

**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         )     Case No. ER-2005-0436  
Retail Electric Service Provided to Customers     )  
In its MPS and L&P Missouri Service Areas     )

**AQUILA'S SUGGESTION IN OPPOSITION TO STAFF'S MOTION IN LIMINE  
REGARDING A PORTION OF THE REBUTTAL TESTIMONY FILED ON BEHALF OF  
SAMUEL C. HARDAWAY (SIC)**

COMES NOW, Aquila, Inc. ("Aquila"), by counsel, and for its Suggestions in Opposition to the Staff's Motion in Limine respectfully states as follows to the Missouri Public Service Commission ("Commission"):

1.     The Staff claims that Aquila rate of return expert witness, Dr. Samuel C. Hadaway, in his rebuttal testimony, has cited to the Commission's approval of a Stipulation and Agreement in Case No. EO-2005-0329 as "precedent" which the Commission must follow in the current rate case(s) involving Aquila. In making this argument, the Staff misunderstands the purpose of Dr. Hadaway's testimony and misapplies the terms of the involved Stipulation and Agreement.
2.     Dr. Hadaway, in his rebuttal testimony, relies on the *Hope*<sup>1</sup> and *Bluefield*<sup>2</sup> standards in determining an appropriate ROE for Aquila in this case. One of those standards is whether the return authorized would be sufficient to ensure continuation of the financial integrity of the enterprise (in this case Aquila) so as to maintain its credit and its ability to attract capital. In his rebuttal testimony, Dr. Hadaway observes that the ROE recommendations of the other parties in this case would weaken rather than

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<sup>1</sup> *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591 (1944).

<sup>2</sup> *Bluefield Waterworks v. Public Service Commission*, 262 U.S. 679 (1923)

support the financial condition of Aquila's MPS and L&P operating divisions. The conclusion to be drawn from this, according to Dr. Hadaway, is that those recommendations do not satisfy the standards of *Hope* and *Bluefield*. That is to say the recommended ROEs of the other parties are not sufficient to ensure the confidence in the financial integrity of Aquila so as to maintain its credit and attract capital.

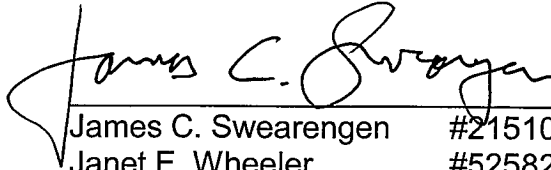
3. It is a fact and no one can dispute that Aquila must compete with other companies, including electric utilities, in the capital markets. It is a fact and no one can dispute that one of Aquila's competitors in the capital markets is Kansas City Power & Light Company ("KCPL"), an electric utility subject to this Commission's jurisdiction. It is a fact and no one can dispute that in Case No. EO-2005-0329 this Commission recognized that, given KCPL's heavy construction program over the course of the upcoming five years, it is important that KCPL maintain two out of three Standard & Poors ("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.

4. Based on this, and given Aquila's current construction program, Dr. Hadaway concluded in his rebuttal that "...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." (Rebuttal p. 9, lines 20-23) This is the capital market in which Aquila must compete - - that is a capital market in which a regulatory body with jurisdiction over one of Aquila's peers has said that it is important for that peer to maintain its financial integrity by achieving certain credit ratios. This pronouncement is a matter of public record and has surely been recognized by the financial markets.

5. Dr. Hadaway, did not say, and Aquila does not suggest, that the Commission action's in the KCPL case (which was not a rate proceeding but the approval of an experimental regulatory plan) is binding precedent that must be followed and adopted as the standard in this rate case. On the contrary, Aquila recognizes that as a general rule Commission decisions are not "precedent" and further Aquila specifically has agreed that the Stipulation and Agreement "not be construed to have any precedential impact in any other Commission Proceeding." (Stipulation and Agreement, Case No. EO-2005-0329, Section III, 10, b, p. 52) (*State ex rel. GTE North v. Missouri Public Service Commission*, 835 S.W.2d 356, 371 (Mo. App., W.D. 1992) (quoting *State ex rel. Churchill Truck Lines Inc. v. Public Service Commission*, 734 S.W.2d 586 (Mo. App., W.D. 1987)) (stating that the Commission is not bound by the doctrine of *stare decisis*)).

6. The rebuttal testimony of Dr. Hadaway simply notes that the mere existence of the factual terms of the KCPL Stipulation and Agreement, approved by the Commission, impacts the circumstances and conditions in which Aquila must compete for capital. Dr. Hadaway is recognizing the facts as they now exist and basing his expert opinion on those facts. This in no way constitutes a violation of any Stipulation or Commission order. Much to the contrary, it ensures that the record in this proceeding is complete with respect to the facts which the Commission must have in order to meet the *Hope* and *Bluefield* standards by authorizing a return sufficient to ensure the financial integrity of Aquila. The motion should be denied.

Respectfully submitted,

A handwritten signature in cursive script, reading "James C. Swearengen". The signature is written in black ink and is positioned above a horizontal line.

James C. Swearengen #21510

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ATTORNEYS FOR AQUILA, INC.

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail or by hand delivery, on this 30<sup>TH</sup> day of December, 2005, to the following:

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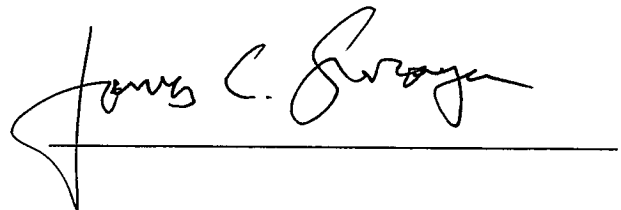
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A handwritten signature in black ink, appearing to read "James C. Swager", is written over a horizontal line.