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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Prehearing Conference
January 12, 2004
Jefferson City, Missouri
Volume 5

In the Matter of the Request of)
Aquila, Inc., d/b/a Aquila Networks -)
L&P and Aquila Networks - MPS, to) Case No. ER-2004-0034
Implement a General Rate Increase in)
Electric Rates.)

KENNARD L. JONES, Presiding,
REGULATORY LAW JUDGE.

REPORTED BY:

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1 P R O C E E D I N G S

2 JUDGE JONES: Good afternoon. This is a
3 prehearing conference on Case No. ER-2004-0034, and as a
4 matter of convenience we're also holding a prehearing
5 conference in Case No. GR-2004-0072. To my left is Judge
6 Ruth, who is the presiding judge in GR-2004-0072.

7 The Staff of the Commission moved the
8 Commission to hold this prehearing conference for the
9 purpose of discussing the effects of AG Processing vs. the
10 Public Service Commission. This was a case handed down or
11 remanded, I should say, from the Supreme Court.

12 I guess the best way to do this is to have
13 Staff, since you filed the motion, say why you think this
14 needs to be discussed.

15 MR. DOTTHEIM: The Staff filed the motion to
16 explore with the other parties to the three cases, the
17 electric, gas and steam rate increase cases, what impact, if
18 any, the Missouri Supreme Court's decision in State Ex
19 Rel AG Processing, Inc. v Public Service Commission decision
20 might have.

21 It's not the situation necessarily where the
22 Staff has certain procedures that if things are required as
23 a consequence, the Staff thought that as early as possible
24 the parties should broach that subject. The Staff does have
25 some thoughts regarding that, and in addition to convening a

1 prehearing conference to permit the parties to discuss that
2 item, the Staff thinks that possibly -- and it would like to
3 pursue this with the other parties, and the RLJs may have a
4 view on it -- that based upon the discussions that occur or
5 that the judges may have, the various parties filing
6 pleadings with the Commission identifying what, if any,
7 impact the various parties believe result could be put
8 before the Commission for the Commission to make some
9 determination.

10 The Staff thought that it was advisable to
11 raise this matter as soon as possible before we got too far
12 into the actual hearing of the cases. If any of the parties
13 have any views that the proceeding should be materially
14 changed because of that October 28th decision of the
15 Missouri Supreme Court, this would afford those parties an
16 opportunity to raise those items.

17 The Staff didn't have necessarily any
18 anticipation that we would stay very long on the record
19 today. At a minimum, the Staff thought that a structured
20 manner, a formal manner for the parties to discuss this item
21 was advisable.

22 At some point, and even today, the judges may
23 have questions for the parties. If the parties either on
24 their own or at the direction of the Commission or the
25 judges make formal filing with the Commission, then the

1 judges or the Commissioners themselves might deem it
2 appropriate to hold an on-the-record conference with the
3 parties to discuss their views as to the impact of that
4 Supreme Court decision on the three rate cases that are
5 pending.

6 So that was the purpose of the Staff filing
7 the motions in the three cases. The Staff, if there are any
8 questions from the Bench, would endeavor to answer those
9 questions as best as possible.

10 But again, the Staff was in particular looking
11 to this prehearing conference as an opportunity for the
12 various parties to discuss amongst themselves their views as
13 to what are the consequences, the results of the AG
14 Processing Supreme Court decision on the pending rate cases.

15 JUDGE JONES: Thank you, Mr. Dottheim.

16 JUDGE RUTH: Can I ask a question, then? I
17 just want to make sure I understand. So at this point,
18 Mr. Dottheim, can you identify what issues in each case
19 might be affected by this AG Processing case?

20 MR. DOTTHEIM: You've raised -- I think the
21 way you've just phrased your question is something that I
22 had not necessarily taken a view on. And if I understand
23 your question, you're thinking that either the Staff's
24 pleading or as your own thoughts that the Supreme Court
25 decision has an impact on individual issues.

1 JUDGE RUTH: It's a question. It's a
2 question. Sorry.

3 MR. DOTTHEIM: It may. It may well have.
4 There's an issue in the case which the company denominates
5 as merger savings, the Staff denominates it as acquisition
6 premium, which has been remanded back to the Commission.
7 That's one issue.

8 The parties in the case may have a view that
9 all the issues, the entirety of the three cases are
10 affected, or they may have a view that only the Aquila
11 Networks Light & Power cases, the electric and the steam and
12 the gas cases of Aquila Networks Light & Power are the only
13 portions of the pending cases that are affected by the
14 Supreme Court decision.

