

# EXHIBIT

Exhibit No.: 14  
Issue(s): Manufactured Gas Plant  
Remediation Costs/  
Accounting Authority Order Costs/  
Witness: Ted Robertson  
Type of Exhibit: Rebuttal  
Sponsoring Party: Public Counsel  
Case Number: ER-2004-0034  
Date Testimony Prepared: January 26, 2004

## REBUTTAL TESTIMONY

OF

**TED ROBERTSON**

FILED

APR 28 2004

Submitted on Behalf of  
the Office of the Public Counsel

Missouri Public  
Service Corporation

**AQUILA, INC.**

**Case No. ER-2004-0034**

January 26, 2004

Exhibit No. 14  
Case No(s). ER-2004-0034  
Date 2/23/04 Rptr XF



## TABLE OF CONTENTS

Testimony	Page
Introduction	1
I. Aquila Networks - MPS	
A. Manufactured Gas Plant Remediation Costs	2
B. Accounting Authority Order Costs	7
II. Aquila Networks - L&P	
A. Accounting Authority Order Costs	12



1 I. **AQUILA NETWORKS - MPS**

2 A. **MANUFACTURED GAS PLANT REMEDIATION COSTS**

3 Q. WHAT IS THE ISSUE?

4 A. As I stated in my direct testimony, Company has booked in its financial records costs  
5 relating to remediation activities associated with formerly operated manufactured gas  
6 plant ("MGP"). Company's response to OPC Data Request No. 1029 identifies that  
7 during the twelve months ended December 31, 2002, and the twelve months ended  
8 September 30, 2003, MPS booked total net charges of \$53,780.64 and (\$50,510.63),  
9 respectively, among several Uniform System of Accounts ("USOA") expense accounts.  
10 The September 30, 2003 credit balance occurred due to Company receiving what it  
11 termed as environmental settlements.

12  
13 It's the Public Counsel's belief that no costs associated with the remediation of  
14 manufactured gas plant should be allowed in the determination of the electric company  
15 cost of service for ratemaking. Public Counsel opposes allowing any of the MGP  
16 remediation costs to flow through to electric ratepayers because neither current nor historic  
17 electric customers of MPS benefited from the manufactured gas service. Therefore, they  
18 should not bear any responsibility for reimbursement of the costs to Company.

19  
20 Q. WHAT IS A MANUFACTURED GAS PLANT?

1 A. Many years ago, before the advent of interstate gas pipelines, gas was produced or  
2 manufactured for sale by utilities via a chemical process of coal gasification. The plant used  
3 to produce the gas has been termed as a manufactured gas plant facility.

4  
5 Q. WHAT ARE MANUFACTURED GAS SITE REMEDIATION COSTS?

6 A. The costs in question relate to the assessment and/or clean-up of sites on which  
7 manufactured gas was produced many decades in the past. Remediation costs can be  
8 defined as all investigations, testing, land acquisition if appropriate, remediation and/or  
9 litigation costs/expenses or other liabilities excluding personal injury claims and  
10 specifically relating to former gas manufacturing facility sites, disposal sites, or sites to  
11 which material may have migrated, as a result of the operation or decommissioning of gas  
12 manufacturing facilities. The remediation and cleanup costs, if applicable, are in actuality a  
13 legal requirement that must be met in order to satisfy federal or state statutes on the proper  
14 handling of hazardous wastes in order to alleviate adverse environmental effects. The  
15 expenditures have been incurred to identify and assess the MGP sites contamination  
16 potential. They are not expenditures related to the provision of electric utility service to  
17 current or future MPS ratepayers.

18  
19 Q. WHY WERE THESE COSTS RECORDED IN THE ELECTRIC FINANCIAL BOOKS  
20 OF THE COMPANY?

1 A. Company's response to OPC Data Request No. 1086 in Aquila, Inc., Case No. GR-2004-  
2 0072 states:

3  
4 MGP remediation costs relating to the Company's MPS operations are  
5 booked in both electric and gas financial records. The Company treats  
6 MGP remediation costs in this manner because they are prudently incurred  
7 costs and a company-wide (MPS) obligation.  
8  
9

10 Q. SHOULD ELECTRIC RATEPAYERS BE HELD RESPONSIBLE FOR COSTS  
11 ASSOCIATED WITH GAS COMPANY ASSETS THAT ARE NO LONGER IN  
12 SERVICE?

