

EXHIBIT

96

Exhibit No.:
Issue(s): Aquila's Merger Savings Retention Proposal
Witness/Type of Exhibit: Kind/Surrebuttal
Sponsoring Party: Public Counsel
Case No.: ER-2004-0034

SURREBUTTAL TESTIMONY

OF

RYAN KIND

FILED⁴

APR 29 2004

Missouri Public
Service Commission

Submitted on Behalf of
the Office of the Public Counsel

AQUILA, INC.

Case No. ER-2004-0034

February 13, 2004

Exhibit No. 96
Case No(s) ER-2004-0034
Date 2/23/04 Rptr XF

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Request of Aquila,)
Inc., d/b/a Aquila Networks-L&P and)
Aquila Networks-MPS, to Implement a)
General Rate Increase in Electric Rates.)

Case No. ER-2004-0034

AFFIDAVIT OF RYAN KIND

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Ryan Kind, of lawful age and being first duly sworn, deposes and states:


1. My name is Ryan Kind. I am Chief Utility Economist for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony consisting of pages 1 through 5.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.



Ryan Kind

Subscribed and sworn to me this 13th day of February 2004.

KATHLEEN HARRISON
Notary Public - State of Missouri
County of Cole
My Commission Expires Jan. 31, 2006



Kathleen Harrison
Notary Public

My commission expires January 31, 2006.

1 **Q. AT LINE 16 ON PAGE 2 OF HIS REBUTTAL TESTIMONY, MR. SIEMEK STATES THAT**
2 **NONE OF THE CONCERNS EXPRESSED BY VARIOUS WITNESSES IN THEIR DIRECT**
3 **TESTIMONY ARE "LEGITAMATE GROUNDS FOR DENYING THE SHAREHOLDERS OF**
4 **AQUILA A SHARE IN THE CONTINUING SYNERGIES CREATED BY THE MERGER." DO**
5 **YOU BELIEVE THAT, IN YOUR REBUTTAL TESTIMONY, YOU PRESENTED LEGITIMATE**
6 **GROUNDS FOR DENYING AQUILA'S REQUEST FOR THE INDIRECT RECOVERY OF**
7 **MERGER COSTS THROUGH ITS MERGER SYNERGY RETENTION PROPOSAL?**

8 A. Yes.

9 **Q. PLEASE EXPLAIN.**

10 A. My rebuttal testimony demonstrated that Aquila chose to acquire SJLP because it
11 expected the acquisition to further its financial and strategic non-regulated business
12 interests. Since my testimony clearly demonstrates that Aquila's decision to acquire SJLP
13 was motivated by the Company's non-regulated business interests, Aquila has no
14 legitimate grounds for seeking the indirect recovery of merger costs through its merger
15 synergy retention proposal in this case.

16 **Q. DOES MR. SIEMEK ADDRESS THE ROLE OF AQUILA'S NON-REGULATED BUSINESS**
17 **INTERESTS IN THE COMPANY'S DECISION TO ACQUIRE SJLP?**

18 A. Yes. At line 13 on page 8 of his rebuttal testimony, Mr. Siemek asserts that
19 "nonregulated businesses were either insignificant or the benefits from the value of
20 generation are already reflected in the synergies created by joint dispatching which are
21 proposed to be shared."

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1 **Q. DID MR. SIEMEK PROVIDE ANY EVIDENCE TO SUPPORT HIS ASSERTION THAT**
2 **“NONREGULATED BUSINESSES WERE... INSIGNIFICANT?”**

3 A. No, he did not. I would note that my rebuttal testimony in this case included extensive
4 evidence demonstrating that Aquila’s **non-regulated business interests were the most**
5 **significant motivating factor** involved in the Company’s decision to acquire SJLP.
6 While I will not repeat my rebuttal testimony here, I do not see how an impartial person
7 could reach the same conclusion that Mr. Siemek reached regarding the role of Aquila’s
8 non-regulated business interests in the Company’s decision to merge with SJLP after
9 reviewing the evidence in my rebuttal testimony.

