

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

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

Case No. ER-2005-0436

**NONUNANIMOUS STIPULATION AND AGREEMENT**

COME NOW Aquila, Inc. d/b/a Aquila Networks – MPS (“MPS”) and Aquila Networks – L&P (“L&P”) (“Aquila” or “Company”), the Staff of the Missouri Public Service Commission (“Staff”), the Sedalia Industrial Energy Users’ Association (“SIEUA”), Ag Processing, Inc. (“AGP”), the City of Kansas City (“Kansas City”), the Missouri Department of Natural Resources (“MDNR”), the Federal Executive Agencies (“FEA”), and the City of St. Joseph (“St. Joseph” (collectively “the Signatory Parties”) and state to the Missouri Public Service Commission (“Commission”) as follows:

**BACKGROUND**

On May 24, 2004, Aquila submitted to the Commission revised tariff sheets designed to increase rates for the electric service provided to its customers in the Missouri service areas of the Company. The tariff sheets bore an effective date of June 23, 2005, and were designed to produce an annual increase of \$69,200,000, exclusive of applicable fees and taxes, from the customers Aquila serves as MPS. The tariff sheets were also designed to produce an annual increase of \$9,400,000, exclusive of applicable fees and taxes, from the customers Aquila serves as L&P.

On May 31, 2005, the Commission issued its Order suspending the tariff sheets until April 21, 2006. Thereafter, various parties, including the Signatory Parties, intervened in this proceeding.<sup>1</sup> Subsequently, by order issued July 21, 2005, the Commission established a procedural schedule and thereafter continued the commencement of the hearing from time to time. During these continuances, the parties met for the purpose of exploring settlement of the outstanding issues. As a result of those discussions and negotiations, the Signatory Parties have resolved as among themselves all remaining issues in this case and stipulate and agree as follows:

## **RESOLUTION OF ISSUES**

### ***Revenue Requirement***

1. The proposed tariff sheets filed by Aquila with the Commission on May 24, 2004, should be rejected and Aquila should be authorized to file with the Commission revised tariff sheets containing rate schedules for electric service in its MPS service area that are designed to produce an increase in base overall gross annual electric revenues, exclusive of applicable fees and taxes, in the amount of \$38,500,000. Aquila should also be authorized to file with the Commission revised tariff sheets containing rate schedules for electric service in its L&P service area that are designed to produce an increase in base overall gross annual electric revenues, exclusive of applicable fees and taxes, in the amount of \$6,300,000.

### ***Tariff and Implementation***

2. The Signatory Parties agree to a goal of a March 1, 2006 effective date for the tariff sheets agreed to herein. In the event the Commission does not deem the March 1, 2006

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<sup>1</sup> Parties to this case who are nonsignatories to this Nonunanimous Stipulation and Agreement are the Office of the Public Counsel ("OPC"), The Empire District Electric Company ("Empire"), Calpine Control, L.P. ("Calpine") and AARP. None of these nonsignatory parties have indicated that they will oppose this Nonunanimous Stipulation and Agreement and/or request a hearing.

effective date to be practicable, the Signatory Parties urge the Commission to permit the rate increase to take effect as soon thereafter as possible. The Commission, in any order approving this Nonunanimous Stipulation and Agreement, should authorize Aquila to file tariff sheets in conformance with the tariff sheets attached hereto for illustrative purposes as Appendix A, said tariffs to have an effective date of March 1, 2006, or such other date as is ordered, less than thirty (30) days from the filing date, without the necessity of Aquila filing a separate motion seeking such authorization.

### **Rate Design**

3. The rate design agreed to among the Signatory Parties is embodied in the illustrative tariff sheets attached as Appendix A. In essence, certain interclass rate shifts were first calculated and then the rate increase agreed to herein was implemented on an equal percentage basis. In Aquila's next general electric rate case, no Signatory Party will seek any interclass revenue responsibility shifts and any rate change that may result in that case will be implemented on an equal percentage basis. From the perspective of the Signatory Parties, who are also parties to Case No. EO-2002-384, these agreements obviate the need for the Commission to issue a decision on the merits in Case No. EO-2002-384, because, on a revenue neutral basis, interclass revenue responsibility shifts were made for customers of both MPS and L&P as follows: MPS residential customer rates were increased by 2.00%, larger general service customer rates were decreased by 3.07% and large power service customer rates were decreased by 4.00%; and L&P residential customer rates were increased by 2.23% and large power service customer rates were decreased by 4.00%.<sup>2</sup>