15 The Staff thought that rather than literally
16 raising that for the record that's being taken at this
17 point, that that's something that would be discussed amongst
18 the parties off the record and, as a result of that, the
19 parties would make formal filings with the Commission
20 addressing that issue or issues in whatever detail they
21 think appropriate.

22 JUDGE RUTH: And can you speculate as to when
23 those filings might be made?

24 MR. DOTTHEIM: Well, that's something that the
25 parties can discuss amongst themselves as far as when their

1 schedules would permit and the urgency of putting those
2 matters before the Commission for consideration.

3 The Staff has not had any detailed discussions
4 with any of the parties on this matter. The Staff has had
5 some very limited discussions, but nothing again in any
6 great detail.

7 So at this point the Staff in particular would
8 suggest that the Regulatory Law Judges ask whatever
9 questions they have, but that any detailed discussions occur
10 amongst the parties today off the record and see if there's
11 some consensus for a perceived need of making a filing with
12 the Commission and what schedule might be appropriate.

13 The judges may have a view on that, or
14 possibly the Commissioners themselves may give some
15 indication of that to the judges. If ultimately the view is
16 by all the parties that there is no impact, there is no
17 effect of the recent Missouri Supreme Court decision, the
18 parties could advise the Commission of that.

19 So that -- that is the Staff's thinking at
20 this point, and the Staff appreciates the judges scheduling
21 this prehearing conference originally last week, even in
22 advance of the prehearing conference today, presumably on
23 the basis that maybe even these discussions might impact, in
24 effect, the prehearing conference. I don't detect that that
25 has occurred as yet, but we're in day one and that may be

1 something that will arise later this week.

2 The Staff suggested that we go on the record
3 today at the hour that we did early this afternoon was an
4 effort again to try to pull the parties together to have a
5 discussion of this matter as early as possible.

6 The Circuit Court last Wednesday issued an
7 order and mandate remanding the case. So that item also has
8 been addressed. If there's any -- if there's any question
9 as to whether the merger case is back before the Commission,
10 there's an actual order and mandate remanding the case,
11 which I have copies of if -- I suspect any number of counsel
12 in the room have copies of that. I have additional copies
13 of the -- if the judges do not have copies of that document,
14 it's a one-page document, I can provide a copy at this time
15 or whenever the judges might wish that be done.

16 JUDGE RUTH: I have a copy of it. If not --
17 if Judge Jones doesn't, I'll share a copy with him.

18 Let me ask, then -- and you may be seated,
19 Mr. Dottheim -- is this the general understanding of the
20 other parties? Do you have any issues you feel need to be
21 addressed on the record at this time, or instead are you
22 ready for the next step, go off the record and allow you to
23 talk among yourselves?

24 Because if that's the case, what I thought
25 might be best is ask the parties to -- actually ask Staff to

1 file a status update in approximately ten days just
2 notifying us of when you would anticipate making any
3 findings or filings. It would simply be that, a status
4 report saying we had our discussions and whatever needs to
5 be filed will be filed in X days.

6 And again, I would suggest that that be -- a
7 status report be filed in each case. Ten days would make it
8 the 22nd. But this is your opportunity to disagree with
9 that or if you have something else that you want to address
10 on the record. I'll just go down the row.

11 MR. SWEARENGEN: The company's in agreement
12 generally with the procedure and the course of action
13 outlined by Mr. Dottheim. We'd be more than happy to share
14 our views with the other parties in the context of the
15 prehearing conference.

16 JUDGE RUTH: And I'm sorry. We didn't do
17 entries of appearance when we first came in. So would you
18 go ahead and make yours now?

19 MR. SWEARENGEN: James C. Swearngen on behalf
20 of Aquila, Inc.

21 JUDGE RUTH: And Mr. Comley?

22 MR. COMLEY: I'm appearing on behalf of the
23 City of Kansas City.

24 JUDGE RUTH: And do you have any comments with
25 the procedure that we've discussed?

1 MR. COMLEY: My understanding is what's -- I
2 have nothing to add between what Mr. Swearengen and
3 Mr. Dottheim said.

4 JUDGE RUTH: Mr. Micheel?

5 MR. MICHEEL: Douglas E. Micheel and John B.
6 Coffman appearing on behalf of the Office of the Public
7 Counsel.

8 JUDGE RUTH: And did you want to comment on
9 what Mr. Dottheim had said or comment on the schedule or
10 procedure?

11 MR. MICHEEL: Not at this moment, no. I mean,
12 I think what Mr. Dottheim said was completely consistent
13 with his pleading requesting this prehearing. I don't
14 think, though, that that suggestion should in any way
15 preclude any party from filing whatever it chooses to file.

