP4 ISSUER CREDIT RATING

GICS Group [Utilities]

Rating	# of Cos. 243	Long Term Debt % of Total Capital			Pretax Interest Coverage			Cash Flow Interest Coverage		
		Min	Avg	Max	Min	Avg	Max	Min	Avg	Max
AAA	1	96.0	96.9	96.9	1.2	1.2	1.2	1.9	1.9	1.9
AA	6	34.8	40.6	46.8	0.5	3.5	5.8	3.5	5.1	7.8
A	88	17.2	48.2	87.0	(1.0)	3.7	9.4	0.4	4.6	11.4
BBB	103	23.6	54.0	87.4	(1.3)	2.9	8.3	0.4	3.9	9.0
Speculative	40	25.4	59.4	127.4	(7.0)	1.5	8.6	(5.5)	2.1	7.1
In Default	5	(15,950.0)	(3,144.0)	113.4	(6.3)	0.7	4.0	(4.3)	1.3	4.0
AQUILA INC			59.7			(7.0)			(5.5)	

Avg. Not Available

Rating	# of Cos. 243	Cash Flow % of Long Term Debt			Asset Turnover			Equity Book Value/ Book Value of Liabilities		
		Min	Avg	Max	Min	Avg	Max	Min	Avg	Max
AAA	1	6.2	6.2	6.2	0.2	0.2	0.2	0.0	0.0	0.0
AA	6	17.0	32.9	67.0	0.4	0.5	0.7	0.3	0.5	0.7
A	88	(5.0)	27.3	80.0	0.2	0.4	0.9	0.1	0.5	1.9
BBB	103	(8.9)	22.3	67.5	0.1	0.4	1.1	0.1	0.4	0.9
Speculative	40	(62.9)	9.8	50.0	0.1	0.4	1.1	(0.1)	0.4	1.3
In Default	5	(220.4)	(17.3)	77.3	0.2	0.4	0.6	(0.1)	0.5	1.1
AQUILA INC			(62.9)			0.2			0.2	

Rating	# of Cos. 243	Return on Total Capital %			Operating Income % of Sales			Total Liabilities % of Tangible Net Worth		
		Min	Avg	Max	Min	Avg	Max	Min	Avg	Max
AAA	1	1.0	1.0	1.0	40.1	40.1	40.1	4,289.8	4,289.8	4,289.8
AA	6	(1.4)	4.9	11.3	19.2	21.8	25.2	134.9	375.4	1,321.8
A	88	(9.7)	5.5	13.6	9.2	28.3	76.5	(47,823.9)	(314.6)	1,604.8
BBB	103	(14.1)	4.4	13.1	(4.9)	25.7	62.6	(10,819.6)	(14.0)	2,553.5
Speculative	40	(47.8)	(1.5)	13.4	(72.2)	23.2	87.5	(6,258.6)	133.5	1,397.5
In Default	5	(15.1)	4.9	21.8	(131.7)	8.2	77.7	(1,724.6)	(389.3)	466.9
AQUILA INC			(42.9)			(71.2)			584.8	

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S/S Electric and Service Unit

