

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

In the Matter of the Tariff Filing of)
Aquila, Inc. to Implement a General Rate)
Increase for Retail Steam Heat Service)
Provided to Customers in its L&P)
Missouri Service Area)

Case No. HR-2005-0450

**STAFF'S MOTION IN LIMINE REGARDING A PORTION OF THE
REBUTTAL TESTIMONY FILED ON BEHALF OF SAMUEL C. HADAWAY**

COMES NOW the Staff of the Missouri Public Service Commission and objects and moves to have excluded from the Commission's consideration, as permitted by 4 CSR 240-2.130(3), a portion of the rebuttal testimony filed by Aquila Networks-MPS and Aquila Networks-L&P ("Aquila") on behalf of Samuel C. Hadaway. In support of its motion, Staff states:

Dr. Samuel C. Hadaway is the cost of capital witness for Aquila in this case. In the Rebuttal Testimony he filed in this case on November 18, 2005, Dr. Hadaway referred to a Stipulation and Agreement in another matter, and held up a specific aspect of that settlement as a model that the Commission should follow. Dr. Hadaway relies upon that specific aspect of the settlement to make his point in this case. This portion of his discussion should be excluded from this matter, as it violates the provisions of the Stipulation and Agreement as well as the terms of the Commission's own *Report and Order*. Aquila was a signatory to the Stipulation and Agreement and a party to the case where the Commission issued its order.

At lines 11 thorough 23 of page ten and lines one and two of page 11 of his prefiled Rebuttal Testimony, Dr. Hadaway states:

Q. Has the Commission dealt with the maintenance of financial integrity recently in another case?

A. Yes. It is my understanding that in the Stipulation and Agreement entered into among Kansas City Power & Light Company (“KCPL”) and the intervening parties regarding KCPL’s “Experimental Regulatory Plan” (Case No. EO-2005-0329), the Commission approved the collection of an “additional amortization amount” by KCPL as necessary to preserve two out of three S&P credit ratios at a level no lower than the “lower level of the top third” of the BBB targets as set by S&P. This was done in recognition of KCPL’s commitment to a heavy construction program over the course of the upcoming five year period.

Clearly, with MPS/LP also committed to a heavy construction program over the next five years, as expressed in Mr. Empson’s direct testimony, allowing for the attainment of credit metrics at least in the mid-BBB range is of paramount importance for Aquila to be able to raise capital on terms comparable to that of its peer companies.

In his discussion, Dr. Hadaway directly relies upon the amortization portion of the settlement of the Stipulation and Agreement in Case No. EO-2005-0329 (Section III.B.1.p, at pp. 27-28). In Kansas City Power & Light Company [KCPL]’s case, the Commission approved the collection of an additional amortization amount for KCPL, and based its approval upon KCPL’s upcoming heavy construction program. In his testimony, Dr. Hadaway draws a parallel between Aquila and KCPL regarding their prospective construction programs and suggests the Commission act again as it acted before. In other words, Dr. Hadaway cites to the Stipulation and Agreement and the Commission’s approval of that Stipulation and Agreement and a specific term in the Stipulation and Agreement in Case EO-2005-0329 as valid precedent.

The terms of the Stipulation and Agreement prohibit its use for precedential value. Specifically, the Stipulation and Agreement provides at Section III.B.10.b at p. 52:

This Agreement is based on the unique circumstances presented by KCPL to the Signatory Parties. This Agreement shall not be construed to have any precedential impact in any other Commission proceeding.

The Stipulation and Agreement further provides at Section III.B.10.d at p. 53 that:

This Agreement represents a negotiated settlement. Except as specified herein, the Signatory Parties to this Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement: (a) in any future proceeding; (b)

in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Agreement in the instant proceeding, or in any way condition its approval of same.

Moreover, the terms of the Stipulation and Agreement were interdependent, both by its general terms (at Section III.B.10.e, p. 53)¹ and by virtue of the actual give-and-take that took place in arriving at the settlement. Specifically, as agreed to in the Stipulation and Agreement at Section III.B.1.p, pp. 27-28:

In order to ensure that the benefits of offsetting the rate base related to the amortizations contained in this Agreement accrue to KCPL's customers in future rate proceedings, KCPL agrees that any such benefits shall be reflected in its rates, notwithstanding any future changes in the statutory provisions contained in Chapter 386 and 393 RSMo, for at least ten (10) years following the effective date of the Order Approving Stipulation and Agreement in this proceeding.

If the Commission were to allow for a higher authorized return in this case to improve cash flow during the construction of Iatan Unit II, then ratepayers would not benefit from a lower rate base in the future because Aquila did not make a proposal to the Commission similar to the terms that were agreed to and that comprise the KCPL experimental regulatory plan. There is no Aquila experimental regulatory plan. Although Aquila's initial application in Case No. EO-2005-0293 contemplated such a plan, ultimately the application was modified into a financing request. Aquila now has a financing plan in place to address its own unique financial situation.

The Commission specifically and explicitly approved the terms of the Stipulation and Agreement and stated that "[t]he Stipulation is a contract among the Signatory Parties, who will be obligated to carry out its terms if approved by the Commission." *Report and Order* at p. 34.² In the *Ordered* section of its Report and Order, the Commission ordered that "[t]hat the signatory

¹ "The provisions of this Agreement have resulted from negotiations among the Signatory Parties and are interdependent."

² *Report and Order, In the Matter of a Proposed Regulatory Plan of Kansas City Power & Light Company*, Case No. EO-2005-0329 (July 28, 2005).

parties shall abide by all the terms and requirements of the March 28, 2005 Stipulation and Agreement.” *Report and Order* at p. 42.

Aquila was a Signatory Party. Thus, it is bound to honor the terms of the Stipulation and Agreement, and by failing to follow those terms has violated both the Stipulation and Agreement and the Commission’s own order.

Moreover, if the Commission permits Dr. Hadaway and Aquila to argue that a parallel exists between KCPL and Aquila, and gives precedential value on behalf of Aquila to a portion of an agreement pertaining to KCPL taken out of its overall context, such an action will have a chilling effect on future negotiations and cast a shadow over any settlements that take place in proceedings before this Commission.

Accordingly, the reference to the terms of the Stipulation and Agreement, and Dr. Hadaway’s discussion at lines 11 thorough 23 of page ten and lines one and two of page 11 of his Rebuttal Testimony filed in this case, should be excluded from consideration by the Commission.

WHEREFORE, the Staff moves the Commission to enter an order excluding Dr. Hadaway’s discussion at lines 11 thorough 23 of page ten and lines one and two of page 11 of his Rebuttal Testimony from consideration in this case because its inclusion (1) violates the terms of a Stipulation and Agreement filed with and approved by the Commission to which Aquila is a party; and (2) because its inclusion would violate a Commission Order that Aquila abide by the terms of that Stipulation and Agreement.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 3rd day of January 2006.

/s/ David A. Meyer