

FILED

May 2, 2007

Missouri Public
Service Commission

Exhibit No.:

Issues: *Interim Energy Charge; Fuel
Cost Recovery Mechanism and
Coal Supply Agreement*

Witness: *Cary G. Featherstone*

Sponsoring Party: *MoPSC Staff*

Type of Exhibit: *Surrebuttal Testimony*

Case No.: *ER-2007-0004*

Date Testimony Prepared: *March 20, 2007*

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

SURREBUTTAL TESTIMONY

OF

CARY G. FEATHERSTONE

AQUILA, INC. d/b/a AQUILA NETWORKS-MPS (Electric)

and AQUILA NETWORKS-L&P (Electric)

CASE NO. ER-2007-0004

*Jefferson City, Missouri
March 2007*

****Denotes Highly Confidential Information****

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Staff Exhibit No. 208
Case No(s). ER-2007-0004
Date 4-12-07 Rptr KF

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of Aquila, Inc. d/b/a Aquila Networks-MPS)
and Aquila Networks-L&P, for authority to file tariffs)
increasing electric rates for the service provided to)
customers in the Aquila Networks-MPS and Aquila)
Networks-L&P service area.)

Case No. ER-2007-0004

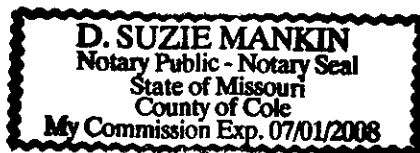
AFFIDAVIT OF CARY G. FEATHERSTONE

STATE OF MISSOURI)
)
COUNTY OF COLE) ss.

Cary G. Featherstone, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Surrebuttal Testimony in question and answer form, consisting of 36 pages to be presented in the above case; that the answers in the foregoing Surrebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.


CARY G. FEATHERSTONE

Subscribed and sworn to before me this 20th day of March, 2007.




Notary Public

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CARY G. FEATHERSTONE**

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1 **SURREBUTTAL TESTIMONY**

2 **OF**

3 **CARY G. FEATHERSTONE**

4 **AQUILA, INC., d/b/a AQUILA NETWORKS-MPS (Electric)**

5 **and AQUILA NETWORKS-L&P (Electric)**

6 **CASE NO. ER-2007-0004**

7 Q. Please state your name and business address.

8 A. Cary G. Featherstone, Fletcher Daniels State Office Building, 615 East 13th
9 Street, Kansas City, Missouri.

10 Q. By whom are you employed and in what capacity?

11 A. I am a Regulatory Auditor with the Missouri Public Service Commission
12 (Commission).

13 Q. Did you file direct and rebuttal testimonies in this proceeding?

14 A. Yes. I filed direct testimony in this case on January 18, 2007 on the areas of fuel
15 cost recovery mechanism- Interim Energy Charge (IEC) and South Harper Generating Unit
16 (South Harper) combustion turbine valuation and I filed rebuttal testimony in this case on
17 February 20, 2005 on the IEC and fuel adjustment clause and capacity planning.

18 Q. What is the purpose of your surrebuttal testimony?

19 A. The purpose of this surrebuttal testimony is to address the rebuttal testimony
20 filed by Aquila, Inc. (Aquila or Company) for the following witnesses:

21 1. Dennis R. Williams, Vice President – Electric Regulatory
22 Services, relating to the area of fuel cost recovery mechanism and interim
23 energy charge (IEC).

24 2. Abby Herl, Director, Coal Procurement and H. Davis Rooney,
25 Director of Resource Planning relating to the CW Mining coal supply
26 agreement.

1 I have also submitted surrebuttal testimony and schedules in a separate binder relating to
2 the issues of capacity planning and combustion turbine valuation

3 Q. How do you refer to Aquila, its divisions and affiliates in your testimony?

4 A. When referring to Aquila as a whole, I use the name Aquila—the corporate name
5 Aquila, Inc. Aquila, Inc. was formerly UtiliCorp United, Inc. (UtiliCorp), changing its name early
6 2002. I refer to the operating divisions of Aquila this Commission regulates as follows: Aquila
7 Networks-MPS as MPS, and Aquila Networks-L&P as Light & Power or L&P.

8 **EXECUTIVE SUMMARY**

9 Q. Please summarize your surrebutal testimony?

10 A. The following summarizes my testimony:

11 **Fuel Cost Recovery Mechanism**

12 Staff is proposing to use an interim energy charge (IEC) as the fuel cost recovery
13 mechanism in this case. In my rebuttal testimony Staff proposed a range of natural gas, coal and
14 purchased power prices to develop an amount for MPS and L&P to collect in rates subject to
15 refund. This range results in an approximate \$50 million increase in IEC revenues split 80%
16 and 20% for MPS and L& P, respectively. These amounts would be included in each division's
17 rate structure with a provision for a refund mechanism for any over-collections.

18 In the alternative, should the Commission not be willing to approve an IEC mechanism
19 in this case, then Staff would support the fuel clause mechanism proposed by the Sedalia
20 Industrial Energy Users' Association (SIEUA or Sedalia Industrials) and Ag Processing Inc., as
21 presented in the rebuttal testimony of Donald Johnstone. This alternative fuel clause
22 mechanism would be preferable to the total pass-through fuel clause being proposed by Aquila
23 witness Williams in his direct and rebuttal testimonies. Aquila's proposal is based on the notion

1 that Aquila would be entitled to pass through all actual fuel and purchased costs quarterly to its
2 customers regardless of the amount and nature of those costs. Aquila's proposal does not
3 provide the necessary safeguards and incentives that either the IEC or the SIEUA proposal
4 provides.

5 **CW Mining**

6 Aquila had a contract with CW Mining for coal that CW Mining did not supply. Aquila
7 is currently engaged in litigation before a Utah court over this fuel supply agreement.
8 CW Mining failed to perform on a contract that had an effective date of January 1, 2004.
9 Aquila never received from CW Mining the contracted tonnages of coal and did not receive the
10 contracted quality of coal. In 2005, CW Mining notified Aquila it was terminating the contract.
11 Aquila refused to accept the termination of the contract and sought relief in the courts for
12 damages up to \$54 million (Aquila witness Herl rebuttal, page 5). Aquila went to trial on this
13 lawsuit on February 12, 2007.

14 Aquila failed to perform proper due diligence on CW Mining concerning labor issues
15 that were occurring at the same time it was entering into this fuel supply agreement. This labor
16 issue resulted in a termination of an employee, which in turn resulted in a walk-out of a
17 substantial majority of the CW Mining work force in the fall of 2003, prior to the start of this
18 contract. Had Aquila done even a cursory review of the labor relations of CW Mining, it would
19 have discovered very disturbing issues surrounding the ability of this company to perform under
20 the terms of the agreement.

21 Staff is proposing to include, as part of the fuel costs in its proposed fuel cost recovery
22 mechanism (the IEC), the coal costs Aquila has incurred for replacing the C.W. Mining coal in
23 the forecast or ceiling, and to keep in base (floor) rates coal costs based on the C.W. Mining

1 contract. Staff believes this represents a fair approach to resolving this issue until the court has
2 rendered a decision regarding any damages relating to CW Mining's non-performance of the
3 contract.

4 If the Commission rejects the IEC mechanism and instead provides for a fuel clause,
5 Staff believes that the CW Mining coal price should continue to be used in determining fuel
6 costs with Aquila being allowed to defer the additional cost of the higher replacement coal until
7 the court makes its ruling on the litigation. Should the court rule against Aquila on this contract
8 dispute, then this would allow the parties to review the court decision and related documents in
9 order to make a determination on the performance of Aquila on this matter. Should the courts
10 find Aquila at fault, then it would allow the parties to consider what, if any, action the parties
11 would recommend to the Commission regarding any recovery of the deferred costs of the
12 replacement coal.

13 **FUEL COST RECOVERY MECHANISM**

14 Q. At page 13 of Mr. Williams' rebuttal testimony, he identifies his understanding
15 of an interim energy charge. Mr. Williams states that, "this mechanism suffers from some of the
16 same shortcomings as other mechanisms I have discussed in that it is ultimately based upon
17 estimates and may result in the customer being overcharged or the utility being under
18 compensated." Do you agree with him?

19 A. No. An interim energy charge or an IEC has a band of fuel prices that have been
20 predetermined and set as part of a permanent rate, or base (floor) rate, and an outer band that is
21 commonly referred to as a ceiling or forecasted rate. At the conclusion of the IEC period, a
22 prudence review and audit of the actual fuel costs incurred determines if there is to be any
23 refund to the customers. Any amounts that were over-collected are to be refunded to the

1 customers (with interest) down to the base amount. Actual amounts for fuel and purchased
2 power costs that are within the band and that are prudently incurred are retained by the
3 Company. Any over-collections that occur are refunded back to the customers down to the base
4 level. If Aquila's actual prudently incurred costs are below the base level, the Company would
5 retain the amount below the base level. (In other words, depending on the Company's prudently
6 incurred costs, only the amount within the IEC band is subject to possible refund to Aquila's
7 customers.) Any under-collections above the forecasted level are absorbed by the utility.

8 Q. At page 10 of his rebuttal, Aquila witness Williams states that, "witnesses largely
9 dismiss the effectiveness of an annual prudence review on a utility's decision making, but the
10 threat of cost disallowance is real and a strong motivator." Please comment.

11 A. It is true that many including myself place little reliance on prudency reviews of
12 fuel clause mechanisms. It is very difficult to re-create the facts and circumstances surrounding
13 particular events. This is especially true considering that these events may take place many
14 months prior to the review, and the events can cover a period of many months. Further
15 compounding the difficulty of the fuel clause review is the fact that the production of electricity
16 is far more complicated than the purchase of natural gas by a local distribution company (LDC).
17 LDCs have one commodity that they purchase---natural gas. They may purchase this
18 commodity from a variety of sources, from several different transportation carriers (pipelines),
19 but the costs can be tracked in a more straight-forward matter. Electric companies, on the other
20 hand, purchase natural gas as a commodity, in most instances from the same sources and
21 pipelines as LDCs, but they also purchase coal, oil and in some instances nuclear fuel. All those
22 fuels are used in some form and generation mix to produce electricity. Station outages and fuel

1 mix also affect the fuel costs. These combine to require a higher degree of review in the case of
2 electric utilities, and make it more difficult to identify potential prudence issues.

3 Q. Do you agree with Aquila witness Williams that "cost disallowance" is a real
4 motivator to Aquila?

5 A. For some time now, Aquila has been under a great deal of scrutiny regarding its
6 capacity planning and has been under "the threat of cost disallowance," but that has not been "a
7 strong motivator" to the Company. Certainly prudence reviews should be taken seriously by
8 companies and those engaged in these types of reviews, but I do not believe these reviews
9 motivate purchasing decisions and optimal plant operations. They may be a safety net to
10 regulators for poor buying decisions and plant operations, but they are not the end-all-be-all that
11 those advancing the need for pass-through fuel cost recovery mechanisms claim they are.

12 Q. At page 11 of his rebuttal testimony, Mr. Williams identifies "price volatility" as
13 an important reason for a fuel clause. Do you agree?

14 A. I agree that generally one of the most often cited reasons by utilities for needing a
15 fuel clause is price volatility. In reality, with tools available today to those procuring natural gas
16 and coal supply, while fuel and energy prices have increased the last several years over
17 historical levels, the fuel and energy prices still can be determined within a range of
18 predictability. As an example, as the fuel and energy markets have increased over the last three
19 years starting in 2004, those involved in forecasting these energy prices have increased the
20 levels in the forecast. Understandably, rate analysts developing fuel pricing in rate cases have
21 all increased the level of energy prices used in cost of service calculations. Utilities, like Staff,
22 have certainly reflected much higher energy prices in their recommendations to correspond to
23 these increases. Many years ago, companies and Staff were using natural gas prices in the

1 \$1.50 per mmbtu range. Today these prices typically are in the \$6.50 to \$8 per mmbtu range.
2 Spot purchased power prices within last four or so years were in \$20 per megawatt hour, and
3 today those prices are typically at the \$65 per megawatt hour. Without question, there is price
4 volatility in the energy market, but forecasting has followed the pattern of increasing costs.

5 Q. Have Aquila's actual purchases reflected such increases?

6 A. Yes. Aquila has experienced price increases for fuel and purchased power just
7 like every other utility in this region, if not the country. The following represents Aquila's
8 actual delivered composite natural costs for the period 2003 through 2006 (including variable
9 transportation charges):

2003	**	_____	**
2004	**	_____	**
2005	**	_____	**
2006	**	_____	**

14 [Highly Confidential Schedule 1]

15 Certainly the above prices show a significant increase the last two years, but they are
16 nothing like the prices that are usually associated with high energy costs, such as \$12 and
17 \$13 per mmbtu natural gas. The costs Aquila paid for natural gas in 2005 and 2006 are a long
18 way from the "good old days" of \$3 per mmbtu, but one must keep these prices in perspective.
19 Higher prices have been put in rates, which customers have had to pay. In some instances,
20 customers have paid higher rates than the cost incurred by the utility.

21 Q. Mr. Williams states at page 11 of his rebuttal that "fuel cost volatility" also has a
22 "bearing on sharing concepts that have been advanced for consideration within a FAC." Do you

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1 believe that volatility in the energy should be considered in developing a fuel mechanism that
2 has a sharing mechanism?

3 A. Absolutely. The higher the price volatility, the greater the need for some sharing
4 mechanism. As the energy prices increase the risks to both the company and customer also
5 increase. When natural gas prices were in the \$2 per mmbtu-range a few years ago, the risk of
6 price decreases and increases were the same as when prices fluctuate from \$4 to \$11 per mmbtu,
7 as they have during last several years. The lack of some type of reasonable sharing mechanism
8 in the fuel recovery mechanism would create a situation where the utility would have no
9 incentive to keep fuel and energy costs low. A sharing mechanism puts everyone at risk,
10 including the company, so the utility is properly motivated to make proper buying decisions and
11 operate its power plants appropriately, thereby maximizing efficiencies and plant output. If a
12 certain level of costs is at risk for the utility, it will act accordingly to buy fuel in the most
13 economical manner. If the utility has an opportunity for rewards at the lower end of fuel costs
14 spectrum, then it will take actions to push prices downward in hopes of benefiting from
15 achieving costs below the base. This is exactly the concept behind the development of the IEC.
16 Customers and utilities alike share in the risks and rewards of going above or below the base
17 (floor) and ceiling (forecast) levels.

18 Q. Why do the increased energy prices increase the risk to both companies and
19 customers?

20 A. As the energy costs increase, forecasters must follow suit with their predictions.
21 As indicated above, everyone connected with rate cases has recommended higher and higher
22 energy prices in the cost of service calculations. As the energy prices fluctuate from one rate
23 case to another, the risks to the consumer and utility alike have increased. As an example, if the

1 costs of natural gas have caused the recommendations made by rate analysts to increase to the
2 \$7 to \$8 per mmbtu range, the customers are at risk if the costs decrease to \$6 per mmbtu.
3 Conversely, the utility will be harmed if costs for natural gas increase to \$9 per mmbtu if \$7 per
4 mmbtu is what is reflected in rates. It is harder and harder, with the price fluctuations, to
5 determine what these costs will be over the period rates are set.

