

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

In the Matter of the Application by                     )  
Aquila, Inc. for Authority to Assign,                 )  
Transfer, Mortgage or Encumber Its                 )  
Franchise, Works or System.                         )

Case No. EF-2003-0465

**STAFF'S MOTION TO FILE EXHIBITS LATE**

**COMES NOW** the Staff of the Missouri Public Service Commission and for its motion to file exhibits late states:

1. The Commission held the evidentiary hearing in this case during the week of October 20, 2003. The subject of that hearing is the use of Aquila's utility assets as collateral for a three-year term loan that Aquila executed on April 11, 2003. During that hearing Aquila stated, "Aquila itself is separating the loan and collateral to ensure that the utility customer and assets are not supporting the nonutility debt requirements. It is Aquila's intent to maintain a proper alignment of domestic utility collateral with domestic utility loan needs and nondomestic utility and nonregulated business collateral with their loan needs." (Dobson Direct, Ex. 4, p.10). This statement supports the representation Aquila made in its application that "Aquila is separating the Term Loan and collateral into United States utility and other categories to ensure that the utility customers and utility assets are not supporting the nonutility debt requirements." (Application, p. 5, para. 13). Further, in response to testimony of Staff witness Wandel, Aquila witness Empson testified as follows:

Q. Do you agree with Staff witness Joan C. Wandel when she states at page 8, lines 26-27 of her testimony that, "Aquila agreed to provide their lenders utility collateral for amounts that the Company would use for non-regulated operations"?

**NP**

A. No, I do not. I do agree that Aquila has made application to add utility property to the collateral pool to support the \$430 million loan, but I cannot agree that the utility collateral will be used for non-regulated purposes

Q. Please explain.

A. Aquila has made the collateral alignment commitments made by Company witness Rick Dobson at page 10, lines 18 – 25 of his direct testimony. There is found the following question and answer:

Q. Did the financial institutions actually split the loan and collateral pools as you described?

A. No. The financial institutions only required Aquila to have pledged sufficient assets in total to secure the \$430 million loan. Aquila itself is separating the loan and collateral *to ensure that the utility customer and assets are not supporting the non-utility debt requirements*. It is Aquila's intent to maintain a proper alignment of domestic utility collateral with domestic utility loan needs and non-domestic utility and non-regulated business collateral with their loan needs. (emphasis added, by Empson)

(Empson surrebuttal, p. 2, l. 18 to p. 3, l. 13).

2. Subsequent to the evidentiary hearing in this case Aquila informed the Staff that it has filed a motion with the Kansas Corporation Commission in Docket No. 02-UTCG-701-GIG for approval to sell to \*\* HC

HC

HC

HC \*\* A copy of that filing designated by Aquila as containing highly confidential material is attached hereto as Appendix A. \*\* HC

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**NP**

3. Aquila has issued a press release announcing a pending agreement to sell its interests in Midlands Electricity plc ("Midlands"), the holding company for Aquila Networks plc, a United Kingdom electricity distribution company. Aquila has also made a filing with the Kansas Corporation Commission regarding the sale of that interest. Copies of the press release and Aquila's filing with the Kansas Corporation Commission are attached hereto as Appendix B.

4. At Staff's request, made based on a highly confidential pleading that Aquila filed with the Kansas Corporation Commission on November 3, 2003, Aquila has provided to the Staff information pertaining to Aquila's sale of its interests in \*\* HC

HC

HC \*\* A copy of the document that Aquila provided to the Staff designated by Aquila as containing highly confidential material is attached hereto as Appendix C.

5. Aquila has issued a press release announcing a pending agreement to sell its interests in 12 power plants to Teton Power Funding, LLC, an affiliate of ArcLight Capital Partners, LLC. In that press release Aquila quotes Keith Stamm, Aquila's chief operating officer, as follows: "The completion of this transaction, together with the completion of the recently announced agreements to sell our Canadian and United Kingdom utility businesses, will provide Aquila with the liquidity to meet 2004 debt maturities and allow management to focus more of its attention on the company's core businesses." A copy of the press release is attached hereto as Appendix D.

6. Because each of these pending sales of Aquila's interests, including its interest in \*\* HC \*\* will affect the collateral that is available for Aquila to use to support the three-year term loan, the foregoing pending sales are relevant to matters at issue in this case.

**NP**

7. On November 6, 2003 Aquila released its SEC 10-Q filing for the quarter ended September 30, 2003. Included in that filing is the statement following:

After our Iowa utility assets have been formally pledged, we will request that our interest rate be reduced as described above, and we will have pledged utility assets in Michigan, Nebraska, Iowa and Colorado which would then fully collateralize the loan. Following the pledge of our Iowa utility assets, we will not be required by the credit facility to maintain collateral for the loan beyond the utility assets pledged. However, it is our intention that borrowings under the credit facility that are not needed to support our utility operations be collateralized by non-utility assets.

This statement is relevant to whether Aquila needs to support the three-year term loan with its Missouri utility assets; therefore, Aquila's SEC 10-Q filing of November 6, 2003 for the quarter ended September 30, 2003 should also be an exhibit in this case. A copy of that SEC filing is attached as Appendix E.

**WHEREFORE**, the Staff moves the Commission for leave to late-file as exhibits in this case copies of the following: (1) Aquila's October 21, 2003 press release announcing a pending agreement to sell its interests in Midlands Electricity plc, (2) a copy of the motion that Aquila filed with the Kansas Corporation Commission in Docket No. UTCG-701-GIG seeking approval to sell its interests in Midlands Electricity plc, (3) Aquila's November 13, 2003 press release announcing a pending agreement to sell its interests in 12 power plants, (4) a copy of the motion, designated highly confidential, that Aquila filed with the Kansas Corporation Commission in Docket No. UTCG-701-GIG seeking approval to sell its interest in \*\* HC  
HC \*\*, (5) a copy of the document that Aquila provided to the Staff, designated highly confidential, describing Aquila's proposed sale of its interests in a \*\* "HC  
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HC \*\* and a copy of Aquila's SEC 10-Q filing of November 6, 2003 for the quarter ended September 30, 2003.

**NP**

Respectfully submitted,

DANA K. JOYCE  
General Counsel

**/s/ Nathan Williams**

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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 14<sup>th</sup> day of November 2003.

**/s/ Nathan Williams**

**NP**