

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

In the Matter of a Management Audit of	)	
Aquila, Inc. d/b/a Aquila Networks-MPS	)	Case No. EO-2006-
and Aquila Networks-L&P	)	

**PUBLIC COUNSEL’S MOTION TO OPEN A NEW CASE TO CONDUCT A  
MANAGEMENT AUDIT OF AQUILA, INC.**

COMES NOW the Office of the Public Counsel and for its Motion to Open a New Case to Conduct a Management Audit of Aquila, Inc. states as follows:

1. In the past, the Commission regularly ordered management audits of utilities under its jurisdiction, particularly when there have been indications of mismanagement.<sup>1</sup>

2. There are ample reasons to believe that Aquila’s management is struggling and that a management audit would be a worthwhile endeavor. First, the Commission has never had a major utility stray as close to the edge of bankruptcy as Aquila has. The fact that a utility – with its exclusive service territories and an assured opportunity to earn a sufficient return on its investment from captive customers – can dig itself into such a financial predicament in and of itself indicates significant management problems.

3. In Case No. EF-2003-0465, Aquila sought to encumber all of its Missouri utility assets to collateralize a loan agreement Aquila had been forced to enter into just to meet its working capital needs. In denying Aquila’s request, the Commission discussed Aquila’s “financial difficulty” and “financial peril.” The Commission believed that the risk of bankruptcy

---

<sup>1</sup> See, e.g., Case No. WR-92-85, In the matter of The Raytown Water Company's tariffs to provide for a permanent increase in rates for water service, Report and Order issued September 8, 1992, 1 Mo. P.S.C. 3d 367

was sufficiently great that it could not allow Aquila to encumber its Missouri assets. The sale of most of Aquila's unregulated businesses and the pending sales of some of its regulated utility businesses has perhaps decreased the risk of bankruptcy. Nonetheless, the risk remains. Even more importantly in the context of this request for a management audit, the same management team that dragged Aquila to the brink of bankruptcy is still in charge.

Yet another suspect Aquila decision was the recent awarding of millions of dollars of bonuses to the management team that took Aquila on the plunge from almost \$40 per share in 2001 to almost worthless a year later. The stated justification for these bonuses was that the team did a good job selling off Aquila's properties. This is much like giving a bonus to a captain who has carelessly damaged his ship because he managed to prevent it from sinking – so far – by throwing the valuable cargo overboard.

4. One more example of mismanagement is Aquila's failure to fund its Other Post-employment Benefits (OPEBs) obligations. OPEBs are obligations to retirees, other than pension obligations, such as retiree medical expenses. Public Counsel filed a complaint (EC-2006-0171) concerning this failure.<sup>2</sup> In the complaint, Public Counsel alleged that Aquila did not make any contributions to its Voluntary Employee Beneficiary Association (VEBA) trust for OPEBs for the years 2003, 2004, and 2005, but that in the years prior to 2003, when Aquila did make contributions to its VEBA trust, it made three such contributions each year. If this change was an oversight, management dropped the ball. If it was a conscious management decision, it

---

<sup>2</sup> At the time of filing this motion, the complaint is still pending. Public Counsel has agreed to dismiss the complaint once Aquila has funded the full amount by which Public Counsel alleged Aquila to be deficient. At the time of filing this motion, Aquila has asserted that it has made the final payment, and Public Counsel is in the process of verifying that assertion.

was certainly a very dubious one. In either event, it is another example of serious problems with Aquila's management.

5. Perhaps the most glaring example of Aquila's mismanagement is the quagmire that is South Harper. It is simply astonishing that one power plant project could have spawned so many poor decisions. From the beginning – deciding to add more gas generation to its portfolio, sizing the plant at 315 megawatts, buying the turbines at an inflated price from an affiliate –management decisions were made in a haphazard manner. And the siting issues! It is literally impossible to find one good decision made about siting. When Aquila should have asked for permission in advance, it opted instead to try for forgiveness later. When initial court decisions were unfavorable, it charged blindly on instead of re-evaluating. As its losses in court continued to mount, it continued to build. When it would have been helpful to court the local citizenry, Aquila ignored and alienated them. Once the damage had been done, Aquila decided to try to woo them over.

6. A management audit of Aquila is clearly needed, and it should include Aquila's highest level management. Public Counsel recommends that the Commission generally follow the procedure it established in Case No. ER-83-163.<sup>3</sup> In that case, concerning Union Electric Company, the Commission opened a management audit case and ordered its Staff to conduct a preliminary investigation concerning a proposed management audit of the company. The Commission directed Staff to file a recommendation on:

what the general parameters of the audit should be, when the audit should take place, a reasonable estimate of its cost, who should pay for such cost, what role Staff will take in the audit, taking into consideration the availability of Staff

---

<sup>3</sup> Case No. ER-83-163, In the matter of Union Electric Company of St. Louis, Missouri, for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company, 26 Mo. P.S.C. (N.S.) 298

resources and the necessity of outside resources and, what, if any, role the audit information should play in [Union Electric] Company's next general rate case.

The Commission allowed the company, Public Counsel and other interested parties fifteen days to respond to Staff's recommendation.

WHEREFORE, Public Counsel respectfully requests that the Commission open a case for the purpose of conducting a management audit of Aquila, Inc., and order its Staff to file a recommendation as to the scope and timing of that audit.

Respectfully submitted,

OFFICE OF THE Public Counsel

**/s/ Lewis R. Mills, Jr.**

By: \_\_\_\_\_  
Lewis R. Mills, Jr. (#35275)  
Public Counsel  
P O Box 2230  
Jefferson City, MO 65102  
(573) 751-1304  
(573) 751-5562 FAX  
[lewis.mills@ded.mo.gov](mailto:lewis.mills@ded.mo.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 16<sup>th</sup> day of March 2006:

**GENERAL COUNSEL**  
Missouri Public Service Commission  
PO Box 360  
Jefferson City MO 65102  
[gencounsel@psc.mo.gov](mailto:gencounsel@psc.mo.gov)

**JAMES B. SWEARENGEN**  
Brydon Swearengen & England  
PO Box 456  
Jefferson City MO 65102  
[lrackers@brydonlaw.com](mailto:lrackers@brydonlaw.com)

**/s/ Lewis R. Mills, Jr.**

---