6 Some type of sharing mechanism is not only appropriate but the only way risks can be
7 spread to both customers and utilities. A total pass-through fuel costs recovery mechanism like
8 the one proposed by Aquila will result in disincentives to the Company, which has already
9 demonstrated difficulty in making proper decisions with respect to choosing fuel suppliers
10 (CW Mining), procuring fuel (rigid hedging program) and more important, its decision-making
11 regarding capacity planning.

12 Q. Does Staff believe that Aquila's fuel clause mechanism as proposed should be
13 adopted by the Commission in this case?

14 A. No. As I have said, absent any type of sharing mechanism to mitigate the risk to
15 customers, the Company's fuel clause is nothing short of a very one-sided approach to capturing
16 all fuel costs, regardless of the levels and regardless of the circumstances under which the costs
17 were incurred. Aquila's proposed fuel clause was designed to capture for the Company all fuel
18 costs increases without risk, while at the same time placing a greater risk on the consumers.

19 Q. Why does Aquila's fuel clause proposal put all the risk on its customers?

20 A. With its proposed fuel clause mechanism, featuring a pass-through of fuel costs,
21 Aquila is attempting to totally capture all fuel costs with no upside cap on expenditures and no
22 performance expectations of the Company's operations regarding its generating units and
23 purchased power decisions. Aquila has not presented any feature that many fuel cost recovery

1 mechanisms have for sharing the risks of an ever increasing energy market. Aquila witness
2 Williams' statement appearing at page 13 of his rebuttal testimony sums up the Company's
3 philosophy, wherein he states that, "it is not unfair for a utility to recover all of its prudently
4 incurred operating costs." It is this "utility should recover what ever level it spends" mentality
5 that has existed over many years that has caused the high degree of scrutiny that utilities were
6 subjected to in the prudency reviews associated with the building of nuclear power plants. This
7 attitude causes a high degree of skepticism on the part of those engaging in the after-the-fact
8 review of costs.

9 Q. Is there a way of minimizing the skepticism that comes from a total pass-through
10 fuel clause mechanism?

11 A. Some type of sharing mechanism must be implemented in the fuel cost recovery
12 mechanism. An IEC mechanism, with properly developed ranges for prices for the floor and
13 ceiling, has such a sharing in place. This has been described in previous testimony.

14 However, if a fuel clause is the Commission's preferred approach in this case, at a
15 minimum some type of sharing mechanism should be implemented.

16 Q. What would be the appropriate sharing for the fuel clause mechanism?

17 A. A sharing mechanism similar to the one proposed in the testimony of Sedalia
18 Industrials' witness Donald Johnstone's rebuttal might be the solution. Certainly it is far more
19 preferable to Aquila's total pass-through of all costs approach.

20 Sedalia Industrials witness Johnstone identifies at page 21 of his rebuttal a sharing
21 mechanism equally and evening split between the Aquila and its customers. You cannot get
22 more fair than to assign equal risks and rewards for both of these groups-- the Company and
23 customers.

1 The Company would receive a portion of total fuel cost increases through the fuel
2 clause, with the opportunity through efficiency to recover the remaining amount by reducing
3 other costs. On the other hand, customers would benefit from 50% sharing of the increase
4 thereby not having the total risk of the increases fall entirely on them.

5 Symmetrically, falling fuel prices would allow the Company to benefit from a portion of
6 those declining costs, sharing them with the customers. Under this proposal, the customer is
7 protected from having responsibility of paying all the cost increases regardless of the reasons for
8 the increases, and the Company is protected from having to give up all the costs savings.

9 Q. Can a fuel recovery mechanism send pricing signals to the Company and avoid
10 the inequity of it not being able to recover all of its prudently incurred fuel costs?

11 A. Either an IEC or a fuel adjustment mechanism can address increased fuel cost
12 using current pricing. There is an inherent inequity in fuel cost mechanisms designed as a total
13 pass-through mechanism in that the burden is upon the prudency review to catch any costs that
14 should not be flowed through to customers via the fuel adjustment mechanism. There is a
15 greater potential in a fuel adjustment mechanism to pass costs on to customers that should not
16 be borne by them.

17 Q. Can you provide an example to illustrate your point?

18 A. Yes. In earlier testimony (pages 35-41 of my direct testimony), I described an
19 issue arising from the termination of a coal supply contract with CW Mining. Briefly,
20 CW Mining contracted with Aquila to supply high btu coal for use at MPS' Sibley Generating
21 Station and at L&P's Lake Road Generating Station; however, CW Mining has attempted to
22 terminate the contract and Aquila is asserting the termination was wrongful and a breach of the
23 contract. Under a straight pass-through fuel clause, the higher replacement cost of the coal

Surrebuttal Testimony of
Cary G. Featherstone

1 obtained to replace that which was to be delivered under the breached CW Mining contract
2 would be passed on to Aquila's electric customers. In order to evaluate the prudence of such
3 costs, those responsible for reviewing the fuel adjustment mechanism would have to discover
4 that the CW Mining contract was breached and that there was a substantially higher cost for
5 replacement coal. The prudence review would be done in an after-the-fact fashion, unlike how
6 it was treated in this case. With an IEC, the Staff is proposing to treat the CW Mining original
7 contract price as a base amount for fuel and the replacement coal as a part of the forecasted
8 range of the IEC. The burden would be on the reviewers of the fuel adjustment mechanism to
9 discover and to make a determination as to the prudence of the CW Mining issue. Using the
10 IEC mechanism, the Staff is able to implement a process that encourages Aquila to fully pursue
11 its legal recourse in the courts concerning the breached coal supply contract and would reduce
12 the possibility that a breaching coal supplier could argue that the utility would double-recover
13 its damages from the breach—once from ratepayers and again from the supplier.

14 In my direct testimony, I identify that the CW Mining issue was worth upwards of
15 approximately \$8 million (page 14, of Aquila witness Williams rebuttal in Case ER-2005-0436).

16 Q. What period should the IEC cover?

17 A. Staff would recommend a two-year IEC. Initially Staff proposed a three-year
18 period, but since the proposed sale of Aquila to Kansas City Power & Light Company (KCPL),
19 Staff believes only a two-year period is appropriate in light of the uncertainty of how Aquila
20 will be operated in the future.

21 Q. What costs should be considered in the IEC?

22 A. The variable costs of fuel and purchased power energy recorded in FERC
23 Account Nos. 501, 547 and 555 should be included in any IEC authorized by the Commission.

1 Also, Staff would recommend that other fuel-related costs such prudent SO₂ and hedging costs
2 should be included in an IEC. The prudent hedging costs would include the net gains/losses
3 from hedging that are recorded in FERC Accounts 509, 421 and 426.5 in the IEC. Staff witness
4 Charles R. Hyneman discusses issues and problems Staff has encountered regarding Aquila's
5 hedging policy, which need to be considered in any prudent costs included in an IEC
6 mechanism.

7 Q. Is it important to develop the appropriate range of fuel and purchased power
8 prices for the IEC?

9 A. Yes. It is critical to develop an appropriate range of energy prices for an IEC in
10 order that Aquila has sufficient opportunity to recover prudently incurred fuel costs at the high end
11 while ensuring that a reasonable incentive is built into the low end (base) to enable the Company to
12 push energy prices down. It is equally critical not to set the base too low, where it is completely
13 impractical for the Company to achieve, or to set an unreasonably high ceiling, where the Company
14 has no incentive to maintain the lowest possible fuel costs.

15 Q. Did Staff propose a level of base (floor) and forecast (ceiling) for an IEC in this
16 case?

17 A. Yes. I presented in my rebuttal testimony (page 6), as a starting point, a base for
18 natural gas of something in the \$6 per mmbtu range and \$55 per megawatt hour for purchased
19 power. Ceiling prices for natural gas and purchased power were recommended to be set at \$9 per
20 mmbtu and upwards of \$90 per megawatt hour, respectively. In addition, Staff has proposed that a
21 dispute with one of Aquila's coal suppliers be treated as part of the IEC mechanism. This would
22 result in a base price of almost \$21 per ton for the original contract amount for the high btu blend

1 coal used at the MPS Sibley facility and the Light & Power Lake Road facility. The forecast
2 amount would be upwards of approximately \$40 per ton.

3 It is estimated that the IEC, using the above base and forecast prices, would roughly equal
4 an approximate \$50 million interim increase in rates, subject to a true-up audit and a provision for
5 refund. This amount of interim rate increase for the IEC would have to be split out roughly 80% to
6 MPS and 20% to L&P, which would result in the MPS IEC being \$40 million and the L&P IEC
7 being \$10 million.

8 Q. At page 6 of Aquila witness Rooney's rebuttal testimony, he indicates that if
9 Aquila "is permitted to implement a FAC mechanism" then the Company would propose
10 refunding a share of any amounts received through its pending litigation with CW Mining.
11 Does Staff continue to believe that including the CW Mining contract cost of coal in the base
12 rate of the IEC is the most appropriate way of handling the CW Mining issue?

13 A. Yes. While Aquila has pursued this litigation and continues to pursue damages
14 from CW Mining for its failure to comply with and perform under terms of the coal supply
15 contract, the outcome is still uncertain. If Aquila were to get the full replacement coal in
16 permanent rates, at more than double the costs, Aquila would have little incentive to pursue
17 through the courts its legal rights for breach of contract damages. Aquila could take the view
18 that it already has recovery in rates the much higher cost replacement coal, and therefore not
19 aggressively pursue its legal recourse. It would be next to impossible for the Commission or its
20 Staff to force the Company to pursue continued legal action against CW Mining if the court
21 rules in favor of the coal supplier. It is expensive to proceed with lawsuits, especially given the
22 uncertainty of the outcome. Waiting for a court decision is time-consuming.

1 What Mr. Rooney is proposing is putting the risks of the CW Mining lawsuit entirely on
2 the Company's customers. Consumers had no role in Aquila's decision to enter into a contract
3 with this coal company; they have no standing in court to pursue a lawsuit; and they have no say
4 on how Aquila prosecutes the case. The customers had nothing to do with getting Aquila in its
5 current position. Only Aquila can pursue damages from the breached coal contract and,
6 therefore, all the litigation risk should be solely on Aquila.

7 Q. Does Staff believe including the costs relating to the dispute with the CW Mining
8 coal contract in the IEC is a reasonable solution to this dilemma?

9 A. Yes. Staff could have taken the position, and some may suggest should have
10 taken the position, that all the replacement coal costs should be absorbed by the Company.
11 There is a question as to the prudence of Aquila's decision to select CW Mining as a supplier in
12 the first place. This matter will be further discussed later in this testimony.

13 Q. If there is not an IEC mechanism approved by the Commission in this case, how
14 would Staff propose treating the CW Mining issue?

15 A. If the Commission rejects the IEC mechanism, and instead provides for a fuel
16 adjustment type clause, Staff believes that the CW Mining coal price should continue to be used
17 in determining fuel costs with Aquila being allowed to defer the higher replacement coal until
18 the court makes its final ruling on the litigation. The Company should set up a deferred account
19 to capture the costs difference between the CW Mining price and the higher price replacement
20 coal. Should the court rule against Aquila on this contract dispute, then this would allow the
21 parties to review court decision and related documents, and to make a determination on the
22 performance of Aquila on this matter. Should the courts find Aquila at fault, then it would

1 allow the parties to consider what, if any, action the parties would recommend to the
2 Commission regarding any recovery of the deferred costs of the replacement coal.

3 This would be similar to what Mr. Rooney is proposing in his rebuttal testimony
4 (page 6) if the Commission does not grant Aquila a fuel adjustment clause. However, Staff's
5 approach would be to maintain the CW Mining price in rates in this case, allowing Aquila to
6 defer the greater replacement coal costs for a determination of the prudence of such higher costs
7 once the court has rendered a decision. This would allow the Company to put its best case
8 before the courts even in the event of an appeal of the initial decision. Once a final judgment is
9 rendered, hopefully in the favor of Aquila, then a decision could be made as to how much of the
10 proceeds would be given to customers and how much would be retained by the Company.
11 Treating these costs in this manner gives the Company the necessary incentive to continue the
12 legal fight, and allows a review of the entire record on this issue, including the court papers.

13 Q. Mr. Williams is supporting a total pass-through fuel clause which does not have a
14 cap provision, resulting in no limit to any increase that customers would have to absorb. Under
15 the IEC there is a cap placed on the amount customers would see as an increase. Should any
16 amounts of the IEC that are unrecovered above the cap at end of the IEC period be allowed rate
17 treatment?

18 A. No. In the past, the IEC was designed so that the Company would keep any
19 amounts of actual fuel costs below the base levels. The IEC was structured so that actual costs
20 above the forecast (ceiling) level were the sole responsibility of the Company. Any amount of
21 an over-recovery of actual fuel and purchased power costs below the base amount (floor) would
22 be retained by Aquila. If the Company collected more than the actual costs below the base

1 prices Aquila would keep that money. An IEC is intended to provide for a range that is a fair
2 proposal to both the Company and its customers

3 Q. Please summarize the Staff's position concerning a fuel cost recovery mechanism.

4 A. Staff continues to believe that a properly designed IEC is preferable to a fuel
5 clause mechanism. Staff has proposed the use of IECs in the past several times and is
6 comfortable with the concept and its implementation. Staff believes that, with modifications
7 discussed in my direct testimony (and later in this testimony), an IEC could be used to deal with
8 the extreme volatility of the energy markets currently affecting the utility industry.

9 If the Commission does not want to approve an IEC-styled fuel cost recovery
10 mechanism in this case, then Staff would support the proposal by several parties regarding a fuel
11 clause that contains a sharing mechanism. This mechanism is primarily identified in the rebuttal
12 testimony of Donald Johnstone of the Sedalia Industrials.

13 Q. You reference a proposal presented by the Sedalia Industrials that identifies a
14 fuel clause approach that provides certain features. Does Staff support this recommendation?

15 A. Yes, if the Commission rejects an IEC type of fuel recovery mechanism. Staff
16 supports the IEC as the best solution to the volatility of fuel and purchased power costs.
17 However, in lieu of an IEC, Staff would support the fuel clause sponsored by Sedalia Industrials
18 witness Johnstone in his rebuttal testimony, referred to as the alternative fuel adjustment clause
19 (or Alternative FAC [fuel clause]). This type of fuel cost recovery mechanism is a much fairer
20 approach than what is being proposed by Aquila in this case.

21 Q. Why is the Sedalia Industrials proposal a better mechanism than what is being
22 advocated by Aquila?

1 A. As discussed earlier in this surrebuttal testimony, Aquila is proposing a total
2 pass-through fuel clause which does not provide any safeguards to the customer and provides no
3 incentive to the Company to keep fuel costs low. The Sedalia Industrials proposal addresses the
4 inherent shortcomings of Aquila's proposal by identifying the need to have some type of sharing
5 mechanism in place to allow equal risks and rewards. This was discussed earlier in this
6 testimony.

