

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
AQUILA NETWORKS-MGU, f/k/a MICHIGAN)	
GAS UTILITIES , for authority to implement a)	Case No. U-13550
gas cost recovery plan and factor for calendar)	
year 2003.)	
_____)	

At the January 22, 2004 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. J. Peter Lark, Chair
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

ORDER DENYING REHEARING

On October 29, 2003, the Commission issued an order approving a gas cost recovery (GCR) plan and factors for Aquila Networks-MGU, f/ka Michigan Gas Utilities, (Aquila) for calendar year 2003, pursuant to 1982 PA 304, MCL 460.6h et seq. As part of the GCR plan, the Commission approved a quartile fixed-price purchasing methodology for Aquila and allowed the admission of Exhibit A-23, which outlined specific implementation guidelines for the purchasing methodology.

On December 1, 2003, the Residential Ratepayer Consortium (RRC) filed a petition for rehearing, alleging that the Commission erred when it allowed Exhibit A-23 to become part of the record. In its petition for rehearing, the RRC requests that the Commission (1) exclude Exhibit A-23 from the record, (2) order Aquila to implement a quartile fixed-price purchasing

methodology consistent with the testimony in the record, and (3) indicate that Aquila's execution of a quartile fixed-price purchasing methodology in 2003 will be reviewed for reasonableness and prudence in the GCR reconciliation proceeding. In the alternative, the RRC requests that the record be reopened to allow the RRC and Attorney General Michael A. Cox to engage in discovery, cross-examination, and rebuttal of Exhibit A-23.

On December 15, 2003, the Commission Staff (Staff) filed a brief in opposition to the RRC's request for rehearing. In its brief, the Staff points out that the substance of Exhibit A-23 was fully discussed by the Staff expert, Robert G. Ozar, in his testimony and Exhibit A-23 does not change his testimony. Further, the Staff argues, the RRC had ample opportunity to cross-examine Mr. Ozar regarding the quartile fixed-price purchasing methodology.

On December 19, 2003, Aquila filed a response to the RRC's petition for rehearing. Aquila contends that the RRC raises no new issues or arguments except those already argued in its reply brief, which have already been addressed in the Commission's order. Aquila agrees with the Staff that Exhibit A-23 was an example of how to implement the quartile fixed-price purchasing methodology, which was set out in Mr. Ozar's testimony. Aquila says that the RRC had ample opportunity to conduct discovery, file rebuttal testimony, and cross-examine Mr. Ozar on his proposed purchasing guidelines. "Evidentiary rulings in an administrative proceeding are not the same as those in courts of law,"¹ Aquila points out, and administrative agencies have "wide latitude" to admit evidence into the record.² Rule 325(1) of the Commission's Rules of Practice and Procedure, R 460.17325(1), Aquila continues, provides that "the commission may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in

¹ See, Spratt v Dep't of Social Services, 169 Mich App 693; 426 NW2d 780 (1988).

² See, General Motors Corp v State Tax Comm, 376 Mich 373; 137 NW2d 161 (1965).

the conduct of their affairs.” To the extent that Exhibit A-23 is evidence, Aquila concludes, the Commission exercised its wide latitude to admit the exhibit as an example of a way to implement the methodology explained in the testimony in the record.

The Commission is persuaded by Aquila and the Staff’s arguments and rejects the RRC’s request for a rehearing. As the Commission has consistently held in the past, a petition for rehearing is not “merely another opportunity to argue a position or to express disagreement with”³ a commission order. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

Moreover, the Commission is not persuaded that further proceedings to debate the merits of Exhibit A-23 would serve a valid purpose. Contrary to the RRC’s argument that it did not have ample opportunity to cross-examine Mr. Ozar regarding Exhibit A-23, it readily admits in its petition that, although Mr. Ozar was withdrawing Exhibit RGO-1, Mr. Ozar testified that he was not withdrawing his testimony that laid out the conceptual framework for quartile purchasing but “recognized that the details of that initial proposal would be better implemented by a different specific recommendation that would implement the concepts.” 3 Tr 293. Therefore, the RRC was on notice that a different specific recommendation was forthcoming. For whatever reason, the RRC chose not to have its expert attend the hearing for an additional day and then argued it did not have the benefit of his assistance on cross-examination for Exhibit A-23.

Regardless, the RRC did have the benefit of the expert’s assistance in preparing the cross-examination of Mr. Ozar, where the quartile fixed-price purchasing methodology was set out in detail. And it was the quartile fixed-price purchasing methodology, as set forth in Mr. Ozar’s

³ See, the October 23, 2003 orders in Cases Nos. U-13129 and U-13793.

testimony, that was approved by the Commission as part of Aquila's 2003 GCR plan. The Commission further noted that Aquila could also implement the methodology consistent with Exhibit A-23, but it was not required to do so.

For these reasons, the Commission finds that the RRC's petition for rehearing should be denied.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1909 PA 300, as amended, MCL 462.2 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1982 PA 304, as amended, MCL 460.6h et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.
- b. The RRC's petition for rehearing should be denied.

THEREFORE, IT IS ORDERED that the Residential Ratepayer Consortium's December 1, 2003 petition for rehearing is denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days
issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark
Chair

(S E A L)

/s/ Robert B. Nelson
Commissioner

/s/ Laura Chappelle
Commissioner

By its action of January 22, 2004.

/s/ Mary Jo Kunkle
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Case No. U-13550

Suggested Minute:

“Adopt and issue order dated January 22, 2004 denying a petition for rehearing of the Commission’s October 29, 2003 decision that approved Aquila Networks-MGU, f/k/a Michigan Gas Utilities’ gas cost recovery plan and factors for calendar year 2003, as set forth in the order.”