

Exhibit No:
Issues: Bidding Process
Sales Transaction

Witness: Thomas Fleener
Type of Exhibit: Direct Testimony
Sponsoring Party: Aquila Networks – MPS
Aquila Networks – L&P

Case No: GO-2006-0205

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. GO-2006-0205

DIRECT TESTIMONY

OF

THOMAS FLEENER

ON BEHALF OF

AQUILA, INC.

d/b/a

**AQUILA NETWORKS – MPS and
AQUILA NETWORKS – L&P**

1
2 **DIRECT TESTIMONY OF THOMAS FLEENER**
3

4 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

5 A. My name is Thomas Fleener and my business address is 20 West 9th Street,
6 Kansas City, Missouri.

7 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

8 A. I am presently employed by Aquila, Inc. (“Aquila”) as Vice President in the
9 Strategic Initiatives group doing corporate development, mergers and
10 acquisitions work.

11 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
12 **EMPLOYMENT HISTORY.**

13 A. I have been with Aquila since 2001 in my current capacity. Prior to this, I worked
14 for Verizon Corporation doing corporate development and finance work. I have
15 an MBA from the University of Texas at Austin and a Bachelors of Science
16 degree in business from Trinity University.

17 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

18 A. The purpose of my testimony is to describe the bid process that Aquila utilized to
19 sell its Aquila Networks – MPS (“MPS”) and Aquila Networks – L&P (“L&P”) gas
20 utility systems (collectively, the “Business”), and to discuss the Asset Purchase
21 Agreement (“Agreement”) ultimately reached by and between Aquila and The
22 Empire District Electric Company (“Empire”).

1 **Q. PLEASE BRIEFLY DESCRIBE THE PROCESS THAT AQUILA UTILIZED TO**
2 **SELL ITS BUSINESS.**

3 A. Aquila followed a classic two-step auction process to offer the Business. This
4 process began in March 2005. Aquila solicited and, in June 2005, received non-
5 binding indications of interest from multiple prospective buyers.

6 **Q. ONCE THESE INDICATIVE OFFERS WERE RECEIVED, WHAT WAS THE**
7 **NEXT STEP?**

8 A. From the group of indicative offers, Aquila identified finalists who were invited to
9 hear management presentations and conduct due diligence. Upon completion of
10 these tasks, bidders were invited to make final offers for the property. These
11 bids were due in the late August. After this, Aquila chose to enter into
12 negotiations with Empire with the intent of reaching an agreement on the sale of
13 the Business.

14 **Q. WHEN WAS THE FINAL AGREEMENT REACHED WITH EMPIRE?**

15 A. The Agreement was executed on September 21, 2005.

16 **Q. WHAT ARE THE MAJOR PROVISIONS OF THE AGREEMENT?**

17 A. The following summarizes the major parts of the Agreement:
18 Empire has agreed to pay \$84,000,000 in cash (the "Purchase Price") for the
19 Business. Empire will assume all Business liabilities and obligations arising after
20 the closing, and purchase, for an amount in addition to the Purchase Price,
21 Business account receivables and unbilled revenues accrued prior to closing.
22 Empire's assumption of liabilities will include, without limitation, all contractual

1 obligations of Aquila relating to the Business's operation, with the corresponding
2 rights under such contracts being assigned to Empire at closing. Aquila has also
3 agreed to reimburse Empire for all amounts in excess of \$50,000 for disallowed
4 gas costs that relate to periods before closing.

5 **Q. WHAT TYPES OF REPRESENTATIONS AND WARRANTIES WERE MADE IN**
6 **THE AGREEMENT?**

7 A. Aquila has provided Empire with customary representations and warranties for a
8 transaction of this nature relating generally to Aquila's authority to enter into the
9 transaction and the physical and financial condition of the Business. Similarly,
10 Empire has provided Aquila customary representations and warranties regarding
11 its ability to enter into the transaction. All representations and warranties will
12 survive closing for a period of 18 months with the exception of: (i) certain
13 representations regarding title and environmental matters, which will survive for
14 three years; and, (ii) certain representations regarding corporate authority and
15 taxes, which will survive until the expiration of the applicable statute of
16 limitations.

17 **Q. WHAT COVENANTS WERE MADE FOR THE PERIOD BETWEEN SIGNING**
18 **AND CLOSING?**

19 A. Aquila has agreed to continue the operation of the Business in its customary
20 manner prior to closing. Both parties have agreed to cooperate in securing all
21 consents and approvals necessary for consummation of the transaction.