7 In addition to the symmetrical sharing that is both even and fair to Aquila and its
8 customers, the Sedalia proposal reflects the following principles and features that are supported
9 by Staff:

- 10 • Limitation of the Alternative Fuel Clause to two year period because of the
11 proposed sale of Aquila to KCPL
- 12 • Prudence reviews are not a substitute for incentives built into the
13 traditional ratemaking process
- 14 • A performance standard relating to the production facilities and
15 capacity purchases would provide necessary protection from unusual
16 outages that may occur during the time the fuel clause mechanism is
17 in place
- 18 • Fixed costs such as demand charges paid to reserve capacity through
19 purchased power agreements should not be included in the fuel clause
- 20 • A six month accumulation period provides more stability in price
21 increases and reduces administrative burdens to implement the fuel
22 clause mechanism
- 23 • A twelve month recovery period will provide a more reasonable result
24 considering the impact on seasonality of fuel costs, and will allow a
25 better use of limited resources for reviews
- 26 • A twelve month recovery period will provide a more reasonable result
27 considering the impact on seasonality of fuel costs, and will allow a
28 better use of limited resources for reviews
- 29 • A twelve month recovery period will provide a more reasonable result
30 considering the impact on seasonality of fuel costs, and will allow a
31 better use of limited resources for reviews

31 These features would mitigate some of the volatility that would be inherent in the total
32 pass-through fuel clause proposed by Aquila. In addition, the sharing proposal would provide

1 incentives to Aquila to operate its plants efficiently and at least cost, similar to incentives built
2 into setting rates under the traditional regulatory approach.

3 Q. Why are changes to Aquila's proposed fuel clause necessary?

4 A. Absent some built-in mechanism for incentives, Aquila would have little reason
5 to be concerned about least cost operations under a total pass-through fuel clause. Under
6 Aquila's proposed fuel clause, higher costs would simply pass-through to customers with little
7 regard to the consequences of after-the-fact reviews. Traditionally, under rate case filings, fuel
8 and purchased power is a major component that is critically and intensely examined by
9 numerous Staff personnel. This high degree of review is done to remove abnormal effects of the
10 utility's operations and effects of seasonal fluctuations of weather. As example, maintenance
11 and planned outages of generating units are normalized and fuel and purchased power costs are
12 determined using the latest price changes to reflect a full year's operations. Plant heat rates are
13 considered along with unit outages. Purchased power levels are determined based on a
14 normalized level and consistent with owned generation mix. New fuel supplies are included
15 with any changes in energy content for contracted mmbtu's. Accredited plant ratings are
16 reviewed to determine proper capacity levels.

17 None of these elements is considered in the Company's proposed fuel clause. But the
18 proposed Alternative Fuel Clause attempts to address these items through the sharing
19 mechanism and the performance standards being proposed.

20 It is for these reasons that Staff is in favor of the Alternative Fuel Clause if the
21 Commission does not approve an IEC.

CW MINING COAL AGREEMENT DISPUTE

Q. Aquila witnesses Herl and Rooney, address the CW Mining dispute in their respective rebuttal testimonies. What is Aquila's position on this issue?

A. These Aquila witnesses take the approach that there was nothing wrong with the Company losing a coal supply agreement that had very attractive fuel prices. Their rebuttal is presented from the perspective that CW Mining is not a current coal contract (Rooney rebuttal, page 3) because CW Mining simply terminated the agreement. Mr. Rooney state at page 3 of his rebuttal testimony that, "the estimates and projections provided by Staff and interveners do not represent the actual and historical, known and measurable, costs of Aquila's coal. Aquila witness Herl states at page 2 of her rebuttal that, "the majority of high-Btu bituminous coal is under contract from Consol Energy's Consolidated Coal Company ("Consol") which operates Emery mine in Utah." Ms. Herl further identifies that the Consol long-term agreement is for the term of ** _____ ** She states that the contract provides for ** _____ ** tons by the end of ** _____ **."

All of these prices are substantially above the per ton price at which CW Mining agreed to supply Aquila in late 2003. The total additional cost to Aquila is approximately \$5 million dollars per year to replace the CW Mining coal. There were also substantial increases for SO₂ emission allowance credits that Aquila had to purchase in 2004 and 2005 as the result of using high sulfur Illinois coal to replace the CW Mining coal. This was at a time when the SO₂ emission credits market saw tremendous price increases. This caused Aquila to pay several million dollars more in fuel costs.

Q. What is CW Mining?

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1 A. This is a Utah based coal company that operates as a d/b/a under the name of
2 Co-op Mining Company (Co-op). CW Mining supplied coal to Aquila before the 2003 contract
3 it terminated. CW Mining agreed to supply high btu bituminous coal needed as a blend that is
4 mixed with low btu coal for Aquila's Sibley and Lake Road generating facilities.

5 Q. Why is coal blended?

6 A. These Sibley power plant was originally designed to use high btu coal in 1969
7 when Unit 3 went into service. With emission issues in the 1980s, Aquila converted Sibley to
8 use low-sulfur western coal in 1993. Since the original boiler was designed to use high btu coal,
9 high btu coal had to be blended with the lower btu coal for operating and safety reasons. The
10 Company has used a variety of blending ratios at Sibley, from 75% low btu / 25% high btu to
11 the current 80% low btu / 20% high btu. Since the high btu coal is more expensive, Aquila
12 attempts to use the lowest amount of this coal as possible, giving full consideration to the
13 reliability and safety concerns of operating the power plants.

14 Q. When did Aquila and CW Mining enter into the coal agreement?

15 A. Aquila's senior vice president and chief operating officer, Keith Stamm signed
16 the contract on behalf of Aquila on September 10, 2003. The contract went into effect
17 January 1, 2004. CW Mining signed the agreement on August 27, 2003.

18 Q. What were the terms of the contract?

19 A. The initial term of the agreement commenced on January 1, 2004 and expired on
20 December 31, 2006. The contract provided for an extension, if agreed to by Aquila, for an
21 additional two years through December 31, 2008 [Source: Data Request No. 87].

22 Starting on January 1, 2004, CW Mining was to supply total tons of coal for at the
23 contract price for each calendar year:

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	<u>Initial Period</u>	<u>Annual Tons</u>	<u>Price</u>
2	2004	450,000 tons	** _____ **
3	2005	550,000 tons	** _____ **
4	2006	550,000 tons	** _____ **

	<u>Extension period</u>		
7	2007	550,000 tons	** _____ **
8	2008	550,000 tons	** _____ **

9 [Source: Data Request No. 303 in Case No. ER-2005-0436-- Aquila
10 press release concerning CW Mining coal contract and Data Request
11 No. 86 in Case No. ER-2005-0436]

12 In contrast to the CW Mining coal price, the replacement coal Aquila paid in 2006
13 was ** _____ **per ton.

14 Q. What is the dispute between CW Mining and Aquila?

15 A. Shortly before the contract was to go into effect, CW Mining notified Aquila that
16 "a labor dispute would affect [CW Mining's] performance under the contract and that reduced
17 shipments could be expected. Since that time the labor dispute has continued, resulting in
18 similar mining impairment notices, and Aquila has received less than 30% of the contracted
19 volumes of coal" [Data Request No. 87 in Case No. ER-2005-0436].

20 Q. When was Aquila notified that CW Mining no longer intended to meet the terms
21 of the contract?

22 A. Aquila received a letter from CW Mining on April 18, 2005. This letter, along
23 with other correspondence concerning this dispute, is attached as highly confidential
24 Schedule 1.

25 CW Mining notified Aquila that it was terminating the coal agreement, stating the
26 following:

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14 [Source: Data Request No. 303 in Case No. ER-2005-0436]

15 Q. Did Aquila respond to CW Mining's attempt to terminate the coal agreement?

16 A. Yes. On April 25, 2005 Aquila's attorney, Shook, Hardy & Bacon, sent
17 CW Mining a letter disputing the coal company's ability to terminate the agreement. This letter
18 is attached as highly confidential Schedule 4. Aquila stated:

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[Source: Data Request No. 303 in Case No. ER-2005-0436—Highly Confidential Schedule 2]

Q. Did CW Mining resume shipment of coal under terms of the agreement?

A. No. On July 1, 2005, Aquila's legal counsel sent CW Mining a letter (highly confidential Schedule 4) stating that CW Mining **

**** The letter goes on to say:**

[Source: Data Request No. 303 in Case No. ER-2005-O436—Highly Confidential Schedule 2]

Q. Mr. Rooney states in his rebuttal testimony at page 3 that "C.W. Mining terminated its contract with Aquila during 2005..."

A. Mr. Rooney should read the letter from Aquila's law firm's sent to CW Mining regarding the issue of termination of the coal contract. In the April 25, 2005 letter sent from Shook, Hardy & Bacon to CW Mining the attorney stated that **

Q. Has Aquila pursued legal action against CW Mining?

1 A. Yes. In 2005, Aquila commenced a lawsuit in the Utah courts seeking damages
2 for the breached coal supply agreement. Aquila is seeking approximately \$54 million in
3 damages from CW Mining. Attached as Schedule 3 is the court filing concerning this lawsuit.

4 Q. Mr. Rooney states at page 3 of his rebuttal that the CW Mining costs "do not
5 represent the actual and historical, known and measurable, costs of Aquila's coal." Do you
6 agree?

7 A. No. The CW Mining contract agreed to by Aquila in 2003 that became effective
8 January 1, 2004 is a "known and measurable" event that occurred. There is a contract that
9 Aquila is pursuing in the courts that has specific terms of tons of coal to be delivered with
10 known certain per-ton prices for each year of the agreement. In this case, Staff used the price
11 that is identified in the contract as of January 2007 as the price for the high btu coal. This is an
12 actual contracted price that Aquila would be paying absent CW Mining's failure to comply with
13 the terms of the coal supply agreement.

14 Q. Does Staff believe that the decision regarding CW Mining costs should be made
15 once the legal action runs its course?

16 A. Yes. The additional costs for replacement of the CW Mining coal, which include
17 SO₂ emission credits costs, are in the tens of millions of dollars. Staff is concerned about
18 Aquila's ability to collect damages from this litigation, and how these damages ultimately will
19 be flowed to customers. Aquila's solution is to pass the replacement coal costs on to its
20 customers—a very simple solution for Aquila, sort of a "bird in the hand" theory. Staff believes
21 a better approach is to include the original "known and measurable" amount of CW Mining
22 contracted coal for the beginning of 2007 as the base of any Commission approved IEC. The

1 forecast (ceiling) amount would be the much more expensive replacement coal. This was
2 discussed earlier in the section of my rebuttal concerning the IEC.

3 Q. Why is Staff concerned about the collection of any damages for the CW Mining
4 dispute?

5 A. While Aquila has pursued its legal rights before the Utah courts, from a practical
6 perspective, Aquila may not have done so if, in the last case, it would have received rate
7 treatment for the higher replacement coal. Regardless of who wins the initial court decision,
8 there likely will be further litigation and Aquila should have incentive to continue to vigorously
9 pursue its asserted rights through the court process—a process that will continue to be very
10 costly, with an uncertain outcome. This will especially be the case if Aquila is permitted to, in
11 essence, collect those “damages” in advance from its customers. Aquila’s customers had
12 nothing to do with any aspect of the dispute between Aquila and CW Mining. Yet, Aquila
13 believes it is proper that those customers bear the risk of Aquila’s inability to force the coal
14 company to comply with the original terms of the coal agreement signed September 10, 2003.

15 Q. At page 5 of Ms. Herl’s rebuttal testimony, she indicates that it is Aquila’s
16 practice not to review labor issues with perspective fuel suppliers. Is this prudent in reviewing
17 long-term supply agreements?

18 A. No. Aquila’s position on this point seems to be that it is not its responsibility to
19 know if one of its critical fuel suppliers has any labor issues because the federal and state
20 governmental authorities will enforce labor laws. Ms. Herl states at page 5 that “any company
21 registered in the United States would be expected to follow State and Federal labor laws as
22 required and as enforced by their respective agencies.”

1 The issue here is that Aquila did not fully evaluate all critical aspects of the CW Mining
2 operations. Labor is essential in any business; the coal industry is no exception. Ms. Herl states
3 that a reasonable standard of review when determining the suitability of a supplier would be
4 "determining the credit worthiness / financial stability of the supplier" and "availability of the
5 product being purchased, in this case coal" (Herl, rebuttal page 5). While credit worthiness and
6 availability of coal are essential, at least as important is the "availability" of an adequate labor
7 force to mine the coal. Having the coal is one thing, but being able to get the coal mined,
8 transported, loaded and prepared for shipment back to Aquila's power plants is just as important
9 as knowing there is plenty of coal in the ground.

10 Aquila admits the importance of having adequate labor to mine the coal where Ms. Herl
11 states at page 6 of her rebuttal testimony "Aquila evaluates, to the best of its ability, the
12 existence of suitable coal reserves, mining capacity to remove it from the ground, and the ability
13 to transport/load out the coal." CW Mining could not possibly meet Aquila's own evaluation
14 criteria of "...mining capacity to remove it from the ground..." without adequate and trained
15 labor supply. Without the proper equipment, and equally important, the labor to operate such
16 equipment, the removal of any coal is simply impossible. Aquila can attempt to make the
17 argument that it did not have the obligation to do "even a cursory review of labor
18 relations/practices for a supplier," as stated by Ms. Herl (rebuttal page 5), but the fact of the
19 matter is that not doing even a cursory review of CW Mining labor practices has cost the
20 Company many millions of dollars and much anxiety regarding its vital coal supply. Just as a
21 coal company cannot mine coal without labor, an electric utility cannot produce electricity
22 without its critical fuel supply-- coal.

1 Q. Did CW Mining have labor issues at the time Aquila was considering entering
2 into the coal supply contract?

3 A. Yes. Staff reviewed documents relating to the legal action between CW Mining
4 and Aquila. These documents were supplied to Staff for its review at the law offices of Shook,
5 Hardy & Bacon, attorneys for Aquila in the suit against CW Mining. Many of the documents,
6 provided by CW Mining in compliance of discovery in the civil case dealt with labor issues
7 regarding the Coal Miners Workers of America's (CMW) attempt, in the summer of 2003, to
8 unionize the coal company. The dispute between the mine workers and CW Mining came to a
9 head in September 2003, the month Aquila signed the coal supply agreement.

10 One of the union organizers was fired and the majority of the work force walked off the
11 job in support. CW Mining was left with a wholly inadequate work force to meet its
12 commitments, Aquila being one.

13 Q. Would a review of CW Mining by Aquila have revealed such labor issues?

14 A. Certainly, even if Aquila had done even a cursory review. Much media attention
15 was given to this labor dispute in late summer and fall of 2003, before the contract with
16 CW Mining became effective. Staff has seen numerous articles from Utah newspapers that
17 identified the labor dispute of CW Mining and, equally important, the kind of company Aquila
18 chose to do business with. To suggest that Aquila was not obligated to discover this critical
19 issue with CW Mining is just a poor excuse for not doing the proper due diligence before
20 entering into this coal supply agreement. After all, this critical fuel source is not like a
21 commodity that can simply be replaced by just anyone. The fuel has to be compatible with the
22 boilers and in compliance with emission standards. This commodity is highly specialized and
23 requires much planning to acquire the necessary tonnages and quality at a reasonable price. In

1 essence, CW Mining put itself in the "driver's seat" with Aquila and was able to hold the
2 Company hostage

3 Q. Ms. Herl states at page 5 that she is "not aware of any policy, requirement, or
4 expectation that would prompt even a cursory review of labor relations/practices for a supplier."
5 Please comment.

