

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 18th day of April, 2006.

In the Matter of the Joint Application of Aquila, Inc.,)
d/b/a Aquila Networks – MPS and Aquila Networks –)
L&P (“Aquila”), The Empire District Gas Company)
 (“EDG”), and The Empire District Electric Company)
 (“EDE”) for an order authorizing the sale, transfer,)
 and assignment of certain assets and liabilities from)
 Aquila to EDG and in connection therewith, certain)
 other related transactions.)

Case No. GO-2006-0205

**ORDER APPROVING UNANIMOUS STIPULATION AND AGREEMENT
AND GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

Issue Date: April 18, 2006

Effective Date: April 28, 2006

On November 8, 2005, Aquila, Inc., d/b/a Aquila Networks – MPS and Aquila Networks – L&P and both The Empire District Gas Company (EDG) and The Empire District Electric Company (EDE) filed a joint application seeking authorization to sell, transfer and assign certain assets and liabilities from Aquila to EDG. EDG is a Kansas corporation created for the purpose of acquiring and operating certain assets consisting of Aquila’s Missouri jurisdictional natural gas utility operations. It is a wholly owned subsidiary of EDE. Essentially, Aquila and the Empire Companies seek to transfer all of Aquila’s Missouri jurisdictional gas operations to EDG. On November 10, the Commission issued an Order and Notice, allowing interested persons an opportunity to intervene. The following companies were granted intervention: Cornerstone Energy, Inc.; Crane Plumbing, L.L.C.; and Pittsburgh Corning Corporation.

On February 28, Aquila, EDG, EDE, the Staff of the Commission, Crane Plumbing, Cornerstone Energy, Pittsburgh-Corning and the Office of the Public Counsel filed a Unanimous Stipulation and Agreement. With the approval of the Stipulation and Agreement, the parties request that the Commission:

- (a) authorize Aquila to sell, transfer and assign to EDG, and authorize EDG to acquire, certain assets and liabilities of Aquila's Missouri jurisdictional gas utility operations as described in the Purchase Agreement;
- (b) direct Aquila, EDE and EDG to comply with the terms and conditions contained in the Stipulation and Agreement and authorize them to comply with the Purchase Agreement;
- (c) authorize Aquila, EDE and EDG to enter into, execute and perform all transactions in accordance with the terms of all other documents not inconsistent with this Stipulation which may be reasonably necessary and incidental to the performance of the transaction and grant Aquila, EDE and EDG such other relief as may be necessary to consummate the sale, transfer and assignment of the assets and related transactions;
- (d) grant EDG a certificate or certificates of convenience and necessity authorizing EDG to provide natural gas service as a gas corporation and public utility, subject to the jurisdiction of the Commission, in the service areas presently served by Aquila through the Business (as defined in the Joint Application), and, in connection therewith, waive the requirements of 4 CSR 240-3.205;
- (e) authorize EDG to provide natural gas service in the areas served by such gas utility operations in accordance with the rules, regulations, rates and tariffs of Aquila as are on file with and approved by the Commission on the effective date of the closing of the transaction, including the tariff sheets reflecting the existing base rates and purchase gas adjustment of Aquila, and authorize EDG to adopt said tariff sheets and to operate under the same as they may be changed from time to time as provided by law;
- (f) authorize Aquila to terminate its responsibility as a gas corporation in Missouri at closing; and
- (g) authorize EDG to use the current approved depreciation rates for Missouri gas properties acquired from Aquila as shown on the list attached to the Stipulation and Agreement, as Appendix 1, until the same may be change from time to time as provided by law.

On March 13, the Staff of the Commission filed a Memorandum in support of the Stipulation and Agreement. Staff points out several areas of concern that, through provisions in the Stipulation and Agreement, are dealt with satisfactorily. Those areas include; gas procurement, tariffs, employee benefits, the Chillicothe Manufactured Gas Plant site, regulatory stability through a rate moratorium, customer notice and accounting for acquisition adjustments. Staff concludes by stating that the proposed transfer is not detrimental to the public interest.

On-the-Record Presentation

Prior to approving the agreement, the Commission posed on-the-record questions to the parties. The areas covered included: the effect the transfer would have on the credit ratings of Aquila, as well as Empire; the benefit to the customers of both companies; and Empire's ability to effectively procure natural gas, including their hedging plan and the experience of the personnel who will be responsible for procurement.

Discussion

Section 393.190, RSMo 2000, requires approval by the Commission before a regulated utility disposes of all or any part of its system. According to the Stipulation and Agreement, Aquila plans to transfer all of its assets necessary to engage in the natural gas business. The Commission may withhold its approval of a transfer of assets if it is shown that the transfer would be detrimental to the public interest.¹ After considering the pleadings and having posed on-the-record questions to the parties, the Commission finds that it has not been shown that the transfer will be detrimental to the public interest and will approve the Stipulation and Agreement. The Commission further finds that it is necessary

¹ *State of Missouri ex rel. Fee Fee Trunk Sewer, Inc. v Litz*, 596 S.W.2d 466 (Mo. App. E.D. 1980).

and convenient for the public service to grant EDG a certificate of convenience and necessity to provide natural gas service in service area now served by Aquila.

IT IS ORDERED THAT:

1. The Unanimous Stipulation and Agreement filed by the parties in this matter is approved.

2. Aquila, Inc. is authorized to sell, transfer and assign to The Empire District Gas company, and The Empire District Gas Company is authorized to acquire, certain assets and liabilities of Aquila's Missouri jurisdictional gas utility operations as described in the Purchase Agreement.

3. Aquila, Inc., The Empire District Gas Company and The Empire District Electric Company shall comply with the terms and conditions contained in the Stipulation and Agreement.

4. Aquila, Inc., The Empire District Gas Company and The Empire District Electric Company are authorized to comply with the Purchase Agreement.

5. Aquila, Inc., The Empire District Gas Company and The Empire District Electric Company are authorized to enter into, execute and perform in accordance with the terms of all other documents, not inconsistent with the Stipulation and Agreement, which may be reasonable necessary and incidental to the performance of the transaction.

6. The Empire District Gas Company is granted a certificate of convenience and necessity to provide natural gas service as a gas corporation and public utility, subject to the jurisdiction of the Commission, in the service areas now served by Aquila, Inc.

7. The Empire District Gas Company is authorized to provide natural gas service in the areas currently served by Aquila, Inc.'s gas utility operations in accordance with the

rules, regulations, rates and tariffs of Aquila, Inc., as are on file with and approved by the Commission on the effective date of the closing of the transaction, including the tariff sheets reflecting the existing base rates and purchase gas adjustment of Aquila, Inc.

8. The Empire District Gas Company is authorized to adopt the tariff sheets discussed in ordered paragraph 7 and to operate under the same as they may be changed from time to time as provided by law.

9. The Empire District Gas Company is authorized to pledge the assets obtained through this transaction to finance the purchase.

10. Aquila, Inc. is authorized to terminate its responsibility as a gas corporation in Missouri at closing.

11. The Empire District Gas Company is authorized to use the current approved depreciation rates for Missouri gas properties acquired from Aquila, Inc. as shown in Appendix 1, attached to the Stipulation and Agreement, until the same may be changed from time to time as provided by law.

12. This order shall become effective on May 1, 2006.

13. This case may be closed on May 2, 2006.

(S E A L)

BY THE COMMISSION



Colleen M. Dale
Secretary

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

Jones, Regulatory Law Judge