13 A. No. Electric ratepayers should not be held responsible for gas company costs. The MGP  
14 site remediation costs being incurred are associated with gas plant that is no longer in  
15 service, and therefore no longer used and useful. The Company is asking the Missouri  
16 Public Service Commission ("MPSC" or "Commission") to have current electric  
17 ratepayers pay plant decommissioning costs for MGP plant that does not operate to  
18 provide current utility service. I don't believe this is a normal practice of this  
19 Commission, and it is unreasonable to force a consumer to pay for something they are not  
20 using. In this instance, it's the Public Counsel's belief that MPS is only entitled the  
21 opportunity to earn a fair rate of return and recover expenses associated with money  
22 prudently invested in property used and useful in rendering electric utility service.  
23

1 Q. PLEASE EXPLAIN THE CONCEPT "USED AND USEFUL".

2 A. One of the Public Counsel's main objections to the Company proposed treatment of this  
3 issue is that it violates the regulatory "used and useful" standard. The general rule is that,  
4 "the rate base on which a return may be earned is the amount of property used and useful, at  
5 the time of the rate inquiry, in rendering a designated utility service." (A.J.G. Priest,  
6 Principles of Public Utility Regulation (1969), p. 139, vol. 1). This principle is certainly  
7 grounded in common sense. In dividing the responsibility for a utility's operations between  
8 ratepayers and stockholders, regulators have traditionally required that stockholders rather  
9 than ratepayers be required to bear the costs of any utility investment which is not used and  
10 useful to provide service to the ratepayers.

11  
12 In a discussion of the policy in Missouri, State ex rel. Union Electric v. Public Service of  
13 the State of Missouri, 765 S.W. 2d 618 (Mo. App. 1988), the Court of Appeals for the  
14 Western District endorsed the used and useful policy. That case involved Union Electric's  
15 appeal of the Commission's denial of the costs of cancellation of its Callaway II nuclear  
16 unit. The Commission ruled that the risk of cancellation should be borne by the  
17 shareholder, since if it was not, the shareholder's investment would be practically risk free.  
18 The Court, in upholding the Commission's decision, stated:

19  
20 The utility property upon which a rate of return can be earned must be  
21 utilized to provide service to its customers. That is, it must be used and



1                   useful. This used and useful concept provides a well-defined standard for  
2                   determining what properties of a utility can be included in its rate base.  
3  
4

5 Q.     WHAT WERE THE REMEDIATION ACTIVITIES FOR WHICH COMPANY  
6           INCURRED THE COSTS?

7 A.     According to the Company's response to OPC Data Request No. 1074, Aquila, Inc., Case  
8           No. GR-2004-0072, the costs were related to the following MGP sites and activities:  
9

10           Four sites - Clinton, Lexington Highland, Nevada and Sedalia.

11  
12           Clinton - Company conducted an investigation and removal action under  
13           an EPA Administrative Order on Consent. The site has been fenced and a  
14           deed restriction placed on the property. The Company inspects the site at  
15           least annually.  
16

17           Lexington Highland - Company is addressing the site under an  
18           Administrative Order on Consent with EPA. Work completed to date  
19           includes a Removal Site Evaluation and Baseline Risk Assessment. The  
20           Company is currently preparing an Engineering Evaluation/Cost Analysis.  
21

22           Nevada - Company conducted a Preliminary Assessment. The MDNR  
23           conducted a site investigation. Company had a property survey performed.  
24           Company has not conducted either an investigation or any removal action  
25           at the site.  
26

27           Sedalia - Company conducted an investigation and removal action under  
28           an EPA Administrative Order on Consent. A deed restriction was placed  
29           on the property.  
30  
31

1 It's my understanding that the Clinton and Sedalia are fully owned by Company, but it is  
2 only a partial owner in the Nevada site and has no ownership interest in the Lexington  
3 (10th St. & Highland Ave.) site.

4  
5 Q. WHAT IS THE PUBLIC COUNSEL'S RECOMMENDATION?

6 A. Our recommendation depends on which of the Company's test periods is utilized. If the  
7 Company's know and measurable period was not updated for MPG remediation costs, it is  
8 the Public Counsel's recommendation that the Company's cost of service expense for the  
9 period twelve months ended December 31, 2002 be **decreased** \$53,781. If the  
10 Company's known and measurable period was updated for MGP remediation costs, then  
11 the cost of service expense for the period twelve months ended September 30, 2003  
12 should be **increased** by \$50,511 to zero out the net negative balance booked for the  
13 period. This last recommendation is based upon the belief that since it is inappropriate  
14 for ratepayers to be held responsible for reimbursement of expenses associated with the  
15 remediation activities of the MGP; thus, it would also be unfair to the Company to allow  
16 ratepayers to benefit or share in any environmental settlement or payments it receives that  
17 offset the remediation expenses it incurs.