6 A. Any proper due diligence would make an assessment of the Company's
7 operations and its ability to perform. At least some minimal review of a supplier's work force
8 capabilities would be included. A "policy, requirement, or expectation" would not have to be in
9 place to make this review—just plain old good business practice and good old fashioned
10 common sense would require the substantiation that the company under consideration for the
11 contract can fulfill all the terms of the agreement. I am sure Aquila wishes now that it had such
12 a policy to inquire about the labor relations of CW Mining before it entered into an agreement
13 that the coal company could not or would not meet. Not to investigate such a vital matter and to
14 focus only on the supplier's credit worthiness and the availability of coal as part of the due
15 diligence process does not give much confidence in Aquila's ability to secure adequate supply
16 of fuel for its generators.

17 The possibility of not having the coal supplier provide coal for Sibley and Lake Road is
18 not the same issue as the possibility of the local office supply company not being able to supply
19 printers. If the office supply company cannot provide the product, then you get your supplies
20 from someone else down the street. Coal for generating units is a unique product and absolutely
21 essential to the operations of the units. Without an adequate fuel source of the right kind of
22 coal, a generating unit cannot produce one kilowatt of electricity. There needs to be a proper
23 fuel supply for safety and reliability reasons. Just to check the coal company's credit and see if

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1 it has coal in the ground doesn't seem to be sufficient, certainly not when it comes to a supplier
2 that doesn't want to perform.

3 Q. Did Aquila do any review of CW Mining's labor force?

4 A. No. The Company did not perform even the most minimum review or make any
5 inquiry into the labor practices of CW Mining. In response to Data Request No. 386 (Case No.
6 ER-2005-0436), the Company provided the following response to a series of questions.

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7 [Attached as Highly Confidential Schedule 4]
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16 ** The resulting failure by CW Mining to perform under terms of the
17 coal agreement cost Aquila tens of millions of dollars, which Aquila now expects its regulated
18 customers to absorb in rates.
19 Q. What did Aquila review in making its evaluation of the fuel supply for its power
20 plant?
21 A. Aquila supplied material in response to Data Request No. 290 that referenced
22 response to Data Request No. 289 (Case No. ER-2005-0436). Both of these responses are
23 attached as Highly Confidential Schedule 5. These responses make no mention of CW Mining
24 labor problems.
25 Q. Could Aquila have had another supplier produce the coal?

1 A. Yes. CW Mining is certainly not the only coal company in America that can
2 supply Aquila with the necessary coal for its Sibley and Lake Road generating stations.
3 Aquila evaluated more than one fuel source in its consideration of replacing the previous
4 contract that expire on December 31, 2003. In fact, the lowest bid at the time of the evaluation
5 was a known supplier who was the parent company of GenWal, the previous coal supplier for
6 the high blend btu coal. Aquila, citing sulfur emission concerns, made the decision to go with
7 CW Mining instead. Attached as Schedule 6 is the response to Data Request No. 289.1
8 (Case No ER-2005-0436), which identifies Aquila's concerns with the West Ridge coal and the
9 related emission issues.

10 Further, Aquila's contention that since the evaluation of that coal was done at a time
11 when SO2 emission allowances prices were lower, the overall price would be higher than
12 CW Mining, given the escalation in SO2 prices. In any event, with the issues surrounding the
13 unknown CW Mining and the known GenWal supplier that offered suspect coal quality, Aquila
14 should certainly have gone back into the market in 2003 for additional coal sources.

15 Aquila has indicated in discussions with Staff during the audit that this coal did not burn
16 as well in its units as CW Mining and did not want to risk using this supply. It has been stated
17 that Aquila posed the question whether it wanted to take coal from a known supplier that it had
18 successfully used before but whose coal was not the quality needed, or whether it wished to take
19 coal that could be burned in the units but from an unknown source. Both of those choices, as
20 framed by Aquila, seemed risky. A better choice would have been to go back out into the
21 market to seek out additional suppliers. Nothing prevented Aquila from following this option.

22 Q. Should Aquila have known of the labor problems at CW Mining in 2003?

1 A. Yes. During the review of documents relating to the lawsuit, Staff obtained
2 numerous news articles that addressed the labor dispute with the coal company. Attached as
3 Schedule 7 is a series of articles starting September 26, 2003 through 2004 dealing with the
4 labor dispute. A review of these articles indicates that the labor dispute took place in the
5 September 2003, the same month in which Aquila signed the coal supply agreement with
6 CW Mining. The labor dispute should of at least raised concerns by Aquila as to the ability of
7 the this fuel supplier to perform under terms of the contract. Seeking out alternative fuel source
8 in fall of 2003 would have been much better for Aquila than trying to replace this fuel supply
9 during the 2004 and 2005 escalation of coal prices.

10 Q. What is Staff proposing with respect to the CW Mining problem?

11 A. Staff continues to support including the CW Mining coal price in base rates as
12 part of the IEC. The much higher replacement coal would be included in a forecasted amount,
13 subject to the terms and conditions outlined in my direct testimony, page 40. Aquila would
14 have to continue to pursue all its legal remedies to recover damages from CW Mining for
15 breaching the coal agreement. Aquila must make every effort to pursue full restitution and
16 reimbursement of the costs for the contracted coal. The reimbursement costs would include:

17 1. the difference between the original CW Mining contract coal cost
18 and the replacement cost of coal for the new contract going forward

19 2. the difference between the original CW Mining contract coal and
20 the cost of replacement coal from first month of the contract (January
21 2004) until the new replacement contract becomes effective sometime fall
22 2005)

23 3. any additional freight costs incurred as a result of the breached
24 contract

25 4. additional emission costs relating to the breach of CW Mining,
26 primarily as a result of burning Illinois coal that contains much higher
27 sulfur, causing Aquila to have to purchase expensive emission allowances

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5. all legal, litigation and court costs relating to Aquila's exercising its legal remedies for breach by CW Mining of the coal supply agreement.

Q. Does Staff view its proposal to treat the CW Mining contract price and the replacement coal in the IEC to be a penalty?

A. No. Staff believes, in spite of significant concerns it has regarding Aquila's decision making on the CW Mining coal contract, that handling this matter in the IEC mechanism is a very reasonable approach. It is hoped that Aquila will receive full damages regarding its pending litigation with CW Mining. Treating the uncertainty surrounding this issue in the IEC protects Aquila and its customers equally. To include the much higher replacement coal in the permanent rates, as Aquila suggests, places no risk on the Company and all the risk on its customers—customers who had nothing to do with this dispute. Aquila would have far less incentive to aggressively pursue all its legal remedies in the courts—a costly and time consuming process—if its customers were already reimbursing them for the higher replacement coal.

Q. Mr. Rooney states at page 3 of his rebuttal testimony "...Aquila is no longer receiving coal under" the CW Mining contract." Please comment.

A. What Mr. Rooney fails to mention with this statement is that when Aquila replaced the CW Mining coal, the coal market had increased dramatically. Aquila recognized that coal prices were increasing in its analysis of the industry in 2003 (attached as Schedule 8). What Aquila loses in the end, with CW Mining's refusal to comply with the coal supply agreement, is the benefit of the lower prices from CW Mining, now that the market is even higher than Aquila believed it was in 2003. Aquila's whole approach as presented in testimony from its various witnesses is a sort of "oh well" attitude—we had a contract; now we don't and we had to replace the contract at twice the price; let the customers pay.

1 The replacement coal is more than double the cost of the CW Mining coal. This
2 replacement coal will cost tens of millions of dollars to Aquila and its customers if the Company
3 is not successful in the courts.

4 Mr. Rooney recognizes this in his statement made at page 4 of his rebuttal testimony
5 "coal prices increased significantly beginning in 2004, the first year of the coal contract.
6 Replacement coal in 2004 was already 60% higher than the C.W. Mining contract price."

7 Q. Mr. Rooney indicates at page 4 of his rebuttal testimony that the reason that Staff
8 wants to include the CW Mining coal is because the coal prices went up in 2004. Is that the
9 reason?

10 A. No. Mr. Rooney apparently believes the only reason Staff has continued to use
11 the CW Mining coal instead of the replacement coal is because it is lower. That is like saying
12 the only reason Aquila wants the higher replacement coal is because it drives up the cost to
13 Aquila's customers. Staff found a significant cost increase in its 2005 audit of Aquila. It
14 performed discovery on this significant increase, as it would any sizable increase, in order to
15 understand why the cost of coal was going up, particularly when it learned in the 2004 rate case
16 that Aquila had negotiated a lower priced fuel that was to take effect on January 1, 2004. Staff
17 did not use this amount in the 2004 rate case but used the higher priced GenWal coal supply
18 because the newly entered into agreement with CW Mining was considered out of period in that
19 case.

20 When Staff started meeting with the Company prior to the start of the 2005 audit, Aquila
21 made it clear that it had a problem with one of its fuel supply agreements. Because of the
22 critical nature of fuel supply and the substantial costs involved, Staff considered it an important

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Cary G. Featherstone

1 part of the audit to review what happened. Staff submitted several data requests and had
2 numerous interviews of Company personnel regarding the CW Mining issue.

3 Staff did not simply take the position to include the CW Mining coal price because the
4 other prices were higher as Mr. Rooney suggests but rather, believed, based on all the evidence
5 reviewed in the last case and additional material looked at in this case, that Aquila did not do an
6 adequate job in evaluating the replacement of the expiring 2003 GenWal coal. It certainly did
7 not adequately examine the key elements regarding the supplier it had chosen to replace the
8 GenWal contract, CW Mining.

9 Q. Is Aquila being denied the recovery of replacement coal for CW Mining coal?

10 A. No. Aquila is not being denied recovery of what could be considered imprudent
11 costs at this time. The IEC amount would reflect the higher replacement coal costs subject to
12 the conditions identified above and in my direct testimony, page 40.

13 Q. Does this conclude your surrebuttal testimony on the issues of IEC and
14 CW Mining?

15 A. Yes.

SCHEDULE 1

HAS BEEN DEEMED

HIGHLY CONFIDENTIAL

IN ITS ENTIRETY

SCHEDULE 2

Pages 1 through 15

HAVE BEEN DEEMED

HIGHLY CONFIDENTIAL

IN ITS ENTIRETY

NewsBrief – August 8, 2005

A daily summary of worldwide industry news and items of interest (all material copyrighted)
Prepared by Aquila Corporate Communications – Contact Summer Turner, 816-467-3283 (summer.turner@aquila.com)

Headlines

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*Aquila Files Suit Against Utah Coal Company Over Tons Lost (SNLI)

SNL Interactive- 8-05-2005

By Bruce Cassell

Aquila Inc. said Aug. 4 during an earnings conference call that it has filed suit against Utah coal supplier C.W. Mining Co., which halted coal shipments to the utility earlier this year. The loss of that coal supply, Aquila said, will cost the company up to \$5 million this year and double that amount in 2006.

This dispute began in April when C.W. Mining, which is owned by a Utah family, sent a notice to Aquila that it was terminating a contract under which it would have supplied 550,000 tons this year to Aquila's Lake Road and Sibley power plants. C.W. Mining, which had been shipping below contracted amounts prior to the termination, claimed force majeure under the contract due to a labor dispute.

On July 5, Aquila filed suit against the coal company in the U.S. District Court for Utah, saying the company had no justification to terminate the contract. Aquila is seeking an unspecified amount of damages. While Aquila said during the conference call that this three-year contract was due to expire at the end of 2006, it said in the court filing that it had already exercised an option in the contract to extend it for two extra years, to the end of 2008. That extension will apparently impact how much it will be seeking in damages, since it has lost almost four years of coal supply (April 2005-December 2008) due to this termination, not almost two years (April 2005-December 2006).

Aquila said in the lawsuit that it will have to pay a lot more money to replace this coal from other sources, but didn't put a specific figure on how much more it will have to pay. In the Aug. 4 earnings call, Aquila COO Keith Stamm said that the \$5 million it might lose this year because of the contract is based on the fact that it was getting only 30% of the deliveries under this contract at the time the deal was terminated.

Stamm said the actual loss figure is not firm. The final figure depends on what tonnage of cheaper Powder River Basin coal Aquila can burn in blends with bituminous coal to replace the lost C.W. Mining coal and also the cost of SO2 credits that have to be used to compensate for the sulfur content of the coal mix that will be burned in place of the C.W. Mining tonnage.

In a response to the lawsuit filed July 27 at the court, C.W. Mining said that it should be allowed to invoke force majeure since force majeure covers things like labor disputes. It did not detail the labor problem in the

court filing, but it has been involved in the last couple of years with a dispute involving the United Mine Workers of America and the National Labor Relations Board.

The company fired dozens of workers in 2004 because they were illegal immigrants, after the UMWA started organizing workers at its Utah mine. Those firings cut into its coal production ability. The UMWA said the company knew those workers were illegal for a long time and only fired them when they showed sympathy to the UMWA.

The NLRB held an election at the mine in December 2004, after ruling that a lot of the remaining workers, who are members of the Kingston family that owns the mine, could not have their votes counted. The NLRB is still sorting through various issues related to the election and has not certified any results yet.

In its July 27 answer, C.W. Mining filed a counterclaim. It said that it wants \$200,705 for coal that it did deliver to Aquila and was not paid for. It also wants damages, with the amount to be determined at trial, for money that it wasn't paid because of penalties and price adjustments imposed by Aquila. Judge Tena Campbell, who is handling this case, has not made any rulings yet.

The disputed contract represents about 25% of the burn at Sibley and Lake Road in Missouri. Sibley has three coal-fired units rated a total of 502 MW and Lake Road has two coal-capable units with a total capacity of 122 MW.

For more background on the labor dispute, the November 2004 NLRB decision that ordered the election is at: [http://www.nlr.gov/nlr/shared_files/decisions/dde/2004/27-RC-8326\(11-18-04\).pdf](http://www.nlr.gov/nlr/shared_files/decisions/dde/2004/27-RC-8326(11-18-04).pdf).

Aquila is headquartered in Kansas City, Mo., and serves a combined 1.3 million electricity and natural gas customers in seven Midwestern states.

Return to Headlines

***Aquila Will File For New Rate With PSC (Blair, Nebraska) Washington County Pilot-Tribune & Enterprise- 8-05-2005**

Aquila, which provides natural gas to Blair and Arlington, has filed an application with the Nebraska Public Service Commission requesting a new natural gas filing process that the company says could result in smaller, more regular increases in customers' rates.

Aquila also requested increasing the residential and commercial customer charge by 47 cents per month, which represents a less than 1 percent increase in the annual bills.

The traditional method of recovering costs is filing a general rate case with the PSC. A general rate filing is expensive for all parties, including customers, and is time consuming, Aquila officials said.