	Dec93	Dec94	Dec95	Debt	Dec97	Dec98	Dec99	Dec00	Dec01	Dec02
Years in Service	15	15	15	1.9	1.9	1.9	1.9	1.9	2.1	1.4
BBB Interest Coverage (x)	2.9	3.0	3.1	2.8	3.0	3.1	3.1	3.0	3.5	2.4
BBBDA Interest Coverage (x)	23.0%	23.0%	16.1%	15.2%	21.1%	18.9%	12.7%	15.0%	13.0%	13.1%
Funds from Operations as % of Total Debt	13.8%	5.8%	8.6%	7.0%	12.5%	7.6%	19.2%	6.7%	11.9%	17.5%
Free Operating Cash Flow as % of Total Debt	2.4%	10.3%	9.4%	10.4%	10.4%	13.0%	10.3%	11.5%	11.1%	10.0%
Fixed Charges to Total Capital	18.3%	24.4%	11.2%	8.1%	4.2%	3.1%	2.8%	3.0%	1.7%	7.2%
Operating Income as % of Sales	61.2%	50.4%	60.0%	55.9%	54.4%	48.0%	41.4%	40.8%	33.4%	59.7%
Total Debt as % of Capitalization	57.9%	57.5%	61.4%	59.6%	58.5%	55.1%	64.0%	64.8%	54.4%	66.6%
Implied Scores										
BBB Interest Coverage (x)	BB	BB	BB	BB	BB	BB	BB	BB	BB	BB
BBBDA Interest Coverage (x)	BBB	BBB	BBB	BBB	BBB	BBB	BBB	BBB	BBB	BBB
Funds from Operations as % of Total Debt	BBB	BBB	BBB	BBB	BBB	BBB	BBB	BBB	BBB	BBB
Free Operating Cash Flow as % of Total Debt	A	BBB	BBB	BBB	BBB	BBB	BBB	BBB	BBB	BBB
Fixed Charges to Total Capital	BB	BB	BB	BB	BB	BB	BB	BB	BB	BB
Operating Income as % of Sales	A	AAA	BB	BB	BB	BB	BB	BB	BB	BB
Total Debt as % of Capitalization	BBB	BBB	BBB	BBB	BBB	BBB	BBB	BBB	BBB	BBB
Total Debt as % of Capitalization	BBB	BBB	BB	BBB	BBB	BBB	BB	BB	BBB	BB
Score Values										
BBB Interest Coverage (x)	2	2	4	2	2	2	2	2	2	0
BBBDA Interest Coverage (x)	2	3	2	2	2	2	2	2	2	0
Funds from Operations as % of Total Debt	3	3	4	2	3	2	2	2	2	2
Free Operating Cash Flow as % of Total Debt	4	3	3	3	3	3	3	3	3	0
Fixed Charges to Total Capital	2	2	2	2	2	3	2	2	3	0
Operating Income as % of Sales	4	6	2	2	0	0	0	0	0	0
Total Debt as % of Capitalization	3	3	0	3	3	3	0	0	3	2
Total Debt as % of Capitalization	3	3	2	3	3	3	2	2	3	2
Average Score	2.875	3.125	3.075	2.125	2.125	2.25	1.625	1.675	2.125	0.75
Implied Overall Score	BBB	BBB	BBB	BB	BB	BB	BB	BB	BBB	BB

AQUILA, INC.  
DOCKET NO. G007,011/S-03-681  
DATA REQUEST NO. DOC-9

DATE OF REQUEST: May 28, 2003

DATE RECEIVED: May 28, 2003

~~DATE DUE: June 9, 2003~~

REQUESTOR: Marcus Gross

QUESTION 9:

Subject: Event of Default; Remedies

Reference: "Indenture of Mortgage and Deed of Trust" Contract Article IX, page 71.

In the case of default, under the terms of Article IX *Events of Default; Remedies*, can the Trustee (Bank One Trust Company, N.A.) take possession of the encumbered assets without a bankruptcy proceeding? Please provide a detailed answer.

**RESPONSE:** Yes, the contract gives the trustee that right. Unsecured creditors have a similar right to take possession of Aquila's assets and sell them for the purpose of satisfying judgments obtained against Aquila for defaulting on its obligations to them.

The practical reality is that if a secured or unsecured creditor attempted to take possession of Aquila's assets for the purpose of satisfying Aquila's defaulted obligations to that creditor, Aquila would file for bankruptcy protection. The automatic stay provision of the bankruptcy code would require the creditor to immediately halt its collection efforts. Aquila would then be permitted to retain its assets and operate its business while it developed a reorganization plan in accordance with the bankruptcy code.

ATTACHMENT: NA

ANSWERED BY: Chris Reitz