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<sup>2</sup> Other parties to Case No. EO-2002-384 are Public Counsel, AARP, Empire and Calpine. AARP's status in that case remains unresolved. AARP has contested the Commission's order that would involuntarily make it a party to

### *IEC*

4. The presently existing Interim Energy Charge ("IEC") for Aquila's Missouri electric operations authorized by the Commission in Case No. ER-2004-0034 shall terminate upon the effective date of the tariff sheets agreed to herein, Appendix A hereto. A \$1.0 million one-time credit in connection with the existing IEC will be provided to Aquila's L&P customers. The credits will begin issuing within 90 days of the effective date of the tariff sheets agreed to herein with a goal of accomplishing same within 120 days from said effective date. The mechanics of the credit will be undertaken in accordance with the Stipulation and Agreement in Case No. ER-2004-0034. The termination of the IEC and provision of the credit will resolve all matters relating to the existing IEC for both the MPS and L&P operating divisions and are in lieu of any true-up and prudence review of the existing IEC.

### *Weatherization*

5. The agreed-to rate increases provide for no rate recovery of any contribution for weatherization or other programs proposed by Kansas City and/or MDNR. Nonetheless, Aquila will provide annual funding for energy efficiency and weatherization programs as follows:

|                   |           |
|-------------------|-----------|
| Weatherization    | \$108,000 |
| Commercial Audits | 60,000    |
| Change-A-Light    | 25,000    |
| Total             | \$193,000 |

The weatherization program shall be implemented consistent with the federal weatherization assistance program guidelines, and Aquila will provide the funds to the local weatherization agencies. The commercial energy audit program will include incentives for implementation of energy efficiency measures identified in the energy audit.

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that case and a Motion to Reconsider is pending.

### ***Generating Facility Value***

6. The rates agreed to herein support a rate base value for a 315 MW generating facility of approximately \$140 million for Aquila. This amount is subject to adjustment as a result of the true-up of Aquila's South Harper Generating Station<sup>3</sup>. The Signatory Parties will endeavor to agree to the true-up amount, but if they are unable to do so, they will submit any dispute to the Commission for resolution at the earliest opportunity. This amount, as trued-up, shall cover all net expenses and liabilities associated with Aquila's South Harper Generating Station that have occurred through October 31, 2005. In any future rate case, Aquila will not request an allowance greater than the depreciated value (including deferred taxes) of that asset at the time of the request except for capital additions booked to the South Harper Generating Station for expenses and liabilities that occur on or after November 1, 2005. The non-Aquila Signatory Parties reserve their rights to challenge such requests in any such future rate case.

### ***No True-Up***

7. Other than as required by paragraph 6, supra, the Signatory Parties agree that this Nonunanimous Stipulation and Agreement obviates the need for any of the scheduled true-up activities in this case, and therefore the Signatory Parties agree that, other than as provided for in paragraph 6, supra, there shall be no true-up of any items in this case.

### ***Depreciation***

8. The Commission shall order Aquila to use the depreciation rates set out in

**Appendix B** to this Stipulation and Agreement.

### ***Tax Study***

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<sup>3</sup> Aquila intends to file with the Commission (and by the time this Nonunanimous Stipulation and Agreement is executed may have filed) an application seeking a certificate of public convenience and necessity for the South Harper Generating Station, a peaking facility which typically would operate only in summer months which capacity replaced a purchase power agreement that expired in June 2005.

9. Aquila agrees to continue the study for its MPS division to develop the level of detail needed to assess Staff's method to determine its regulated income tax expense for Missouri ratemaking purposes, as agreed to in Case No. ER-2004-0034.