"We continually work to find ways to hold down our operating costs," said Steve Pella, Nebraska vice president of operations at Aquila. "However, inflationary pressures have not been entirely offset by efficiency improvements. Aquila is responding to what we have heard from customers and public officials that if rate increases are necessary, they should be on a more regular and smaller percentage basis."

The request will increase annual revenue to Aquila by slightly more than one-half of 1 percent, or approximately \$1 million, Pella said.

Article Last Updated: 9/25/2004 02:40 AM

Kingstons' mine sues over strike

By Pamela Manson
The Salt Lake Tribune

Salt Lake Tribune

A mining company owned by the Kingston polygamous family filed suit Friday against miners who picketed the operation last year and more than 100 other individuals and groups that either spoke in support of the workers or published information about the labor dispute.

The 122 defendants targeted in the action include the United Mine Workers of America (UMWA); the Socialist Workers Party and its newspaper, *The Militant*; the Roman Catholic Church and Bishop George Niederauer of the Utah Diocese; Tapestry Against Polygamy; *The Salt Lake Tribune* and several of its editors and reporters; and other media organizations and journalists.

The plaintiffs are the C.W. Mining Company and the International Association of United Workers Union (IAUWA), which picketing workers claimed is a "yellow-dog" union run by members of the Kingston family.

The claims in the lawsuit include unfair labor practices, defamation, intentional interference with economic relations and civil conspiracy. The action, filed in U.S. District Court in Salt Lake City, seeks more than \$1 million in alleged lost profits and unspecified punitive damages.

About 75 workers, most of them Latino, say they were locked out of the Co-op Mine near Huntington in Emery County in September 2003 after talking about organizing themselves to negotiate better pay and working conditions.

The company claims it fired one worker who was talking up the UMWA and the rest of the miners left their jobs in sympathy. They were never locked out, the company says.

The workers returned to work this past July after the National Labor Relations Board brokered a deal in which the company admitted no wrongdoing. Under the agreement, the miners will get to decide whether to be represented by the IAUWA, the UMWA or no union at all.

pmanson@sltrib.com

NP

Schedule 2-18



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Aquila disputes C.W. Mining termination of c contract

Reprinted from SNL Interactive - 5/4/2005

May 10, 2005 - Aquila Inc. is disputing an April letter from C.W. Mining Co. in Ut that terminates a 550,000 ton/year contract to supply coal to the Sibley and Lak Road power plants in Missouri.

Aquila spokesman Al Butkus said the letter cites labor problems as the reason for termination. Aquila does not think this is valid under the force majeure provision the contract and is disputing the termination. That dispute has not yet landed in said Butkus on May 4. Aquila said it is replacing this coal from other sources. A Mining official could not be reached for comment.

C.W. Mining, also known as Co-op Mining, has had labor problems for months. United Mine Workers of America has been trying to organize workers there. Last the company fired a number of Hispanic workers because they did not have immigration papers. The UMWA said the company knew all along that those workers were illegal and only fired them when they showed UMWA sympathies. About 200 those workers walked off the job last year and remain off, said a UMWA official May 4.

The company has had production problems for months due to this loss of workers. Butkus said that Aquila has gotten less than the full 550,000 tons/year it is due under its contract with C.W. Mining. That contract started in 2004 at 450,000 tons/year, moved up to 550,000 tons/year in 2005 and 2006. It is due to expire at the end of 2006. This coal represents about 25% of the burn at Sibley and Lake Road. Sibley has three coal-fired units rated a total of 502 MW, and Lake Road has two coal-capable units with a total capacity of 122 MW.

In May 2004, the UMWA petitioned the National Labor Relations Board for an organizing election at C.W. Mining and its Bear Canyon deep mine. It complained the existing union, the International Association of United Workers, is a puppet company. The NLRB held an election in December, but it decided beforehand not to allow the votes of dozens of workers who are members of the Kingston family, who owns the mine. The company protested that decision, but that protest was rejected in January.

An NLRB official was unavailable for comment May 4 regarding the status of this case. UMWA spokesman Phil Smith said the board is still deciding whether to count the ballots of the workers who were fired before last December's election, with a date for the board to make that decision and certify the election results. In that election, workers were given the option of voting for the UMWA, for the existing union or for no union at all.

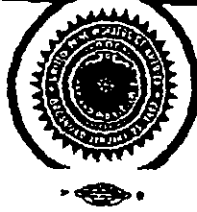
Feedback: [Corporate Communications](#)

NP

Schedule 2-19

United Mine Workers of America

INTERNATIONAL UNION
8315 LEE HIGHWAY
FAIRFAX, VA 22031-2215
TELEPHONE 703-208-7200
FAX 703-208-7122



REGION IV ORGANIZING OFFICE
6525 W. 44TH AVENUE
WHEAT RIDGE, CO 80033
TELEPHONE 303-425-7110
FAX 303-425-0401

May 4, 2004

Mr. Mike Baker, BA
IBEW Local 814
2113 W. Broadway
Sedalia, MO 65301

Dear Brother Baker:

On September 22, 2003, seventy four coal miners that work underground at the C. W. Mining Company's CO-OP (a/k/a/Bear Canyon Mine) mine were fired, escorted off of the mine property by sheriff's deputies, and subsequently locked out after they stopped work to protest the unlawful firing of co-worker Bill Estrada who was attempting to organize with the UMWA at the mine.

Estrada had been talking to his mostly immigrant fellow miners for months about organizing with the UMWA, in an effort to put an end to the brutal underground working conditions, starvation wages (\$5.25 to \$7.00 per hour), non-existent health care or pension benefits, and the constant threat of being deported if any miner contacted any state or federal mine safety, wage, and hour or workers compensation agency. Miners that were injured on the job were forced to work while injured. The cost of tools for everyday production of coal was deducted from the miners' paychecks. There are no separate bathing or toilet facilities for female employees and the miners are forced to use unsafe and defective machinery.

For years many of these workers have been forced into paying dues to a phony Company "union", where the mine superintendent is "President" of the local. All of which is enforced under the threat of discipline or deportation.

Since the firings and lock out, the miners have maintained an unfair labor practice picket at the mine gate, but C. W. Mining has scabbed out production with offers of \$20 per hour jobs.

NP

Schedule 2-20

Mr. Mike Baker, BA
IBEW Local 814
Page 2.

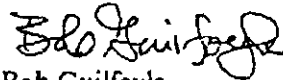
The October 13, 2003, issue of U.S. Coal Review (Issue #1459) stated that Aquila had recently signed a multiyear coal supply agreement with C.W. for the Sibley Plant. A letter from Aquila's Directors to C. W. Mining about putting an end to the abuse and mistreatment of these workers would be tremendous leverage in putting an end to this tragic labor dispute.

Mike, we could also send a locked out miner and UMWA representative to Aquila's headquarters for a meeting with the Company's principals if such an arrangement could be possible.

Enclosed please find news articles and related information about this labor dispute and the outlaw Kingston crime family that owns and operates C. W. Mining.

Thank you so much for your Solidarity and help.

In Solidarity,



Bob Guilfoyle
International Representative
UMWA Region IV

deseretnews

Deseret Morning News, Sunday, May 02, 2004

Miners take on the Kingstons

By Adam Benson
Deseret Morning News

Bill Estrada worked as an underground coal miner at the Kingston-owned Co-Op mine in Huntington for nearly a year before he was fired last Sept. 22 for negligence.

At least that's the explanation Estrada says he was given after mine executives learned that he and 73 others were attempting to align themselves with the United Mine Workers of America — an international union of coal miners, coal technicians, truck drivers, health board employees and teachers — in an attempt to combat unsafe working conditions in the mine. The move, Estrada said, ultimately cost all 74 of them their jobs.

"They started framing people.

They used things like (claims of negligence) to target people," Estrada said.

More than a year later, the battle continues for the miners, who brought their cause to another Kingston-owned business Saturday in an attempt to draw attention to their accusations against the mine.

The miners and about 20 of their supporters blasted the Kingston family's business practices during a demonstration in front of A-1 Disposal, 624 N. 300 West.

The waste disposal company serves more than 5,000 customers throughout the Salt Lake Valley.

"We want people to know who they're doing business with," Utah Jobs With Justice spokesman George Neckel said.

Neckel's organization, along with the Utah chapter of the National Organization for Women, Code Pink and UMWA representatives were among the 30 or so pickets backing the miners' attempts to take on the Kingston family, which owns 106 businesses across the state.

According to Neckel, the Kingstons operate their businesses based strictly on the bottom line, with no regard for the safety or well-being of their employees.

"They're exploiting people, plain and simple. In my opinion, this looks very much like



John Daniel Kingston, left, confronts UMWA spokesman Mike Dalpiaz at protest.

Michael Brandy, Deseret Morning News

organized crime," he said.

Though employees from A-1 Disposal wouldn't comment on the claims of exploitation, family member John Daniel Kingston said Saturday's protest was a personal attack and nothing more.



John Daniel Kingston photographs protesters outside the Kingston-owned A-1 Disposal in Salt Lake City.
Alicia H. Brantly, Deseret Morning News

"This protest has nothing to do with A-1 Disposal. They're just persecuting the Kingston family. There is no substance to any of this," he said. He also said A-1's 30-person work force is not unionized, nor has it ever asked to join one.

But Estrada said that's not the case at Co-Op mine. While miners there make anywhere between \$5.25 and \$7 an hour — compared to the national average wage of \$18 an hour for underground miners in most other quarries — it's also the only mine in Utah that charges its miners for any tools they use, Estrada said. "It comes right out of our pay," he says.

What's more, Estrada said, the Kingston family treats its employees at other businesses much the same way it does the Co-Op miners.

"The Kingstons routinely use a slave labor force, and we want to put pressure on them through other companies to negotiate with them," he said.

In December 1998, North Salt Lake severed its ties with A-1 after the company received 245 state and federal safety violations since 1993.

On Saturday, John Kingston said employees of the company are satisfied. "We have the highest-paid drivers in the valley, and I've never heard any talks of a union before," he said.

Kingston, who spent 28 weeks in a Brigham City jail in June 1998 after beating his then-16-year-old daughter for fleeing her marriage to her uncle, also said the 74 miners fired last September staged an "illegal walkout" and that two or three employees are returning to the mine each day.

But that fact is disputed by at least one striking miner. "That's flat out not true," said Alyson Kennedy, a Co-Op striker and one of three women miners employed by the company.

Estrada said the family has rebuffed any efforts to forge an agreement and hasn't contacted Estrada or any other miner for seven months. He also said action like Saturday's protest will continue for as long as it takes.

UMWA spokesman Mike Dalpiaz said his organization has "people on the ground 24-7" working with the embattled miners in securing union benefits and a safe working environment.

"We're committed to this until they win," Dalpiaz said. "These people need justice, that's all there is. Nobody should be exploited the way these people have."

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Attorneys for Plaintiff Aquila, Inc.

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

JUL 05 2005

MARKUS B. ZIMMER, CLERK
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DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH CENTRAL DIVISION

<p>AQUILA, INC.,</p> <p>Plaintiff,</p> <p>v.</p> <p>C.W. MINING,</p> <p>d/b/a CoOp Mining Company,</p> <p>Defendant.</p>	<p>COMPLAINT</p> <p>Judge Tena Campbell DECK TYPE: Civil DATE STAMP: 07/05/2005 @ 15:31:47 CASE NUMBER: 2:05CV00555 TC</p>
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Aquila, Inc. ("Aquila"), by and through its undersigned attorneys, files this Complaint against C.W. Mining, d/b/a CoOp Mining Company ("C.W. Mining") and alleges as follows:

PARTIES

1. Aquila is a Delaware corporation having its principal place of business in Missouri.
2. C.W. Mining is a Utah corporation having its principal place of business in Utah.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because Aquila and C.W. Mining are incorporated in and have principal places of business in different states. Further, the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

4. The Court has personal jurisdiction over C.W. Mining.
5. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(a).

BACKGROUND FACTS

6. On or about September 10, 2003, Aquila and C.W. Mining entered into an agreement for the purchase by Aquila of coal produced by C.W. Mining (the "Agreement").
7. The Agreement has an initial term of three years, running from January 1, 2004, through December 31, 2006 (the "Primary Term"). The Agreement grants Aquila an option to extend the term of the Agreement for an additional two years, from January 1, 2007, through December 31, 2008 (the "Extension Term"). The option to extend the term has been exercised by Aquila.
8. Under the Agreement, C.W. Mining is to supply Aquila with certain stated quantities of coal with certain stated characteristics.
9. The price to be paid by Aquila for these amounts of coal is set forth in the Agreement.

10. C.W. Mining has breached the terms of the Agreement by failing and refusing to supply coal in the quantity and of the quality required by the Agreement.

11. By letter dated April 18, 2005, C.W. Mining informed Aquila that it was purportedly terminating the Agreement.

12. By letter dated April 25, 2005, Aquila demanded that C.W. Mining resume delivery of coal in the quantities provided in the Agreement and that C.W. Mining withdraw its purported notice of termination.

13. Despite Aquila's demand, C.W. Mining has failed and continues to fail to comply with the terms of the Agreement. Aquila hereby cancels the Agreement.

14. Since executing the Agreement in September 2003, the market price of coal has increased significantly over the price negotiated and incorporated into the Agreement.

CAUSE OF ACTION--BREACH OF CONTRACT

15. Aquila incorporates paragraphs 1 through 14 as if fully set forth herein.

16. Aquila and C.W. Mining entered into the Agreement under which C.W. Mining promised to supply certain quantities of coal to Aquila in exchange for payment by Aquila of an agreed price.

17. C.W. Mining has breached the terms of the Agreement by, among other things, failing and refusing to supply coal in compliance with the Agreement and by improperly repudiating the Agreement on April 18, 2005.

18. Aquila has duly and properly performed all of its obligations under the Agreement.

19. C.W. Mining's improper actions have caused and will cause Aquila damages, including but not limited to: (1) the difference between the negotiated price of coal in the Agreement and the cost of cover goods purchased by Aquila over the duration of the contract

(including the Extension Term) and all incidental or consequential damages incurred by Aquila related thereto, (2) damages for C.W. Mining's non-delivery of coal under the Agreement, and (3) other damages, all in an amount estimated to be in excess of \$75,000.

WHEREFORE, Aquila prays for judgment in its favor and against C.W. Mining on its complaint for all damages suffered and incurred by Aquila and for its attorneys' fees and costs incurred in this action, and for such other and further relief as the Court deems just and proper.

DATED this 5th day of July, 2005.

RAY QUINNEY & NEBEKER P.C.

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Attorneys for Plaintiff Aquila, Inc.

Plaintiff's Address:
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829324

SCHEDULES 4 and 5

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IN ITS ENTIRETY

**AQUILA, INC.
AQUILA NETWORKS-MISSOURI (ELECTRIC)
CASE NO. ER-2005-0436
MISSOURI PUBLIC SERVICE COMMISSION
DATA REQUEST NO. MPSC-0289.1**

DATE OF REQUEST: September 15, 2005
DATE RECEIVED: September 15, 2005
DATE DUE: September 25, 2005
REQUESTOR: Graham Vesely

REQUEST:

Please provide a complete explanation for selecting Co-Op coal over West Ridge in spite of the fact that, as described in the response to DR 289, the source of West Ridge was a known supplier (parent company of GenWal) and was slightly less expensive than Co-Op.

