

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 5th day of
January, 2006.

In the Matter of the Tariff Filing of Aquila, Inc.)	
to Implement a General Rate Increase for)	
Retail Electric Service Provided to Customers)	<u>Case No. ER-2005-0436</u>
in Its MPS and L&P Missouri Service Areas)	Tariff No. YE-2005-1045

**ORDER REGARDING STAFF'S MOTION TO STRIKE A PORTION OF
HADAWAY'S REBUTTAL TESTIMONY**

Issue Date: January 5, 2006

Effective Date: January 5, 2006

On December 21, 2005, the Staff of the Commission filed a motion asking the Commission to strike portions of the rebuttal testimony of Samuel C. Hadaway, a witness on behalf of Aquila.¹ The challenged testimony concerns the terms of a stipulation and agreement approved by the Commission in Case Number EO-2005-0329; a recent case regarding an experimental regulatory plan proposed by Kansas City Power & Light Company. Hadaway's testimony indicates that in that stipulation and agreement the parties agreed that KCPL would be allowed an additional amortization amount to preserve KCPL's S&P Credit Ratios in recognition of KCPL's commitment to a heavy construction program. Hadaway points out that Aquila is also planning a heavy construction program in upcoming years and argues that the Commission should also allow Aquila to attain credit metrics in the mid-BBB range to permit Aquila to raise capital on terms comparable to other utilities.

¹ Staff asks that the following portions of the testimony be struck: Hadaway Rebuttal, page 9, lines 9 through 23.

The KCPL stipulation and agreement, to which Aquila was a signatory, provides that it is not to have any precedential impact in any other Commission proceeding. It also provides that no party to the agreement will be prejudiced or bound by the terms of the agreement in any future proceeding. Staff contends that Hadaway's citation to the stipulation and agreement in the KCPL case violates the terms of the stipulation and agreement by attempting to cite the resolution reached in that case as precedent for Commission action in this case.

Aquila filed suggestions in opposition to Staff's motion on December 30. Aquila contends that Hadaway's testimony simply notes the existence of the factual terms of the KCPL stipulation and agreement and comments on the circumstances in which Aquila must compete for capital. Aquila denies that Hadaway's testimony is an argument that the KCPL stipulation and agreement should be given binding precedential effect in this case.

After considering the arguments of the parties, the Commission concludes that the challenged testimony merely cites an earlier Commission case that recognized the importance of maintaining a utility's financial integrity. It does not argue that the Commission's earlier decision is binding precedent in this case, nor does it argue that any party to that stipulation and agreement should be precluded from taking an inconsistent position in this, or any other case. The challenged testimony does not violate the terms of the stipulation and agreement and it need not be struck. Staff's motion will be denied.

IT IS THEREFORE ORDERED:

1. That Staff's motion to strike a portion of the rebuttal testimony Samuel C. Hadaway is denied.

2. That this order shall become effective on January 5, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton and Appling, CC., concur

Woodruff, Senior Regulatory Law Judge