***Pensions/OPEBs***

10. MPS rates include a \$1,492,540 annual provision, prior to capitalization, for MPS electric jurisdictional pension cost. L&P rates include a \$15,651 annual provision, prior to capitalization, for L&P electric pension cost. Company is authorized to reflect pension cost equal to this provision for the ERISA minimum and record the difference between the ERISA minimum and the annual provision for pension cost as a regulatory asset or liability. This regulatory asset and/or liability is intended to track the difference between the provision for the ERISA minimum contribution included in cost of service in this case, and the Company's actual ERISA minimum contributions made after the effective date of rates established in this case. This regulatory asset and/or liability will be included in rate base in the Company's next rate case and amortized over a five (5) year period. The Company is authorized to make such additional entries as are appropriate under FAS71 to reflect that rates do not include FAS87 in cost of service. Company is authorized to adjust its calculation of the MPS and L&P ERISA minimum, and the allocations to MPS and L&P of pension related assets and costs, to reflect the exclusion of Aquila's total company actual contributions that are in excess of the ERISA minimum. MPS rates include a \$2,110,436 annual provision, prior to capitalization, for an MPS electric jurisdictional prepaid pension amortization. This amortization will be in effect for a five and one-half (5½) year period beginning with the effective date of rates established in Case No. ER-2004-0034. L&P rates include a \$3,352,742 annual provision, prior to capitalization, for L&P electric prepaid pension amortization. This amortization will be in effect for a nine and

one-quarter (9.25) year period beginning with the effective date of rates established in Case No. ER-2004-0034.

MPS rates reflect a rate base offset for a electric jurisdictional regulatory liability of \$1,752,357. L&P rates reflect a rate base offset for a regulatory liability of \$10,556. Rates reflect a 5-year amortization of the regulatory liabilities, identified in this paragraph, prior to capitalization. This amortization will begin with the effective date of rates established in this case.

Aquila agrees to make at least one payment per year equal to the current year FAS 106 calculation.

### ***Litigation***

11. At the time that the Commission issues its order approving this Nonunanimous Stipulation and Agreement, the Public Counsel, although not a signatory to this Nonunanimous Stipulation and Agreement, has represented to the Signatory Parties that it will dismiss, with prejudice, the complaint which is the subject of Case No. EC-2006-0171 related to the funding of Aquila's VEBA trust, subject to Aquila funding said trust as provided for herein. Based on this representation, Aquila agrees that the Company will fund its VEBA trust in the amount of \$1.4 million on the date the Commission's order dismissing said complaint and Case No. EC-2006-0171, with prejudice, is final, effective and no longer subject to judicial review, and the Commission, in any order approving this Nonunanimous Stipulation and Agreement, may direct the Company to so act. For the purposes of this paragraph, "dismissal with prejudice" means that Public Counsel will not file another complaint based upon the allegations in its complaint in Case No. EC-2006-0171 unless Aquila fails to fund the additional \$1.4 million as provided herein.

### ***Transition Costs***

12. Aquila agrees not to seek rate recovery of additional transition costs associated with its merger with St. Joseph Light & Power Company beyond the annual amortization amount settlement agreement between Company and Staff.

### ***South Harper And Prospective Generating Units***

13. The South Harper Generating Station commercial operation dates are as follows: Unit 1-July 12, 2005; Unit 2-July 1, 2005 and Unit 3-June 30, 2005. For purposes of this case and future Aquila rate cases, test power, depreciation and allowance for funds used during construction will be calculated based on the commercial operation dates for South Harper Units 1, 2 and 3.

The commercial operation date for prospective generating units will be the date the unit is first available for dispatch by the system operator. The actual commercial operation date for prospective generating units will be subject to review at the time the units are first sought to be included in rates. The actual commercial operation date for prospective generating units will be brought to the Commission for resolution in the event of an unresolved dispute.

The commercial operation date of a generating unit is not necessarily the date a unit meets the fully operational and used for service requirement of Section 393.135 RSMo (Proposition 1). The commercial operation date for a prospective generating unit can occur before the date a unit meets the fully operational and used for service requirement of Proposition 1. The commercial operation date for a prospective generating unit will be no later than the date the unit meets the fully operational and used for service requirement of Proposition 1.

### ***Moratorium/ Requirement to File***



14. Aquila will not seek a general increase in the retail electric rates for its MPS or L&P operating divisions before July 1, 2006, unless there is the occurrence of a significant, unusual event that has a major impact on either or both of said operating divisions such as:

- Terrorist activity or an act of God;
- A significant change in federal or state tax laws; or
- A significant change in federal or state utility or environment laws or regulations.