RESPONSE:

I have spoken further with some of the relevant parties involved during the selection process to provide additional insight above and beyond the information contained within the original data request. Ultimately, the deciding factor between Co-Op versus West Ridge comes down to sulphur content including SO₂ allowance cost and operational considerations at Lake Road.

The sulphur content between the two coals is 0.93% with West Ridge being the higher of the two. As an example, at the time of evaluation, SO₂ allowance pricing was \$175.00 and this week is trading in excess of \$900.00. Choosing a higher sulphur product provides more adverse exposure to SO₂ allowance price volatility. If that same model used during the original evaluation is rerun using the \$900 allowance price, the West Ridge evaluation is approximately \$6M higher. SO₂ allowance pricing has increased steadily since these proposals. This further supports selecting the low sulphur product, Co-Op.

Lake Road Generating Station's operational consideration revolves around a Consent Decree with Missouri Department of Natural Resources which limits the emissions from Boilers 5 and 6. Since the plant relies on next day fuel analysis results to verify day-to-day compliance on Boiler 5 emissions, the plant makes every effort to not have a coal on the ground whose sulphur content meets or exceeds the emission limit in the case that it was accidentally filled with high Btu product instead of the low Btu (PRB) product.

ATTACHMENT: None

ANSWERED BY: Abby Herl

DATE ANSWERED: 09/22/05

The Salt Lake Tribune

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Salt Lake Tribune, The (UT)

Date: September 26, 2003

Section: Business

Edition: Final

Page: C9

Tensions mount in dispute at Utah mine

Emery County: A union says 75 workers were locked out; the owners say they quit; Tensions mount in Emery County mine dispute

Glen Warchol The Salt Lake Tribune

D005412

Labor tensions erupted this week between the polygamous Kingston clan operators of an Emery County coal mine and their mostly Latino work force, resulting in a lockout of 75 workers, union leaders say. A spokesman for the CW Mining Co., which operates the Bear Canyon Mine,

said no workers were locked out or fired. He said they walked off the job Monday and have not returned.

"If they don't show up for three days, the assumption is that they all quit," said Charles Reynolds, personnel manager at the Bear Canyon Mine near Huntington.

But Jesus Salazar, who has worked at the mine for four years, said the workers were told they were fired and sheriff's deputies ordered them off the property. Later, guards at the mine entrance had a list of miners to keep out, he said.

A spokesman for the Emery County Sheriff's Department confirmed deputies went to the mine to keep the peace, but he said deputies did not order workers to leave.

CW Mining is owned by the Kingston clan, which achieved notoriety in the late 1990s when a court convicted John Daniel Kingston of beating his daughter after she tried to leave a forced polygamous marriage to his brother, David Ortell Kingston. A court convicted David Ortell Kingston of incest and sexual abuse.

Reynolds said the employees had grievances about the firing of another worker and other issues, but refused to take their concerns to their union, the International Association of United Workers.

However, Francisco Picado, an organizer for the United Mine Workers of America, said the so-called union is a sham. "It's a totally fake organization that the bosses use to stop the workers from organizing themselves."

Salazar said the Kingston mine union "is a union of the bosses. We don't even know who belongs to it."

David Mayne, president of the Utah AFL-CIO, said he has never heard of the International Association of United Workers.

Sounds like a Kingston plot," Mayne said. "It's almost comical, a throwback to the '20s. Employers would sometimes set up a company union to keep workers from organizing."

Schedule 7-1

http://nl.newsbank.com/nl-search/we/Archives?p_action=doc&p_docid=100E3E2AB3B2227D&p_docnu... 1/13/2005

Chris Grumvick, who identified himself as the workers' representative to the International Association of United Workers, maintained the union is valid and based in Bountiful. No office listing could be found for the union.

The workers had some complaints about pay and insurance benefits, Grumvick said. But a Latino labor activist "stirred them up," telling workers the mine's union was not a real union, he said.

Picado said the workers were forced to work with injuries and unsafe equipment and were deprived of workers' compensation benefits. Three miners have been killed in accidents at the mine -- also known as the "Co-op Mine" -- since 1996.

The average wage for coal miners is about \$15 an hour for contract workers and \$20 an hour for union workers, Picado said.

But the mostly immigrant workers at the Bear Canyon Mine report making between \$5.25 and \$7 an hour, he said.

"We want to be treated as we never were at this mine," said Salazar, "with respect and dignity."

"Basically they are locked out," Picado said. "The company is trying to break their unity."

Grumvick said he is still trying to get the workers to meet with him to get their jobs back. "I have tried many times to contact them, but they will not talk to me."

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D005413

The Salt Lake Tribune

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Salt Lake Tribune, The (UT)

Date: October 12, 2003

Section: Nation/World

Edition: Final

Page: A1

Immigrant miners take on Kingstons

Co-op: They say the company took advantage of them, paid poorly and fired workers for trying to unionize; Miners take on the Kingstons

Mike Gorrell and Rhina Guidos

D005414

The Salt Lake Tribune The Salt Lake Tribune

HUNTINGTON – Bill Estrada never aspired to be a labor activist before he spent a year digging coal at the Co-op Mine for less than \$6 an hour. Now he spends six hours a day on a picket line at a junction where the mine's access road branches off from state Road 31,

a scenic bypass that climbs from the terraced base of Huntington Canyon to the top of the coal-rich Wasatch Plateau.

Estrada is supported by 68 to 75 miners, almost all Latino, who rallied to his cause after he says Co-op fired him Sept. 22 for trying to organize a union. The company maintains Estrada was insubordinate after being caught falsifying a safety inspection record.

His backers include Guillermo Hernandez who, after 22 years with Co-op, earns less than \$8 an hour, with no pension or medical benefits. And Celso Panduro, who contends he cannot afford to celebrate his son Daniel's upcoming third birthday because his \$8 per hour wage barely covers the rent and food bills for his family of five. And Ana Maria Sanchez, a 24-year-old single mom who claims the mine-owning Kingston family did not provide separate restrooms or bathing facilities for the three women on the work force.

"We're very united," says Estrada, 37, who migrated from Los Angeles to Price, where his girlfriend had relatives. "That's the one thing the company didn't count on. They thought, 'They're Mexicans. We can get rid of them.' . . . They didn't figure that sooner or later, a group of workers would be able to find out what their rights are and to fight back for what's justifiable and what they deserve."

Charles Reynolds, personnel manager for CW Mining Co., the company's formal name, denies Co-op was taking advantage of the miners, most of whom hail from Sinaloa state in west-central Mexico. "Our company does not discriminate in our hiring in any way. We employ both Hispanic-Americans and anyone else who applies for a job, when we have an available opening," he says.

The miners' case is being investigated by the National Labor Relations Board at the request of the United Mine Workers of America (UMWA).

Once vibrant but now struggling, the union has made the Co-op miners a cause celebre. Their plight is evidence to the UMWA that modern workers remain subject to corporate mistreatment that most Americans thought was eradicated long ago -- with immigrants still especially vulnerable to exploitation

because of their limited English-speaking abilities and fears that deportation will face any complainants who enter the United States illegally.

Seven of the miners received a warm ovation Sept. 30 when they were introduced onstage at a union special convention in Las Vegas. UMWA International President Cecil Roberts then issued a statement calling on American workers to support the miners "as they fight for justice and dignity."

Salt Lake City-based members of AFL-CIO's Building Trades local union chapters responded with a food drive. Teaming with Utahns Against Hunger and Utah Jobs with Justice, a worker advocacy group, the union locals delivered four truckloads of canned vegetables, fruit, beans, tortillas, rice and other foodstuffs to the Co-op miners.

"It kind of makes you mad that somebody could abuse people that badly," says Corey Hilton, chairman of the Building Trades Organizing Project. "We don't want any kids going hungry."

Unless the labor dispute goes on indefinitely, most food needs of the miners and their families should be covered by the Emery County Community Service food bank, operated in Castle Dale by the Southeastern Utah Association of Local Governments. But service coordinator Kathy Thomas says that with 30 families already having come to the food bank for assistance, "we're thinning out. That's a sizable number for a small area like this. We have donation sites all over the county so individuals can donate food if they like."

Thomas says her agency cannot help the miners meet rent payments or utility bills, assistance that will have to come from the UMWA or Catholic relief agencies.

Adding spice to the conflict is the fact that Co-op Mining is widely recognized as a holding of the polygamous Kingston family. Longtime UMWA International board member Mike Dalpiaz, Helper's former mayor, says that because of suspicions about the family's operations, "we are going to open this up and see what the Kingstons are doing on different playing fields. Somebody has to put an end to this."

For his part, Estrada says, "we're fighting this, not because they're a polygamous family but because of what they do at this mine. We want what's fair at that mine."

He says he heard grumbling about the low wages (average pay for a Utah coal miner is \$21 per hour), lack of benefits and potentially dangerous working conditions from the day he started as a miner's helper. It did not take him long to perceive that the mine's so-called union, the International Association of United Workers, was a company concoction designed to preclude employees from airing legitimate grievances.

Estrada eventually became part of a group that arranged a meeting in late August with UMWA labor organizer Jim Stevenson, who urged the group to keep a low profile while electing a "Leadership Committee" that could advise workers of their rights under the National Labor Relations Act.

They learned very quickly," Stevenson says of the miners, who Estrada claims stood up to their bosses twice last month when they threatened disciplinary action against two colleagues, Oscar Sosa and Juan Salazar, for alleged infractions of work rules.

Estrada says the showdown over Salazar occurred Sept. 19. When he returned to work the following Monday, a foreman confronted him, wanting Estrada to sign a form acknowledging a failure to perform his duties adequately. Estrada refused and the foreman fired him.

Co-op's Reynolds rejects Estrada's account, contending he knows nothing of "any organizing they were doing. It was simply in response to some problems they were having with him on the job."

The miners and the company disagree over what happened after that, too. The miners maintain that when they came to Estrada's defense, a foreman told them they were all fired. When some tried to return to work the next morning, only a handful of employees on a company checklist were allowed onto the property.

Reynolds contends the employees "simply walked off the job and have not returned."

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Either way, the UMWA filed a grievance with the National Labor Relations Board (NLRB) on Sept. 23.

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http://nl.newsbank.com/nl-search/we/Archives?p_action=doc&p_docid=100E3B415FF8R1F0&n_docid=

accusing Co-op of intimidation and coercion in firing an employee for promoting unionization, creating a sham union controlled by the company and seeking immediate reinstatement of the miners with back pay.

Denver-based NLRB investigator Daniel Robles spent three days in Carbon and Emery counties a week ago, interviewing miners and company officials about the dispute. His boss, assistant regional director Wayne Benson, says that "because a lot of people have lost their jobs and these are important issues, we're giving it our utmost attention." He expects a ruling by mid-November.

Until that decision is rendered, Co-op's Reynolds said he was limited in how much he can say.

But in comments to The Salt Lake Tribune and a letter to the Price Sun-Advocate, he argues that the International Association of United Workers union is legitimate, that the company offers health insurance through Ensign Company Group Health Plan to its employees although not all take advantage of it, that seemingly low hourly wages are boosted upward with supplementary pay for jobs well done and performance bonuses, that female employees have access to separate restrooms and bathing facilities, and that the company abides by federal and state safety regulations. Federal Mine Safety and Health Administration records support his last point, showing injury incidence levels at Co-op mines that are below the national average.

The miners, nevertheless, remain steadfast in their determination to force the company to improve pay scales and working conditions.

While having three young children at home made it difficult for Panduro to stop working, he says he had to "because I couldn't close my eyes any more" to the ill treatment. Sanchez swears her resolve will not waver.

"The day we united against the owners, it was because we had hit a wall. Every time we had asked for better working conditions, they told us to keep our heads down and keep working or we could be out the door."

Their determination is inspiring to the UMWA's Dalpiaz, who contends that union and nonunion miners alike from Utah's coal country have called him, voicing support for efforts to help the Co-op miners.

"It's taken some beat-down immigrant workers to make the rest of society stand up and say we can make changes," he says.

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Caption: Ricardo Chaves, who worked at the Kingston family mine in Huntington, pickets the mine. Recently, dozens of miners lost their jobs for protesting the firing of a co-worker trying to improve conditions.; Jump Page A4: Celso Panduro, outside his home in Huntington with his wife, Elizabeth Morales, and their son Daniel, says it is difficult not to be working, but says he "couldn't close my eyes any more" to the miners' treatment. Panduro lost his job at the Co-op Mine for protesting the firing of Bill Estrada, above left, who was trying to improve the working conditions at the mine with the help of labor organizer Jim Stevenson, above right.

Ryan Galbraith/The Salt Lake Tribune

Jump Page A5: Graphic: Co-Op Mine (map)

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Schedule 7-5



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Salt Lake Tribune, The (UT)

Date: October 31, 2003

Section: Business

Edition: Final

Page: D1

Co-op Mine workers say dignity at stake in their strike

Mine workers fight injustice

Rhina Guidos The Salt Lake Tribune

Inside a Denny's Restaurant near downtown Salt Lake City, Maria Sanchez looks out the window and sees a homeless man asking for money during the year's first snow. The 24-year-old worries it is a sign of a bleak future for her and her 3-year-old daughter Litz because Sanchez hasn't worked in more than a month.

In September, she joined about 70 co-workers from Huntington's Co-op Mine in demanding that the polygamous Kingston clan — the mine's owners — provide safer working conditions, better wages and a legitimate workers union at the Huntington facility.

"A lot of the families are feeling the pressure," Sanchez says of the workers fighting the Kingstons. "We want to return to work as soon as possible but we also want to be treated with dignity."

Sanchez, along with about a dozen miners and about 30 other supporters, waved signs in the snow Thursday outside the office of attorney Carl Kingston in South Salt Lake. The group seeks public support in the form of financial and food donations for the workers and condemnation of the Kingstons' labor practices.

"We're here to expose the abuses of mine workers," said Francisco Picado, of the United Mine Workers of America (UMWA), one of several groups backing the workers. "We're asking that people throw their weight in this fight. We need money, we need food and support to make it possible for the workers to do the right thing."

James Tobler of the group Mormons for Equality and Social Justice decried the Kingstons' lack of attention to the teachings of Brigham Young, who he said stood up for workers and injustice.

"We'll stand by the workers until justice is achieved. It surprises me that people can sleep at night," Tobler said.

The National Labor Relations Board, at the request of the UMWA, is investigating allegations of unfair labor practices that the workers have lodged against the Kingstons' CW Mining Co. They expect the board to render a ruling in mid-November.

CW Mining representatives did not immediately return phone calls Thursday. Carl Kingston declined comment except to say the mine remains operational and has hired replacement workers.

Sanchez and Berthila Leon said they had to undress in the same rooms as their male workers since the Kingstons didn't provide separate bathrooms or changing facilities for female workers.

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Leon, a single mother of five, said she worries about how she will pay medical bills for her children, how she will pay rent and feed her family. But it was important to stand up against years of injustice, she said.