18  
19 B. ACCOUNTING AUTHORITY ORDER COSTS

20 Q. WHAT IS THE ISSUE?

1 A. Company, and the MPSC Staff, in their respective direct testimony, have recommended rate  
2 base treatment for the unamortized deferred balances associated with two of the accounting  
3 authority orders (i.e., the Sibley rebuild and western coal conversion deferrals) discussed in  
4 my direct testimony. Also, Company appears to have failed to appropriately track the  
5 deferred income tax balances associated with those same accounting authority orders.  
6

7 Q. DID COMPANY, AND THE MPSC STAFF, INCLUDE IN RATE BASE THE  
8 UNAMORTIZED DEFERRED BALANCE ASSOCIATED WITH THE ICE STORM  
9 AAO AUTHORIZED IN CASE NO. EU-2002-1053?

10 A. Company did, however, the MPSC Staff did not. Apparently, the costs were not included  
11 because the MPSC Staff has an ongoing documentation availability dispute with Company.  
12 However, in the direct testimony of MPSC Staff witness, Ms. Trisha D. Miller, page 9, line  
13 11, she states that the inclusion of the deferred costs associated with the Ice Storm AAO are  
14 subject to change.  
15

16 Q. DOES THE PUBLIC COUNSEL OPPOSE THE INCLUSION OF THE AAO  
17 UNAMORTIZED DEFERRED BALANCES IN RATE BASE?

18 A. Yes.  
19

1 Q. WHY DID THE MPSC STAFF INCLUDE THE UNAMORTIZED DEFERRED  
2 BALANCES IN RATE BASE?

3 A. On page 8, lines 16-18, of Ms. Miller's direct testimony, she states:

4  
5 Unamortized AAO balances at September 30, 2003 were included in rate  
6 base, to reflect in the cost of service a return on the unamortized balance of  
7 the AAO deferrals authorized by the Commission in Case Nos. ER-90-101,  
8 EO-91-247 and ER-93-37.  
9

10  
11 Q. DOES THE PUBLIC COUNSEL BELIEVE THAT COMMISSION CASE NOS. ER-90-  
12 101, EO-91-247 AND ER-93-37 ARE VALID WITH REGARD TO THE  
13 APPROPRIATENESS OF RATE BASE TREATMENT FOR THE UNAMORTIZED  
14 DEFERRED COSTS?

15 A. No. The cases Ms. Miller cites occurred early in the Commission's process of developing,  
16 or adopting, what commonly became known as accounting authority orders. In later cases,  
17 the Commission recognized that allowing a utility to earn a return on the deferred costs was  
18 not an appropriate regulatory policy.  
19

20 Q. WHY DOES THE PUBLIC COUNSEL OPPOSE RATE BASE INCLUSION OF THE  
21 UNAMORTIZED DEFERRED BALANCES?

22 A. As discussed in my direct testimony, Public Counsel believes that the AAO process has the  
23 effect of protecting Company from regulatory lag. This Commission has recognized that

1 lessening the effect of regulatory lag by deferring costs is beneficial to a utility but not  
2 particularly beneficial to ratepayers. Companies do not propose to defer profits to  
3 subsequent rate cases to lessen the effects of regulatory lag, but insist it is a benefit to defer  
4 costs. Regulatory lag is a part of the regulatory process and can be a benefit as well as a  
5 detriment.

6  
7 Later Commissions (i.e., subsequent to the cases referenced by Ms. Miller) recognized that  
8 the unamortized deferred balances associated with AAOs should not be afforded rate base  
9 treatment. They stated that the AAOs issued by the Commission authorize the utility to  
10 book and defer the costs requested but do not approve any ratemaking treatment of the  
11 deferred balances. Furthermore, AAOs are not intended to eliminate regulatory lag but are  
12 intended to mitigate the cost incurred by the Company because of regulatory lag. They also  
13 stated that the purpose of the AAO is to lessen the effect of the regulatory lag, not to  
14 eliminate it nor to protect utilities completely from risk. Without the inclusion of the  
15 unamortized balance of the AAO account included in the rate base, the utility will still  
16 recover the amounts booked and deferred, including the cost of carrying the deferred  
17 balances, property taxes and depreciation expenses.

18  
19 However, the deferral of costs to maintain current financial integrity, though, is of  
20 questionable benefit. If a utility's financial integrity is threatened by high costs so that its

1 ability to provide service is threatened, then it should seek interim rate relief. If maintaining  
2 financial integrity means sustaining a specific return on equity, this is not the purpose of  
3 regulation. It is not reasonable to defer costs to insulate shareholders from any risks.  
4

5 Q. DOES THE PUBLIC COUNSEL KNOW THE CORRECT AMOUNT OF DEFERRED  
6 INCOME TAXES ASSOCIATED WITH THE DEFERRED AAO COSTS THAT  
7 SHOULD BE SUBTRACTED FROM RATE BASE?