The availability of a fuel adjustment clause as a result of §386.266 RSMo (Senate Bill 179), or rules promulgated pursuant thereto, does not qualify as a significant change in state utility laws or regulations that would allow Aquila to seek a general increase in the retail electric rates of its MPS or L&P operating divisions before July 1, 2006. Aquila will file tariffs designed to adjust the electric rates for its MPS and L&P operating division within two years of the effective date of the rates authorized in this case. Some Signatory Parties do not agree whether any filing that predates the effective date of rules promulgated pursuant to §386.266 RSMo (Senate Bill 179), if any, may necessarily be used to establish a fuel adjustment mechanism under subsequently promulgated fuel adjustment mechanism rules and all Signatory Parties reserve their rights to assert their respective positions regarding such a filing.

***Allowance for Funds Used During Construction***

15. For Allowance for Funds Used During Construction (“AFDC”) purposes, the following principles are established:

**Iatan 1 and 2 construction project.** The AFDC rate for the Iatan construction project will be based on the Term Loan Agreement (as set out in Case No. EO-2005-0293) used to finance Aquila’s share of construction costs for Iatan 1 and 2 Generating Facilities.

**Non-Iatan construction projects.** For all other construction projects, Aquila agrees to follow the Federal Energy Regulatory Commission's Uniform System of Account's Plant Instruction for AFDC calculation using a 10% return on equity and Aquila's corporate (consolidated) capital structure minus the outstanding balance and related interest on the Term Loan Agreement.

***Fuel Study***

16. Aquila, with input from interested parties, will study the economics and operational issues associated with utilizing petroleum coke, tire-derived fuel and other fuels at its Sibley and Lake Road generating stations.

***Accounting Authority Order***

17. The Signatory Parties agree, for accounting and ratemaking purposes, that hedge settlements, both positive and negative, and related costs (e.g. option premiums, interest on margin accounts, and carrying cost on option premiums) directly related to natural gas generation and on-peak purchased power transactions under a formal Aquila Networks—MPS hedging plan will be considered part of the fuel cost and purchased power costs recorded in FERC Account 547 or Account 555 when the hedge arrangement is settled. These hedging costs will continue to be recorded on a Mark-To-Market basis, as required by Financial Accounting Standard No. 133, with an offsetting regulatory asset FERC Account 182.3 or regulatory liability FERC Account 254 entry that recognizes the change in the timing of value recognition under Financial Accounting Standard No. 71. Aquila agrees there will be no rate base treatment afforded to hedging expenditures recorded on the Mark-To-Market basis. Aquila agrees to maintain separate accounting in Accounts 547 and 555 to track the hedging transaction expenditures recorded under this agreement.

## GENERAL PROVISIONS

### *Admission of Party Testimony*

18. The Signatory Parties agree that, in the event the Commission approves this Nonunanimous Stipulation and Agreement without modification or condition, then the prefiled testimony of all witnesses in this proceeding may be included in the record of this proceeding, without the necessity of such witnesses taking the stand.

### *Contingent Waiver of Rights*

19. This Nonunanimous Stipulation and Agreement is being entered into solely for the purpose of settling all issues in this case and Case No. EO-2002-384 as among the Signatory Parties. None of the signatories to this Nonunanimous Stipulation and Agreement shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any method of cost determination or cost allocation or revenue related methodology, and none shall be prejudiced or bound in any manner by the terms of this Nonunanimous Stipulation and Agreement in this or any other proceeding, whether this Nonunanimous Stipulation and Agreement is approved or not, except as otherwise expressly specified herein. Additionally, this Nonunanimous Stipulation and Agreement shall not bind or prejudice the rights of the Company or any other person or entity in any other proceeding concerning the South Harper Generating Station and any related electric substation(s), except as otherwise expressly specified herein.

20. This Nonunanimous Stipulation and Agreement has resulted from extensive negotiations among the Signatory Parties and the terms hereof are interdependent. In the event the Commission does not approve this Nonunanimous Stipulation and Agreement, then this

Nonunanimous Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof, except as otherwise provided herein.