Celso Panduro, whose \$8-an-hour wage at the mine supported a family of five, said he is also worried about his family's finances but believes that calling attention to conditions that he and others worked under is important. Besides not providing medical insurance for workers or their families, the Kingstons often exposed their workers to unsafe conditions in the mine, he said. Many of those picketing, such as Ricardo Chavez, can point to scars from injuries suffered at the Co-op.

The workers also said the family set up a fake union that they used to draw more money out of paychecks without providing benefits for workers.

Jim Stevenson of the UMWA said other labor groups have been promoting the case of the workers in the Midwest, where the Kingstons do business.

He said they want to call attention to problems that many Americans thought no longer existed.

"We're telling them that their lights are being turned on by slave labor," he said. "We're going to keep this battle going until they [the Kingstons] come into the 21st century. The dark days are gone."

Caption: Ricardo Chavez and other workers from the Co-op Mine in Huntington, owned by the polygamous Kingston clan, picket the company's offices in Salt Lake City on Thursday.

Francisco Kjolseth/Salt Lake Tribune

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Salt Lake Tribune, The (UT)

Date: December 11, 2003

Section: Business

Edition: Final

Page: E6

Rally celebrates Utah's role in labor movement

Human Rights Day: Churches are urged to use their influence to help win rights for workers

Rhina Guidos The Salt Lake Tribune

Touting collective bargaining as a public good, more than 100 Utah union members and their supporters gathered at the Salt Lake City Main Library on Wednesday to celebrate Human Rights Day. Religious leaders, professors of the labor movement and union members listened to the history of the labor movement in Utah,

which included involvement by the LDS and Catholic churches.

Brigham Young was a member of the Printers' Union, said panelist J. Kenneth Davies, Brigham Young University professor emeritus, and members of The Church of Jesus Christ of Latter-day Saints who settled in Utah envisioned a system of social justice in their plans to develop a state that would serve their religious goals on Earth.

"The Mormon church was and is for social justice," he said.

Likewise, the Catholics have teaching documents called encyclicals steering worshippers to stand up for social justice, said Dee Rowland of the Catholic Diocese of Salt Lake City.

"Catholicism doesn't tell us to abandon the world but help shape it," Rowland said. "In our tradition, work is both a beauty and a right."

Forming unions that defend workers isn't a thing of the past, organizers said. They brought in nurses, a teacher, a dispatcher and miners to talk about the modern-day struggles in the workplace and to explain their view of why collective bargaining is important.

In Ogden, a worker from the Consolidated Dispatcher Center talked about the high turnover rate, about the lack of training and schedules for part-time workers.

A Utah educator talked about the difficulties teachers face with new demands brought by legislation such as No Child Left Behind, and a nurse from Salt Lake City talked about the difficulties of trying to unionize at her workplace.

The most applauded of the workers were two miners from Huntington who are battling owners of the Huntington Co-op Mine. They received a standing ovation before they spoke.

Lina Maria Sanchez, 24, told the crowd about the "bad and dangerous" working conditions many immigrant miners faced at the co-op mine and the reasons behind current efforts to unionize.

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"Unite with us with this fight against the Kingstons," she said.

The National Labor Relations Board, at the request of the United Mine Workers of America, is investigating allegations of unfair labor practices at the mine.

Andy Triplett, a Kennecott Rio Tinto worker, asked that LDS Church members talk to their leaders to bring about better working conditions, wages and benefits for all workers in Utah.

"We can bring about change, and we deserve safe workplaces," Triplett said. "We are not subversive. We are proud of our jobs."

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Salt Lake Tribune, The (UT)

Date: December 20, 2003

Section: Utah

Edition: Final

Page: B1

Striking Latino miners have little to celebrate this year

Tom Wharton The Salt Lake Tribune

"When the love of the poor shall one day turn to hate. When the patience of the workers gives away

'Would be better for you rich if you never had been born'

So they laid Jesus Christ in his grave.

- Woody Guthrie

HUNTINGTON CANYON -- Red Christmas lights surrounded the portrait of the Virgin of Guadalupe inside the weathered old trailer on the road to the Co-Op Mine.

On the feast day of the Virgin during the height of the Christmas holiday season, the striking miners have little to celebrate.

Like the Greeks, Chinese, Italians, Irish and Czechs before them, the mostly poor Latino miners are battling mine owners for basic rights such as safety, a living wage, a pension and health insurance.

The striking miners sit inside a trailer donated by a retired coal-country miner. Coffee, leche and tortillas sit at the ready. A deck of worn cards waits for a late-night game.

They may not have heard of Woody Guthrie or his union songs, written in a different time. They might not know about Utah's own union history, well documented in the nearby Helper Mining and Railroad Museum. But they are part of an unfortunate American industry habit of exploiting immigrant workers.

The piano played a slow funeral tune

And the town was lit up by a cold Christmas moon,

The parents they cried and the miners they moaned,

See what your greed for money has done.' "

- Woody Guthrie

D005421

Hand-lettered signs, in English and Spanish, tell a story to those who drive past the striking miners.

"Co-Op Miners Demand Dignity and Respect from the Kingstons" reads one sign, referring to the family that owns the Co-Op Mine.

Talk to folks in Emery County and you will find support for the miners' cause. While only one mine in the Carbon and Emery coal country – the Deer Creek – remains unionized, the difference in the wages alone speaks to how the workers at the Co-Op are being exploited.

The approximately 75 miners who went on strike Sept. 22 made between \$5.25 and \$7 an hour; other mines in the area pay \$15 to \$20.

"Why do they have to be different?" asked Bill Estrada, one of the striking miners. "Why not operate like other companies or offer wages compared with other companies?"

Estrada talked about unsafe conditions in the mines, about injured miners who have had their pay docked when they dared report an accident.

"Oh, you can't scare me, I'm sticking to the union,

I'm sticking to the union till the day I die."

– Woody Guthrie

The drama between the mine bosses and the union members plays out like a history lesson from early in the 20th century during the height of the union movement.

Estrada talks about hearing threats the mine owners might call the immigration officials to scare the workers. The Kingstons have called the sheriff, reporting illegal trespass.

At night, they flash their high beams into the faces of those on the picket line.

The miners want their jobs returned and back pay for being illegally fired for union activity.

"Any group of people willing to stand up for justice and what's right, only good things can come," said Estrada. "We haven't won. But we trust each other. They never thought we could get together."

Woody Guthrie would be proud.

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Salt Lake Tribune, The (UT)

Date: May 5, 2004

Section: Nation/World

Edition: Final

Page: A1

A show of support

Utah's Catholic leader speaks out, offers prayers for striking miners; Bishop shows support for miners

Rhina Guidos The Salt Lake Tribune

HUNTINGTON — Bishop George Niederauer stepped out of his sedan and into the warm spring afternoon along state Road 31 on Tuesday, arriving to show his support for miners who have been on strike here for months. Across the street, a crowd of about 25 of the miners and their families — most of them Mexican immigrants, most of them Catholics — were happy to see that the head of the Salt Lake Catholic Diocese was joining their struggle.

For more than seven months, the workers have been locked out of their mining jobs at CW Mining Co., also known here as the Co-op mine, and there is no resolution in sight. In the sun and snow of those months, they have been at the entrance of the mine asking for their jobs back, but with better wages, with health insurance for themselves and their families, and with the right to organize a union.

"I drove two hours to come here and two hours back" to Salt Lake City, Niederauer told them. "But you sacrifice day after day. You are in my prayers, and you are in the prayers of the people."

It is the first time the bishop has made such a visit in Utah. But by joining the strikers on Tuesday, Niederauer said, he is following in the footsteps of other Christians and predecessors in the church.

"I'm not striking out in any radical new way," he said.

He said a prayer for the strikers alongside an image of the Virgin of Guadalupe, housed inside a trailer that the Utah Department of Transportation tried to have removed in April.

As Co-op workers and the owners of the mine — members of the polygamous Kingston clan — left for the day, Niederauer listened to stories from the striking workers, about how little they made, about how their families are suffering.

At San Rafael Mission outside of Huntington, he celebrated a Mass for the workers, their families and the communities that have supported them. Later he shared a meal with them.

This has been hard," said Jesus Salazar, one of the strikers. "But we have to keep going."

D005423

The visit from Niederauer was a boost to the dwindling picket line, as some strikers have left for better paying jobs at other mines.

Valente Leon, a former Co-op worker, said he's making more money at a new job. But just because his life is better, the struggle isn't over, he said.

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He stopped to shake Niederauer's hand and to ask him to help the strikers.

"I will still come by after work to lend them support," Leon said.

Though the Kingstons may not listen to the Catholic bishop of Salt Lake, Niederauer said the purpose of his visit was to speak out for fair wages, for safe working conditions, for the right to associate as workers.

"They are all being denied to the workers" at the Co-op mine, he said.

Seminarian Oscar Martinez has been helping with efforts to get the Kingstons and workers talking.

So far, he said, it has yielded a letter offering the workers their jobs back, but at the same wages and conditions as before.

But striker Alyson Kennedy said they won't go back to the mine until they are treated with dignity and respect.

"We will go back, but with our heads held high," she said.

And that's what the church leaders want, too, Martinez said. He hopes that the bishop's visit will facilitate that.

"Our role is to accompany them spiritually and to accompany them on this strike," he said. "It is not a battle against this [the Kingston] family."

Caption: Striking miner Valente Leon greets Catholic Bishop George Niederauer near the Kingston-owned CW Mining Co. in Huntington.

Isaac Brekken/The Salt Lake Tribune

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Salt Lake Tribune, The (UT)

Date: July 3, 2004

Section: Nation/World

Edition: Final

Page: A1

Miners win back their jobs

Huntington workers aren't celebrating, say safety, wages remain an issue; Miners vow to fight for better conditions

Glen Warchol and Rhina Guidos The Salt Lake Tribune

A group of mostly Latino coal miners who became labor movement celebrities after they were fired and locked out of a polygamous clan-owned mine 10 months ago have won reinstatement to their jobs. However, the 75 workers at C.W. Mining's Co-op Mine near Huntington in Emery County say their hard-fought settlement with the owners — members of the Kingston clan — is only the first step toward getting the right to work safely for decent wages.

"It's an important step, but we haven't won," said Bill Estrada, the miner who rallied the others last year after he was fired for union-organizing activity.

He said the settlement reached Thursday through the National Labor Relations Board (NLRB) validated what the miners have been saying all along: The Kingstons fired them illegally.

It also entitles the miners to back pay for the time of the lockout in an amount that has yet to be determined.

Workers, however, will return to the same wages, poor benefits and the unsafe working conditions, Estrada said, so a final victory eludes them.

The United Mine Workers of America (UMWA) already has petitioned the NLRB to represent the miners in contract negotiations. An election is expected next month in which the miners will choose between the UMWA, the mine's existing union, the International Association of United Workers, or no union, NLRB Assistant Regional Director Wayne Benson said.

Miners say the International Association of United Workers is a "yellow-dog" or company-run union, but Benson said the NLRB did not gather sufficient evidence to support that allegation.

Telephone calls to C.W. Mining on Friday were not immediately returned. The company has maintained Estrada was fired for insubordination after having been caught falsifying a safety-inspection record.

Estrada said the miners' attention now turns to next month's union vote.

It will be between the UMWA or the false union of the Kingstons," he said. "But how can [we] have a union that is owned by the company?"

The UMWA helped the miners rally support around the country and the world.

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In the months that followed the Sept. 22 lockout, they became labor movement celebrities, speaking at conferences and union functions from Boston to Seattle. The Utah miners received donations and moral support from labor groups in Sweden, Great Britain and New Zealand.

"When we were fired from our jobs, they [the UMWA] said they'd be with us every day until it was over, and they have been," miner Alyson Kennedy said.

"We're going back stronger, with a lot of support, with a lot of friends and allies," she said. "We're going back in a good position for the next stage."

On Tuesday, the miners and supporters will trek from a park in Huntington to the entrance of the mine. They will decide which workers will return to work in the mine, since many of them have taken jobs elsewhere.

Utah's Roman Catholic Bishop George Niederauer, who visited the striking miners in May, said they will continue to need public support.

Like the union, the diocese has been instrumental in sending monetary and other types of donations for the miners, as well as rallying support around the state.

"One of the most important things we in the public should realize is that this is no time to divert our attention away from the situation," Niederauer said. "We need to keep alert and watching . . . It's important not be lulled into thinking the whole thing has been resolved."

Caption: Jump Page A11: Demonstrators in October protest the firing of a miner who had been trying to improve conditions at a Bear Canyon mine in Huntington Canyon.

Ryan Galbraith/Tribune file photo

Jump Page A11: Graphic: Map of Co-Op Mine area in Huntington, UT. The Salt Lake Tribune

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Salt Lake Tribune, The (UT)

Date: July 7, 2004
Section: Nation/World
Edition: Final
Page: A1

Miners march back to work after settlement, Armed with a settlement

Miners march to claim jobs won in deal

Glen Warchol The Salt Lake Tribune

HUNTINGTON – The march to the Co-op Mine on Tuesday was a throwback to better days of Utah union solidarity as 49 coal miners, who for 10 months have protested working conditions at the Kingston-owned mine, climbed the canyon to demand their jobs back under a federal settlement. About 100 cheering supporters, including union miners from around the region, joined in the half-mile march.

"This is nothing compared with what I've seen," said retired miner Tony Salazar, 76, who blocked the same canyon during a strike in 1949. "We stopped a truck and dumped a load of coal down there. Over toward the Book Cliffs, they burned a bridge to stop the coal from getting out. The union was very strong in those days."

The protesting Co-op miners, most of them Latino, say the settlement reached last week through the National Labor Relations Board (NLRB) validated their claims that the polygamous Kingston clan fired and locked them out for trying to organize under the United Mine Workers of America (UMWA). They also won an as-yet undetermined amount of back pay.

"This is a very happy day for the Co-op miners," said Bob Butero, a UMWA organizer. But he cautioned the miners and their supporters: "This is not over until these workers are covered by a true labor agreement."

The mine's managers contend the miners refused to return to work after two miners were disciplined for job-related issues.

"There was no lockout," Personnel Manager Charles Reynolds said. "At any time, any of them could have returned."

The miners will be called back for refresher training courses sometime this month, Reynolds said, then returned to their jobs. "The goal is to work with the employees to work out all our concerns."

An election is expected next month in which the miners will choose between the UMWA or the mine's existing union, the International Association of United Workers. The miners say the IAUW is a bogus, Kingston-controlled union.

D005427

But Chris Grumvick, the IAUW's representative, says his union is legitimate and that he is not a member of the Kingston family.

Nevertheless, it was the UMWA that represented the miners on their march to regain their jobs – not Grumvick. "I offered them representation. They refused it," he said.

Still, even Butero admits that the upcoming election is no sure thing. It will pivot on who the NLRB decides can cast votes. Owners, managers and supervisors are barred from voting in union elections, but it is a particularly murky situation at the Co-op mine.

The UMWA says Kingston family members should not vote as workers. The NLRB will have to make a unique call on Kingston workers, Butero said.