16 JUDGE RUTH: And I did not mean to state in
17 any way that I was limiting what parties could file. I had
18 mentioned a status report on the 22nd just to give the
19 Commission an idea if the parties anticipate filing
20 something.

21 MR. MICHEEL: Right. And I didn't think that
22 you were limiting us, Judge. I just wanted to put on the
23 record that I wasn't somehow agreeing to limit anything to
24 this procedure.

25 MR. DOTTHEIM: It was not the Staff's

1 intention to limit any of the parties.

2 JUDGE RUTH: Okay. I think we all understand
3 that, then.

4 Mr. Conrad, would you go ahead and give your
5 entry of appearance?

6 MR. CONRAD: Sure. Stu Conrad for the Sedalia
7 Industrial Energy Users Association, intervenors in this
8 case, as well as AG Processing.

9 With respect to the topic before us, I would
10 like to advise -- and I do have copies for the judges and
11 service copies for the other parties -- that we just a few
12 moments ago did file a motion to dismiss and reject the
13 St. Joseph Light & Power portions of this filing that would
14 include, I would think in its entirety, Judges, the HR case
15 and so much of the ER case as concerns the St. Joe Light &
16 Power area. I'm not sure if I have a full bunch of copies
17 here. We'll try to get by.

18 The upshot of this, not to argue it, but just
19 simply to quickly summarize, is the law is what the law is,
20 and there has been no effective merger. If there is no
21 merger, there's no authority to file tariffs, and thus the
22 file and suspend process has not been instituted.

23 In addition to that, we've also asked that the
24 Commission direct its General Counsel's Office to join with
25 us in the appointment of a conservator for the benefit of

1 the interest of the shareholders of St. Joseph Light & Power
2 Company. The property is owned by someone, and it happens
3 to be them. There is no party in either of these
4 consolidated proceedings, Judge, in the GR docket or for
5 that matter now in the remanded EM docket, that represents
6 that interest.

7 And it seems to me, at a minimum, as an
8 officer of the court I have an ethical obligation to point
9 that out both to Your Honors, to the Commission, and to the
10 Circuit Court. And with that, I think I'll pass the baton
11 to whomever else wants to enter an appearance and make
12 comment.

13 JUDGE RUTH: Was this filed in just the ER and
14 HR case?

15 MR. CONRAD: Yes, ma'am, it is, because it is
16 filed on behalf of my client AG Processing. AG Processing
17 does not receive natural gas service from any Aquila-related
18 entity, of which we are aware.

19 JUDGE RUTH: I want to make sure there aren't
20 any other parties sitting in the back of the room. There
21 are a lot of individuals. We're going to -- if you came in
22 late, I want your entry of appearance and then a comment if
23 you have any on the proposed schedule for today and then for
24 the filing of the status report.

25 MS. WOODS: Shelley Woods, Assistant Attorney

1 General on behalf of the Missouri Department of Natural
2 Resources. And I think the procedure that's been set out by
3 Public -- or by Staff makes perfect sense.

4 MS. RANGLES: Amy Randles, Assistant Attorney
5 General, also representing DNR specifically in the natural
6 gas case, and my response to Mr. Dottheim's proposal is the
7 same.

8 MR. PAULSON: Major Craig Paulson, federal
9 executive agencies. I'm representing the Department of
10 Defense and other federal executive agencies in the electric
11 case, the ER case, and I have no comments at this time.

12 JUDGE RUTH: Thank you. Moving on over,
13 anyone else wish to make an entry of appearance? Looks like
14 that is everyone.

15 Mr. Dottheim, do you want to make your entry
16 of appearance? I don't think we formally got it on record.

17 MR. DOTTHEIM: Steven Dottheim, Post Office
18 Box 360, Jefferson City, Missouri 65102, appearing on behalf
19 of the Staff of the Missouri Public Service Commission.

20 JUDGE JONES: I should say on this motion
21 that's been filed, I don't suspect anyone needs more than
22 ten days to respond to this motion?

23 MR. SWEARENGEN: Not having read it, your
24 Honor, I would not necessarily agree with that. We may want
25 more than ten days to respond to it. If so, we will advise

1 the Commission and make a request.

2 JUDGE JONES: Okay.

3 MR. SWEARENGEN: Thank you.

4 MR. DOTTHEIM: Also, the Staff would share the
5 view just stated by Mr. Swearengen as far as having the
6 opportunity to request additional time based upon a review
7 of the motion that was just filed by AG Processing.

8 JUDGE JONES: Okay. Is there anything else
9 anyone would like to state on the record?

10 JUDGE RUTH: I have no questions at this time.

11 JUDGE JONES: We'll go off the record, then.

12 Thank you all.

13 WHEREUPON, the recorded portion of the
14 prehearing conference was concluded.

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