21. If the Commission does not unconditionally approve this Nonunanimous Stipulation and Agreement without modification, and notwithstanding its provision that it shall become void therein, neither this Nonunanimous Stipulation and Agreement, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any party has for a decision in accordance with §536.080 RSMo 2000 or Article V, Section 18 of the Missouri Constitution, and the Signatory Parties shall retain all procedural and due process rights as fully as though this Nonunanimous Stipulation and Agreement had not been presented for approval, and any suggestions or memoranda, testimony or exhibits that have been offered or received in support of this Nonunanimous Stipulation and Agreement shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

22. In the event the Commission accepts the specific terms of this Nonunanimous Stipulation and Agreement, the Signatory Parties waive their respective rights to present oral argument and written briefs pursuant to §536.080.1 RSMo 2000; their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2 RSMo 2000; their respective rights to seek rehearing, pursuant to §386.500 RSMo 2000; and their respective rights to judicial review pursuant to §386.510 RSMo 2000. This waiver applies only to a Commission Order respecting this Nonunanimous Stipulation and Agreement issued in this proceeding, and does not apply to any matters raised in any prior or subsequent Commission proceeding, or any matters not explicitly addressed by this Nonunanimous Stipulation and Agreement.

### ***Right to Disclose***

23. The Staff shall file suggestions or a memorandum in support of this Nonunanimous Stipulation and Agreement. Each of the parties shall be served with a copy of any such suggestions or memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's suggestions or memorandum, responsive suggestions or a responsive memorandum which shall also be served on all parties. The contents of any suggestions or memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to this Nonunanimous Stipulation and Agreement, whether or not the Commission approves and adopts this Nonunanimous Stipulation and Agreement.

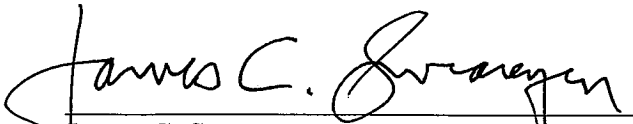
24. At any Commission agenda meeting at which this Nonunanimous Stipulation and Agreement is noticed to be considered by the Commission, the Staff also shall have the right to provide, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any protective order issued in this case.

### ***Integration***

25. This Nonunanimous Stipulation and Agreement incorporates the agreements of the Signatory Parties on all issues that the Signatory Parties presented to the Commission as issues to be decided in Case No. ER-2005-0436 and Case No. EO-2002-384.

WHEREFORE, for the foregoing reasons, the Signatory Parties respectfully request that the Commission issue its Order approving all of the specific terms and conditions of this Nonunanimous Stipulation and Agreement.

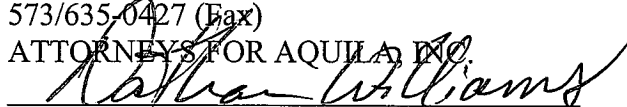
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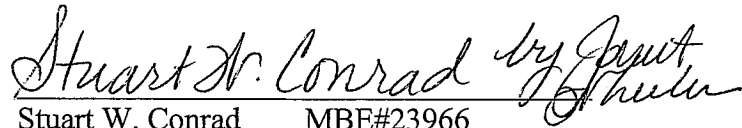
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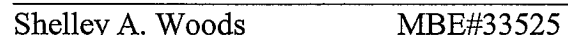
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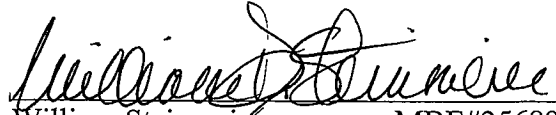
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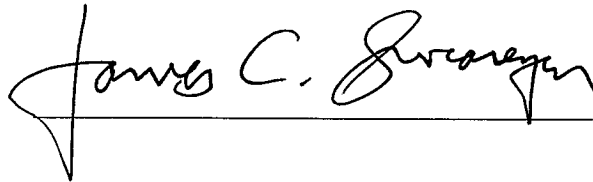
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was sent by electronic mail on this 31<sup>ST</sup> day of January, 2006, to the Parties of record.

  
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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by electronic mail on this \_\_\_\_\_ day of January, 2006, to the Parties of record.

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