10 **Q. WHAT ABOUT THE SECOND PART OF MR. SIEMEK’S ASSERTION WHERE HE STATES**
11 **“...OR THE BENEFITS FROM THE VALUE OF GENERATION ARE ALREADY REFLECTED IN**
12 **THE SYNERGIES CREATED BY JOINT DISPATCHING WHICH ARE PROPOSED TO BE**
13 **SHARED.”**

14 A. My response to this is, what difference does it make if “the benefits from the value of
15 generation are already reflected in the synergies created by joint dispatching which are
16 proposed to be shared?” Given that Aquila clearly chose to merge with SJLP due to the
17 benefits that it expected its shareholders to receive because of the positive financial
18 impact that the merger was expected to have on the Company’s non-regulated business
19 interests, there is absolutely no justification for approving the proposal for the indirect
20 recovery of SJLP merger costs in the rates charged to regulated customers. As my
21 rebuttal testimony explained, requiring regulated customers to pay rates that exceed the
22 utility’s cost of service in order to finance a portion of the merger costs would amount to
23 a bailout of this utility by captive monopoly customers for a management decision that
24 did not lead to the level of non-regulated earnings that were expected when the Company
25 chose to merge with SJLP.

1 **Q. AT LINE 18 ON PAGE 14 OF HIS TESTIMONY, MR. SIEMEK STATES THAT IT "IS**
2 **CLEARLY NOT EQUITABLE [TO UTILIZE 100% OF THE MERGER-RELATED SAVINGS TO**
3 **REDUCE THE COSTS OF MPS AND L & P] SINCE THE PARTIES BENEFITTING FROM THE**
4 **COST SAVINGS DO NOT SHARE THE COSTS." WHAT IS YOUR RESPONSE TO THIS**
5 **STATEMENT?**

6 A. My rebuttal testimony shows that Aquila's management chose to merge with SJLP
7 because it expected the non-regulated merger benefits to exceed the cost of the merger.
8 Those non-regulated benefits have apparently not materialized for various reasons, but
9 the fact that such anticipated benefits have not materialized is no justification for forcing
10 ratepayers to absorb some of the costs of the merger by pretending that the cost of serving
11 them is higher than the actual level of costs.

12 If I were to apply Mr. Siemek's logic, I might try to get my neighbor to pay for a portion
13 of the costs associated with painting the outside of my house because the neighbor is
14 benefiting from having a nicer looking house across the street from him after the new
15 paint job. Assume that I decided to incur the expense of painting my house because I
16 believed the improved appearance would be worth the cost of hiring someone to do the
17 paint job. Then after the job was done, I noticed that I didn't benefit from the improved
18 appearance as much as I expected because I spend very little time outside of my house
19 (perhaps due to an unanticipated decline in my health.) Then I notice my neighbor across
20 the street sitting on his front porch and think to myself "he is receiving the greatest
21 benefit from my new paint job since he no longer has to look at the peeling paint on my
22 house when he is out on his front porch...I'm going to go tell him that he needs to pay for
23 half of my house painting bill because that's only equitable."

24 As the above analogy demonstrates, just because the neighbor (utility customer) may
25 benefit from my decision to paint my house (merge with SJLP) does not mean that it

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1 would be equitable to force him to pay for part of my paint job (merger cost recovery)
2 since my decision to have my house painted was based on the assumption that the
3 benefits that I expected to receive from the paint job would exceed the expected costs
4 (non-regulated considerations). It seems especially inequitable for a homeowner (Aquila)
5 to present a bill to their neighbor across the street (regulated customer) for a portion of
6 house painting expenses (merger costs) after the homeowner's health has declined
7 (Aquila's non-regulated business plans and businesses abandoned) and the paint job did
8 not provide the expected benefits (non-regulated financial and strategic benefits that
9 Aquila anticipated did not materialize).

10 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

11 A. Yes.