"When these [Kingston members] go to work, they are part-owners of the mine," he said. "Can we get the board to take the broader view to see that? We'll see."

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Caption: Charles Reynolds, front, personnel manager of Co-op Mine, looks through papers as he talks to United Mine Workers of America Director Bob Butero, center, as striking miners in Huntington return to get back their jobs. The miners were locked out by the mine owners in a labor dispute.; Jump Page A6: Huntington miners march up the road that leads to the Co-op mine. They were locked out 10 months ago by the mine owners, the Kingstons, in a labor dispute. The labor relations board mandated that mine managers rehire the workers and pay them for the time they missed.

Ryan Galbraith/The Salt Lake Tribune

Jump Page A6: Graphic: Co-Op Mine location (map) The Salt Lake Tribune

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Salt Lake Tribune, The (UT)

Date: July 10, 2004

Section: Opinion

Edition: Final

Page: A8

Victory for miners

Mining coal underground is dirty, dangerous, debilitating work. No one should have to do it for \$5.25-\$7 an hour. It is little wonder, then, that the workers at the Co-Op Mine near Huntington tried to organize themselves to negotiate better pay and working conditions. When they talked about forming a union last September, they say, their leader was fired and the rest of them were locked out.

The company – CW Mining, owned by the polygamous Kingston clan – claims that it fired for insubordination the worker who was talking up the union, and the rest of the miners left their jobs in sympathy. They were never locked out, the company says.

The dispute ended up in the lap of the National Labor Relations Board, which finally facilitated a settlement this month. The miners won the right to return to their jobs, get back pay and hold an election to determine whether they will be represented by the United Mine Workers of America, by a rival union affiliated with the company, or by no union at all.

The settlement was a victory for the miners and the UMWA, which had taken the miners' complaint about unfair labor practices to the NLRB.

For the miners and UMWA, it was a glimpse into the past. Beginning late in the 19th century, the mines and unions in Utah's coal country grew up on the backs of immigrant labor. By no coincidence, most of the miners at the Co-Op Mine today are Latinos, many of them Mexicans.

Historically, immigrant workers were easier for employers to exploit, because of language and cultural barriers. Today, companies can threaten to turn noncompliant workers over to immigration authorities.

That is the environment that gave birth to trade unionism, in Utah as well as elsewhere.

In recent decades, however, the state's coal industry around Price has declined, and trade unionism has slowly eroded along a parallel track. U.S. labor unions have discovered, however, that their future lies not far from their roots, in immigrant labor. That pattern is playing itself out near Huntington.

If the miners' claims about low pay and benefits, about inadequate safety training and poor working conditions are as they appear, it is no surprise that they would organize to improve their lot. They have little other recourse.

History, it seems, is repeating itself in Utah's coal country.

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Salt Lake Tribune, The (UT)

Date: July 14, 2004

Section: Utah

Edition: Final

Page: B2

Workers return to jobs at Huntington mine

Rhina Guidos The Salt Lake Tribune

After being out of work for nine months over a labor dispute, more than 40 miners quietly returned Tuesday to their jobs in the caverns of a Huntington mine. The issues leading to the dispute remain unresolved. "It was uneventful," said Bill Estrada of his first day back at the Co-op Mine.

He said that miners who were locked out last September by their employer C.W. Mining entered their old workplace with stickers on their hard hats bearing the name of the United Mine Workers of America (UMWA), the union they want to join.

The dispute over the workers' allegations of low wages, lack of health insurance, and unsafe or unacceptable working conditions ended earlier this month, when the National Labor Relations Board brokered a deal between the laborers and the polygamous Kingston family that owns the Co-op Mine. The company admitted no wrongdoing and the workers were allowed to return to work after being fired.

Representatives of the mine did not return phone calls seeking comment.

Next month, the workers could choose to be represented by the UMWA, the International Association of United Workers Union (IAUWU), or no union at all. The workers who picketed the company say the IAUWU – which says it has represented the mine's workers for more than 20 years – is a "yellow-dog" union run by members of the Kingston family. But the NLRB recognizes that union as a valid organization.

It wasn't easy to return to work making \$6.50 an hour and still without health insurance for himself or his family, said miner Juan Salazar, 28, after a 13-hour workday.

Many of the workers have been given 48-hour work schedules this week.

Salazar, a machine operator, said he spent the first day "cleaning" the coal with a shovel.

"We went in and we didn't have problems, no one intimidated us," he said. "But we want to attain a real union, one that will change the conditions of the mine."

Miner Alyson Kennedy also went back to work on Tuesday. She spent Saturday watching a refresher course on mining.

"It's not clear what's going to happen," she said.

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The miners will still be negotiating for back pay, she said. And the conditions are still the same. The women still don't have a separate place to shower or change. She said the company offered her \$1.50 a

day if she signed a document accepting the lack of a separate space for female miners.

"They said they don't have money [to build separate facilities]," she said.

Like most of the workers, Estrada said he wasn't thrilled about returning to the same conditions that led the miners to strike in the first place. "[W]e have taken a step toward an election," he said. "That's why we're back, because we have the opportunity to change something and we think it will be possible to do it."

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Salt Lake Tribune, The (UT)

Date: September 25, 2004

Section: Utah

Edition: Final

Page: B3

Kingstons' mine sues over strike

Pamela Manson The Salt Lake Tribune

A mining company owned by the Kingston polygamous family filed suit Friday against miners who picketed the operation last year and more than 100 other individuals and groups that either spoke in support of the workers or published information about the labor dispute. The 122 defendants targeted in the action include the United Mine Workers of America (UMWA); the Socialist Workers Party and its newspaper, The Militant; the Roman Catholic Church and Bishop George Niederauer of the Utah Diocese; Tapestry Against Polygamy; The Salt Lake Tribune and several of its editors and reporters; and other media organizations and journalists.

The plaintiffs are the C.W. Mining Company and the International Association of United Workers Union (IAUWA), which picketing workers claimed is a "yellow-dog" union run by members of the Kingston family.

The claims in the lawsuit include unfair labor practices, defamation, intentional interference with economic relations and civil conspiracy. The action, filed in U.S. District Court in Salt Lake City, seeks more than \$1 million in alleged lost profits and unspecified punitive damages.

About 75 workers, most of them Latino, say they were locked out of the Co-op Mine near Huntington in Emery County in September 2003 after talking about organizing themselves to negotiate better pay and working conditions.

The company claims it fired one worker who was talking up the UMWA and the rest of the miners left their jobs in sympathy. They were never locked out, the company says.

The workers returned to work this past July after the National Labor Relations Board brokered a deal in which the company admitted no wrongdoing. Under the agreement, the miners will get to decide whether to be represented by the IAUWA, the UMWA or no union at all.

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Salt Lake Tribune, The (UT)

Date: October 3, 2004

Section: Utah

Edition: Final

Page: B4

D005433

Kingston clan's mine workers hold rally on the first anniversary of their lockout

Christy Karras The Salt Lake Tribune

PRICE – This high desert town in eastern Utah doesn't usually see many shipyard workers. But on Saturday, John Fisher was one of several Seattle longshoremen who came here to support workers in an industry far removed from their own – miners celebrating the one-year anniversary of starting a picket line to protest their employer, C.W. Mining. "We're here to support them in their struggles. We've struggled, and their struggle is our struggle," Fisher said at a rally in the local union hall. "We'll come back here again and again, and if we need to bring additional help, we will."

The miners say they were locked out of their jobs last September because their employers heard them talking about forming a union to ask for better wages, benefits and working conditions.

They have been back on the job for three months now after a no-fault National Labor Relations Board decision returned them to work. Now they are waiting for another decision by the board that will determine which of the mining company's employees can vote on which union to join.

The miners say the company plans to stack the union vote in favor of a company-supported organization, the International Association of United Workers Union.

"That is false. The IAUWU is just like any other union. It's a legal union. They're the union we've dealt with for years, so we're used to dealing with them. As far as the union is concerned, it's the workers' choice," said mine manager Charles Reynolds. "The company does want to see the whole situation resolved, and I think it will be resolved in the way that will be best for the workers."

At the rally, several dozen supporters ate steak and cheese quesadillas, donned T-shirts proclaiming "One year in struggle" and made speeches in the United Mine Workers of America hall.

The mining company, owned by the Kingston family and also known as the Co-op Mine, recently filed a lawsuit against more than 100 people and organizations, claiming it had been defamed by the workers, supporters and news organizations (including The Salt Lake Tribune).

The miners at Co-op were determined stick to it to the end, to win decent pay and safe conditions, and we're not going to be scared by a lawsuit from this kind of people," said Bill Estrada, one of the miners who says he was unfairly fired. "We wanted our jobs back, but now our goal is to win union representation."

Several of the miners, many of whom speak only Spanish, recounted how the past year changed them from workers to warriors after they lost their jobs, asked for help from other unions and learned how to file protests with the government.

Juan Salazar used to be shy, but on Saturday he gave a fiery speech in front of the crowd. "They hope to scare people who support our fight, but that's not going to happen," he said.

The company has never admitted wrongdoing in the case and now says the matter is well on its way to being over. "As far as the company is concerned, the issue has been settled, with the exception of the NLRB reviewing the case to see if any of them may be eligible for back pay," Reynolds said.

Supporters say it's an old-fashioned case of a brave few going up against a corporate foe.

"I couldn't believe the story I heard about these poor guys down here, that stuff like this can happen in this day and age. It's unbelievable," said Brian Anderson, one of a group of Salt Lake City union members who drove to Price for the rally.

To union members who came from Washington state, New Mexico and elsewhere, the cause is invigorating for the beleaguered national labor movement, which has seen declining enrollment and what union leaders say is a hostile environment under the Bush administration.

"It's important for everybody to rise up, I believe, and show support," said Fisher, the longshoreman. "This is the wealthiest country in the world, and we can't show gratitude to the working people?"

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Salt Lake Tribune, The (UT)

Date: November 20, 2004

Section: Nation/World

Edition: Final

Page: A1

Union vote to exclude Kingston relatives

Co-Op Mine: The NLRB ruling clears the way for a vote on joining the UMWA union; Kingston miners to have vote on union

Steven Oberbeck The Salt Lake Tribune

Struggling coal miners at the Kingston family-owned Co-Op Mine in Huntington now can vote to join the United Mine Workers of America union without fear their voices will be drowned out by co-workers related to the polygamous clan. In a ruling handed down this week, the National Labor Relations Board (NLRB) in Denver determined workers at the mine who are related by blood or marriage to the Kingston family won't be allowed to vote on UMWA representation.

"This [ruling] is a good win for the UMWA, but more importantly, for those miners who waged a long hard fight after standing up for their rights," said Doug Gibson, a spokesman for the mine workers' union in Washington, D.C.

However, the battle may not be over.

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"We feel the NLRB's ruling is discriminatory against a large portion of workers who deserve to participate," Co-Op Mine manager Charles Reynolds said. "We intend to appeal the NLRB's decision."

The company has maintained that the International Association of United Workers Union already represents the miners, but many of the workers describe that organization as a "yellow-dog" union with ties to the Kingstons.

In its ruling, though, the NLRB determined the International Association is a valid labor organization. In a future election, miners will be asked whether they want representation by the International Association, the UMWA or neither.

Late last year, several dozen coal miners, mostly Latinos, were fired and locked out of the polygamous clan-owned mine after they protested poor working conditions, low salaries and the lack of benefits. They're trying to organize under the UMWA.

Mine managers contended the miners refused to return to work after two miners were disciplined for job-related issues. "There was no lockout," Reynolds said then. "At any time, any of them could have returned."

But the NLRB in July determined the miners were entitled to reinstatement to their jobs, a ruling that may open the way for the miners to collect back pay for the time they were out of work. The NLRB still is investigating that possibility.

Many of the protesting miners have returned to work, but now they are laboring with the hope the UMWA

eventually may be certified as their union and help in future collective bargaining with the company.

"We haven't won yet," said Bill Estrada, the miner who rallied the others last year after he was fired for union-organizing activity. "The next big thing for us to look forward to will be when the NLRB sets the date for the election."

Prior to the NLRB's ruling earlier this week, the miners feared Kingston family allies in the work force would vote in favor of the status quo and thwart their efforts at UMWA representation. "These were people who never applied for employment," Estrada contended. "The family just brought them in."

Gibson at the UMWA said were it not for the NLRB decision, Kingston family members working at the mine could have swayed the vote.

In its decision, the NLRB noted that based on the company's records, there were approximately 220 full- and part-time employees at the mine and that 156, or 71 percent, had ties to the family.

The board found there were only 64 employees eligible to vote. Included among that number were many of those who were locked out of the mine in September 2003.

Estrada said support is overwhelming for UMWA representation.

"Not all of the 64 [miners] remain at the mine. Some have moved on and are working at other mines. But of those remaining, support is strong for the UMWA," he said.

NLRB Assistant Regional Director Wayne Benson in Denver said if the company wishes to appeal, it must request a review by the NLRB in Washington. The order handed down this week indicates that request for review must be filed by Dec. 2.

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Salt Lake Tribune, The (UT)

Date: November 30, 2004**Section:** Business**Edition:** Final**Page:** E1

Miners allege union busting

They claim Kingston mistreatment in weeks before vote; Kingston miners complain

Glen Warchol The Salt Lake Tribune

Coal miners trying to organize a new union at the Co-Op Mine owned by the polygamous Kingston family on Monday complained of dangerous conditions and worker intimidation at the mine near Huntington. Co-Op miner Bill Estrada alleges workers supporting the United Mine Workers of America have been threatened and, in one case, assaulted.

"They are trying to use anything possible to defeat our attempt to organize with the UMWA," Estrada said. "They are taking desperate measures," including unrealistic work demands, threats to fire workers who cannot prove they are legally in the country and warnings they will close the mine if the UMWA wins the election set for Dec. 16.

The miners also asked federal Mine Safety and Health Administration officials to order the mine's owner, C.W. Mining, to halt what the miners allege are dangerous practices that expose them to cave-ins and inadequate ventilation, Estrada said.

A Co-Op Mine manager did not immediately return phone calls Monday.

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The National Labor Relations Board (NLRB) in Denver earlier this month ruled workers at the mine who are related by blood or marriage to the Kingston family won't be allowed to participate in the union election.

Co-Op management promised to appeal the decision, but NLRB assistant Regional Director Wayne Benson said he had yet to receive it. Coercion of employees attempting to organize is unlawful, he said. The NLRB has no reason to believe any of the approved voters have questionable social security numbers, Benson said.

The company maintains the miners already are represented by a union, the Utah-based International Association of United Workers. Dissident miners say the United Workers is Kingston created and controlled.

The NLRB agrees the United Workers is a union — but says the miners have the right to choose which union will represent them — if any.

late last year, several dozen coal miners, mostly Latinos, claimed they were fired and locked out of the mine after they protested poor working conditions, low salaries and the lack of benefits.

Mine managers say the miners refused to return to work after two miners were disciplined for job-related issues.

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The NLRB determined the miners were entitled to reinstatement to their jobs and, possibly, back pay.

Based on the company's records, the NLRB found that 156 of the mine's 220 full- and part-time employees had ties to the family. Only 64 employees are eligible to vote.

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