

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Cornerstone) Application No. FC-1330
Energy, LLC d/b/a Constellation)
NewEnergy-Gas Division CEI, LLC,)
Omaha vs. Aquila, Inc., d/b/a)
Aquila Networks, Omaha, alleging) ORDER DISMISSING COMPLAINT
violation of Energy Options)
Tariff.)
) Entered: April 22, 2008

BY THE COMMISSION:

On February 29, 2008, a Formal Complaint was filed with the Nebraska Public Service Commission (Commission) by Cornerstone Energy, LLC d/b/a Constellation NewEnergy-Gas Division CEI, LLC, (Complainant or Cornerstone) against Aquila, Inc., d/b/a Aquila Networks (Respondent or Aquila). An answer was timely filed by the Respondent.

The Complaint alleges that Aquila violated provisions of its Energy Options Tariff (EO Tariff)¹ and the State Natural Gas Regulation Act (SNGRA).² The Complainant alleges the violations of the Tariff and the SNGRA occurred when Aquila gave notice to Cornerstone that Aquila was not renewing the Billing and Other Services Agreement (Billing Services Agreement) with Cornerstone without first seeking Commission approval.

On March 27, 2008, the Respondent filed a Motion to Dismiss the Complaint, asserting the Commission lacked jurisdiction over the Billing Services Agreement between Cornerstone and Aquila. Oral arguments were heard on the Motion on April 7, 2008, in the Commission Hearing Room, Lincoln, Nebraska.

O P I N I O N S A N D F I N D I N G S

Cornerstone is a certified Competitive Natural Gas Provider (CNGP) in Nebraska³ and engages in natural gas marketing to commercial and small industrial firm customers in Nebraska. Aquila is a jurisdictional utility in the State of Nebraska providing natural gas service as well as operating a local distribution company. Cornerstone is a natural gas marketer on Aquila's natural gas system pursuant to the provisions of Aquila's Energy Options Program (Program). The Program allows certain gas consumers, namely commercial and small industrial

¹ Aquila Inc. d/b/a Aquila Networks, Nebraska Operations Tariff, Index No. 15, Section RS, Second Revised Sheet, Rate Schedule - EO, *Energy Options Program*, Effective Date April 1, 2008.

² See *Neb. Rev. Stat. § 66-1801 et. seq.* (2006 Cum. Supp.).

³ See Application No. NG-0009, *In the Matter of Cornerstone Energy, Inc., Omaha, Nebraska, for authority as a competitive natural gas provider in the state of Nebraska*. Application Granted. (November 25, 2003).

firm customers with natural gas transportation requirements of less than 500 therms per day, to purchase natural gas from other approved marketers participating in Aquila's Program, other than Aquila. The EO Tariff requires any marketer participating in the Program to be a certified CNGP and to enter into the Marketer Agreement, the terms of which are standard for all marketers participating in the Program. Cornerstone satisfied both requirements to be a commercial marketer in Aquila's Program.

Cornerstone and Aquila negotiated and entered into a Billing Services Agreement effective September 30, 2002. Pursuant to the provisions of the Billing Services Agreement, Aquila issues billing statements that include both Aquila's transport and delivery charges and Cornerstone's charges for the customer's natural gas service. The Billing Services Agreement was originally set to terminate on September 29, 2007. On September 27, 2007, Aquila and Cornerstone extended the expiration date of the Billing Services Agreement to April 30, 2008.

The SNGRA does not address the method of billing customers of a natural gas marketer. Beyond becoming a certified CNGP, marketers, such as Cornerstone, are non-regulated businesses under the SNGRA. The sections of the SNGRA relied upon by the Complainant contemplate the regulated provision of natural gas service. Section 66-1808(2) states,

"No **jurisdictional utility** shall make effective any changes rate or any term or condition of service **pertaining to the service or rates of such utility**, except by filing the same with the commission at least thirty days prior to the proposed effective date."⁴ (emphasis added).

The Billing Services Agreement that is the subject of this Complaint does not constitute services and rates of a jurisdictional utility to its customers. The fact that Aquila is a regulated jurisdictional utility does not render every activity of Aquila a regulated activity under the SNGRA. The Billing Services Agreement represents an arms-length commercial contract between two businesses for services that are competitively available from other parties. Aquila is not the only party that can provide the service to Cornerstone, and indeed, Cornerstone is the only marketer engaged in the Program that contracted with Aquila for billing services. Therefore, the Commission declines

⁴ Neb. Rev. Stat. § 66-1808(2)(Reissue of 2003).

to extend its jurisdiction to the Billing Services Agreement at issue in the current Complaint.

The Complaint also alleges that Aquila violated the provisions of its EO Tariff by not first seeking Commission approval before terminating the Billing Services Agreement. The pertinent provisions of the Tariff state,

"Aquila reserves the unilateral right to alter or amend or revise the requirements under this Energy Option tariff or Marketer Agreement, subject to Commission approval."⁵

Aquila has indicated it will seek Commission approval prior to exercising its right to amend or revise its EO Tariff or Marketer Agreement. Nevertheless, the Commission finds no jurisdiction, voluntary or otherwise, over the Billing Services Agreement via the provisions of the EO Tariff. The Billing Service Agreement that contains the billing services at issue in the complaint are not part of the Marketer Agreement. The Billing Services Agreement is a separate contractual agreement that was independently negotiated and entered into by the parties. Therefore, no Commission approval was necessary before terminating the Billing Services Agreement.

We recognize that the Commission is the correct forum for issues such as the ones raised in the above-captioned proceeding to be properly taken up. We further recognize that proceedings before regulatory bodies such as the Commission take time, even when expedited. In light of these concerns and in the interest of furthering a smooth customer transition with no interruption and undue confusion, we find that Cornerstone should have until June 30, 2008, to complete the billing services transition from Aquila.

We therefore find that the Motion to Dismiss should be granted and the Complaint dismissed. We further direct that the transition of billing services be completed by Cornerstone by June 20, 2008.

⁵ *Supra*.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. FC-1330 be, and is hereby, dismissed.

IT IS FURTHER ORDERED that Cornerstone Energy, LLC d/b/a Constellation NewEnergy-Gas Division CEI, LLC have until June 30, 2008, to complete the transition of billing services from Aquila, Inc., d/b/a Aquila Networks.

MADE AND ENTERED at Lincoln, Nebraska, this 22nd day of April, 2008.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair:

ATTEST:

Executive Director