8 A. No. Company's response to Public Counsel data requests (e.g., OPC DR No. 1031) indicate  
9 that it has not properly maintained the financial bookkeeping required to track those costs.  
10 As a matter of fact, Company's failure to maintain the proper financial records has been a  
11 factor in the tracking of these particular costs at least as far back as its 1993 electric rate  
12 case.  
13

14 Q. WHAT DOES THE PUBLIC COUNSEL PROPOSE REGARDING THE AMOUNT OF  
15 DEFERRED INCOME TAXES ASSOCIATED WITH THE DEFERRED AAO COSTS  
16 THAT SHOULD BE SUBTRACTED FROM RATE BASE??

17 A. Inasmuch as the Company has proposed a surrogate amount (i.e., Company work-paper  
18 RBO 31 - \$3,190,470) for the deferred income tax effect of the September 30, 2003  
19 deferred cost balances, Public Counsel recommends that the Commission accept the  
20 Company's calculation as the amount of deferred income taxes associated with the AAO

1 unamortized deferred balances that should be subtracted from rate base. However, with  
2 regard to the MPSC Staff's documentation dispute with the Company, if the Commission  
3 later determines that the amount of the total deferred costs associated with the Ice Storm  
4 AAO is different than that proffered by Company, the income tax effect would require  
5 further appropriate adjustment.  
6

7 **II. AQUILA NETWORKS - L&P**

8 **A. ACCOUNTING AUTHORITY ORDER COSTS**

9 **Q. WHAT IS THE ISSUE?**

10 **A.** Company, and the MPSC Staff, in their respective direct testimonies, have recommended a  
11 cost of service amortization along with rate base treatment for the unamortized deferred  
12 balance associated with the AM/FM accounting authority order discussed in my direct  
13 testimony. During the twelve months ended September 30, 2003, the Company's expense  
14 amortization for the deferred balance totaled \$45,291. Further, Company, and MPSC Staff,  
15 both propose to include a remaining unamortized deferred balance of \$22,380 in rate base.  
16

17 **Q. IS THIS ISSUE ESSENTIALLY THE SAME AS THAT PRESENTED IN THE MPS**  
18 **PORTION OF THIS TESTIMONY REGARDING AAOs?**

19 **A.** Yes, and no. In this instance, for this particular AAO, it is the Public Counsel's belief that  
20 no costs (i.e., neither cost of service amortization or rate base treatment for the unamortized

1 deferred balance) associated with this AAO should be allowed in the determination of the  
2 utility's cost of service. However, were the Commission to reject that position, the  
3 discussion laid out in the MPS portion of this testimony, regarding the appropriateness of  
4 rate base treatment for the unamortized deferred balance is essentially the same, and equally  
5 relevant to this accounting authority order.

6  
7 Q. WHY DOES THE PUBLIC COUNSEL BELIEVE THAT THE COSTS ASSOCIATED  
8 WITH THIS AAO SHOULD NOT BE ALLOWED?

9 A. As discussed in my direct testimony, there are several reasons that the costs should be  
10 disallowed; however, the two primary reasons that costs should not be authorized are, 1)  
11 Company has far exceeded the six year timeframe over which the Commission authorized  
12 the amortization, and 2) the unamortized deferred balance, as identified by the utility, is  
13 nearing zero. According to the Company's response to OPC Data Request No. 1010-  
14 Supplemental, the costs will be fully amortized by the end of October 2004.

15  
16 Q. IF THE COMMISSION AUTHORIZES CONTINUED AMORTIZATION OF THE AAO  
17 BALANCE, IS IT LIKELY COMPANY WILL OVERRECOVER THE ALLEGED  
18 DEFERRED COSTS?

19 A. Yes. If the Commission authorizes a cost of service amortization of the alleged deferred  
20 balance, over-recovery would occur due to the fact that it is nearly extinguished. Company



1 has stated that the deferred balance associated with this AAO will be reduced to zero within  
2 the next nine months; therefore, any amortization recovery built into rates will continue to  
3 be collected by the utility until the conclusion of its next rate case. Since historically this  
4 utility does not come in for a rate case for intervals of several years such authorization  
5 would certainly guarantee over-recovery of the amortization. It's Public Counsel's belief  
6 that ratepayers should not be required to reimburse Company for costs which do not exist.  
7

8 Q. IF THE COMMISSION DETERMINES THAT COSTS ASSOCIATED WITH THIS AAO  
9 SHOULD BE ALLOWED COST OF SERVICE AMORTIZATION, SHOULD THE  
10 UNAMORTIZED DEFERRED INCOME TAXES ASSOCIATED WITH THE AAO  
11 ALSO BE UTILIZED TO REDUCE RATE BASE?

12 A. Yes. If cost of service amortization of the alleged unamortized deferred balance is  
13 authorized, Company should also be required to reduce rate base for the balance of  
14 unamortized deferred income taxes associated with the AAO. A surrogate calculation, such  
15 as that developed by the Company for the MPS AAOs, would likely be appropriate.  
16

17 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

18 A. Yes, it does.