

106 FERC ¶ 61,234
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

Aquila Merchant Services, Inc.
(f/k/a Aquila, Inc.)

Docket Nos. EL03-138-000
and EL03-181-000

ORDER APPROVING CONTESTED SETTLEMENT

(Issued March 8, 2004)

1. On August 29, 2003, Commission Trial Staff and Aquila Merchant Services, Inc. (Aquila) filed a Settlement Agreement. The Settlement Agreement resolves all issues related to Aquila that were set for hearing in Docket No. EL03-138-000 in the Commission's Order to Show Cause Concerning Gaming and/or Anomalous Market Behavior (Gaming Order)¹ and in Docket No. EL03-181-000 in its Order to Show Cause Concerning Gaming and/or Anomalous Market Behavior Through the Use of Partnerships, Alliances or Other Arrangements and Directing Submission of Information (Partnership Order).²

2. On September 30, 2003, the California Independent System Operator Corporation (ISO) filed comments objecting in part to the Settlement Agreement. On September 30, 2003, the California Parties³ and Port of Seattle, Washington (Seattle) filed comments opposing the Settlement Agreement. On September 30, 2003, Public Service Company of New Mexico filed initial comments in support of the Settlement Agreement. On October 20, 2003, Aquila filed reply comments challenging the objecting parties' comments. Also on October 20, 2003, Trial Staff filed both general reply comments addressing the California Parties' objections, and filed specific reply comments in

¹ American Electric Power Service Corporation, et al., 103 FERC ¶ 61,345 (2003), reh'g denied, 106 FERC ¶ 61,020 (2004).

² Enron Power Marketing, Inc. and Enron Energy Services, Inc., et al., 103 FERC ¶ 61,346 (2003), reh'g denied, 106 FERC ¶ 61,024 (2004).

³ The California Parties are the People of the State of California ex rel. Bill Lockyer, Attorney General, the California Electricity Oversight Board, the California Public Utilities Commission, Pacific Gas and Electric Company and Southern California Edison Company.

support of the Settlement Agreement. On October 20, 2003, Eugene Water & Electric Board filed reply comments in support of the agreement. On October 22, 2003, Staff filed a motion to supplement its general reply comments in order to address the “Information to be Provided with Settlement Agreements,” as described in a Notice to the Public issued by the Chief Administrative Law Judge on October 15, 2003.⁴ On November 10, 2003, the presiding judges in the two proceedings jointly certified the Settlement Agreement to the Commission as contested, but recommending its approval.⁵

3. The Settlement Agreement constitutes a reasonable resolution of these proceedings and will be approved. The Settlement Agreement reasonably addresses and resolves the charges against Aquila that were set for hearing in the Gaming and Partnership Orders. In this regard, Aquila will be returning \$75,975.42, the total revenues (and not merely the profits -- and thus more than would be achieved in litigation⁶) from Aquila’s participation in alleged gaming practices.

4. Issues raised in the comments filed by the ISO, the California Parties and Seattle go to the scope of these proceedings, are thus essentially requests for rehearing of the Gaming and Partnership Orders and, in fact, were addressed in the rehearing order issued January 22, 2004.⁷ Such matters thus need not be further addressed here.

5. This order terminates Docket Nos. EL03-138-000 and EL03-181-000.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Acting Secretary.

⁴ The terms of the Settlement Agreement and these various pleadings are described in more detail in the presiding judges’ certification. Aquila Merchant Services, Inc., 105 FERC ¶ 63,014, errata, 105 FERC ¶ 63,019 (2003) (Certification).

⁵ Id. at P 45-49.

⁶ Gaming Order, 103 FERC ¶ 61,345 at P 1, 2, 71; Partnership Order, 103 FERC ¶ 61,346 at P 2, 3, 48.

⁷ To the extent that these issues are addressed in the rehearing order, we incorporate by reference the discussion of these issues in that order.