1 **Q. DESCRIBE THE CONDITIONS PRECEDENT TO CLOSING THE**
2 **TRANSACTION.**

3 A. The obligations of parties to close the transaction are conditioned upon, among
4 other items described in the Agreement: (i) the material accuracy of each other's
5 representations and warranties and material compliance with their covenants; (ii)
6 the absence of any litigation, rule of law or order that would seek to block or
7 materially alter the intention of the parties with respect to the consummation of
8 the transaction; and, (iii) the receipt of all necessary governmental and third party
9 consents. The obligation of Empire to close the transaction is further conditioned
10 upon (A) the absence of any material adverse change in condition and operation
11 of the Business and (B) the release of certain encumbrances over assets being
12 purchased by Empire.

13 **Q. DOES THIS INCLUDE APPROVAL BY THE MISSOURI PUBLIC SERVICE**
14 **COMMISSION?**

15 A. Yes. For the transaction to close, the Commission must issue an order
16 approving the sale. The Agreement states that the order must contain such
17 terms and conditions that do not result in a material adverse effect on the
18 Business, the parties to the Agreement, or any other businesses operated by
19 Aquila or Empire, respectively.

20 **Q. DOES THE AGREEMENT MAKE ANY PROVISIONS FOR TRANSITIONAL**
21 **SERVICES AFTER CLOSE?**

1 A. Yes. The Agreement provides that Empire will, at least 60 days prior to close,
2 provide Aquila a list of any transitional services it would like from Aquila, as well as
3 the period of time during which Empire would like to receive those services. The
4 parties will then work together to execute a Transition Services Agreement in the
5 form included in the Agreement. The purpose of providing for transition services is
6 to work to ensure a seamless and effective handoff of the operations of the
7 business to Empire.

8 **Q. WILL AQUILA BE PROVIDING ALL DOCUMENTS RELATED TO THE**
9 **BUSINESS TO EMPIRE?**

10 A. Yes. Upon closing, Aquila will transfer all documents of the Business, as defined
11 in the Agreement, to Empire.

12 **Q. PLEASE SUMMARIZE THE INDEMNITY PROVISIONS.**

13 A. Both Aquila and Empire have agreed to indemnify each other with respect to
14 losses incurred by the other as a result of a breach of representation, warranty,
15 covenant or agreement. All indemnification obligations of the two parties are
16 subject to (i) a \$50,000 minimum claim amount, provided that neither party may
17 make a claim until the total amount of all claims exceeds \$1,000,000, and (ii) a
18 maximum cap of 15% of the purchase price, subject to increase to 50% in limited
19 instances. Indemnification obligations are further limited for a period of 18
20 months from closing, provided, however, that with respect to losses arising from
21 the breach of a representation or warranty with a longer period of survival, the
22 obligation to indemnify will extend for an equally long period.

1 **Q. WHEN DOES AQUILA EXPECT THIS TRANSACTION TO CLOSE?**

2 A. The closing date will be the first business day of the month immediately following
3 the satisfactory completion of all conditions to closing. Aquila is targeting a May 1,
4 2006 close. Either party can terminate the transaction if closing has not occurred
5 by September 21, 2006, subject to extension for up to six months if the closing is
6 delayed only by the receipt of required regulatory approval.

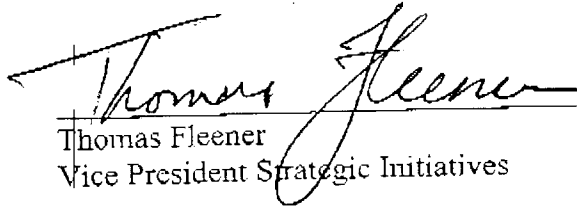
7 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

8 A. Yes.

AFFIDAVIT

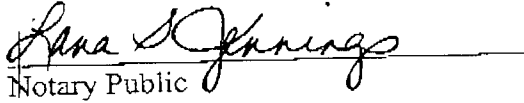
STATE OF MISSOURI)
)ss
COUNTY OF JACKSON)

I, Thomas Fleener, having been duly sworn upon my oath, state that I am the Vice President, Strategic Initiatives; that I am duly authorized to make this Affidavit on behalf of Aquila, Inc.; and that the matters and things stated in the foregoing application are true and correct to the best of my information, knowledge and belief.



Thomas Fleener
Vice President Strategic Initiatives

Subscribed and sworn to before me this 8th day of November, 2005.



Notary Public

My Commission expires:

January 8, 2009

