

**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 RESPONSE TO MOTION IN LIMINE

COMES NOW Aquila, Inc. (Aquila), and, in response to the Missouri Public Service Commission (Commission) Staff’s (Staff) Motion in Limine and Motion for Expedited Treatment, states as follows to the Commission:

1. On January 9, 2006, the Staff filed its Motion in Limine and Motion for Expedited Treatment (Staff Motion). In that Motion, the Staff asked that the Commission find that certain portions of the Surrebuttal Testimony of Aquila witness Matt Daunis are inadmissible, restrict the use of Mr. Daunis’ surrebuttal to responding to others’ testimony or change the hearing dates in order to allow for discovery and additional preparation before the relevant issues are tried.
2. On January 10, 2006, the Commission issued its Order Establishing Time for Response to Motion in Limine. Therein, the Commission directed that any party wishing to respond to Staff’s Motion do so by January 11, 2006.
3. Mr. Daunis’ Surrebuttal Testimony concerns issues 26 (Low Income Weatherization Assistance (Electric)) and 27 (Demand Side Management (Electric)), as described in the List of Issues filed on December 22, 2005. The origin of these issues can be found in the Direct Testimony of Missouri Department of Resources (MDNR) witness Anita Randolph. In her Direct Testimony, Ms. Randolph proposed that the

Commission order the implementation of weatherization assistance, Energy Star, Change a Light and Commercial Audit programs.

4. Aquila can agree with the Staff that the only programs currently before the Commission for possible adoption are those proposed by MDNR. However, this does not call for the order requested by the Staff. Commission Rule 4 CSR 240-2.130(7)(D) states that "surrebuttal testimony shall be limited to material which is responsive to matters raised in another party's rebuttal testimony." Mr. Daunis' testimony does just that and, therefore, should not be deemed to be "inadmissible" as requested by the Staff.

5. Both Mr. Daunis and Staff witness Lena Mantle provided rebuttal testimony concerning Ms. Randolph's proposals. Mr. Daunis indicated that Aquila was willing to discuss the proposals made by Ms. Randolph, but cautioned that the programs would create costs and that a clear determination as to cost recovery and assignment would have to be made as a part of the process. (Daunis Rebuttal, p. 3). Ms. Mantle's Rebuttal Testimony, in conjunction with a discussion of the programs proposed by MDNR, suggested that the costs of the MDNR proposal be recovered "with fifty percent of the costs paid for by Aquila shareholders and fifty percent by Aquila ratepayers." (Mantle Rebuttal, p. 2) Ms. Randolph had not suggested this funding mechanism in her initial proposal.

6. In his Surrebuttal Testimony, Mr. Daunis responded to Ms. Mantle's rebuttal proposal that the MDNR programs, to the extent they are adopted, be paid for utilizing, at least in part, shareholder funds. This response included information as how similar programs are funded in other states and how Ms. Mantle's funding proposal is

contrary to guidance provided by the Commission's IRP rules, NARUC policy statements and 1992 and 2005 Energy Policy Act provisions.

7. Mr. Daunis further described programs that have been discussed by Aquila in both the collaborative group formed pursuant to the terms of the Stipulation and Agreement in Case No. ER-2004-0034 and in Aquila's integrated resource planning process. The Stipulation in Case No. ER-2004-0034 established a collaborative group to explore and propose appropriate cost recovery mechanisms for demand side management programs. Aquila has been working with this collaborative group, but no consensus has been reached on an appropriate cost recovery mechanism. (Daunis Surrebuttal, p. 7) Thus, Aquila's proposals suffer the same deficiency as those proposed by Ms. Randolph – there is no agreement as to the cost recovery and cost assignment.

8. As a part of this description, Mr. Daunis felt it necessary to also respond to Ms. Mantle's rebuttal statement that she was unable to determine how Aquila's demand side programs had been incorporated in its integrated resource plan. (Mantle Rebuttal, p. 4, ln. 2-6) On page 6, lines 1-17 of his Surrebuttal Testimony (one of the sections sought to be eliminated by the Staff Motion), Mr. Daunis explained how those plans were incorporated in direct response to Ms. Mantle's statement.

9. Mr. Daunis does not separately propose the adoption of specific programs within the context of this rate case and his Surrebuttal Testimony should not be interpreted as such. Mr. Daunis' Surrebuttal Testimony is designed to respond to the funding proposal made by Ms. Mantle. This is the same funding proposal that Ms. Randolph addressed in her Surrebuttal Testimony on behalf of MDNR. Accordingly,

Aquila believes that Mr. Daunis' Surrebuttal Testimony is admissible in that it responds directly to Ms. Mantle's funding proposal found for the first time in her Rebuttal Testimony.

10. This being said, Aquila would not object to addressing this dispute by utilizing a slight variation of the first alternative described in the Staff's Motion. Staff proposed, as an alternative, "that the Commission order that Mr. Daunis' testimony be used only for the limited purpose of responding to Ms. Randolph's testimony." (Staff Motion, p. 4) Aquila can agree that at the base of these issues are the programs proposed by Ms. Randolph on behalf of MDNR, as modified by Ms. Mantle's funding proposal. Limiting the testimony to these issues would be consistent with Aquila's intent in this matter.

CONCLUSION

11. Mr. Daunis' Surrebuttal Testimony properly responds to the Rebuttal Testimony of Staff witness Lena Mantle concerning her funding proposal for the programs that have been proposed by MDNR witness Anita Randolph. Therefore, it is admissible and Staff's Motion should be denied. Aquila further clarifies, to the extent necessary, that Mr. Daunis' Surrebuttal Testimony is not intended to propose an alternate slate of low-income or efficiency programs, but relates solely to the MDNR proposals and funding issues associated therewith.

Respectfully Submitted,



BRYDON, SWEARENGEN & ENGLAND, P.C.

James C. Swearengen

MBE#21510

Dean L. Cooper

MBE#36592

312 E. Capitol Ave.

PO Box 456

Jefferson City, MO 65102

(573) 635-7166

(573) 635-7431 (facsimile)

lrackers@brydonlaw.com

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 11th day of January, 2006, to the following:

Steve Dottheim/Nathan Williams
General Counsel's Office
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102-0360

Lewis Mills
Office of the Public Counsel
Governor Office Building
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102-2230

Stuart Conrad
Finnegan, Conrad & Peterson
3100 Broadway, Suite 1209
Kansas City, MO 64111

Jeremiah Finnegan
Finnegan, Conrad & Peterson
3100 Broadway, Suite 1209
Kansas City, MO 64111

Major Craig Paulson
Federal Executive Agencies
139 Barnes Drive
Tyndall Air Force Base, FL 32403

Shelley Woods
Attorney General's Office
P.O. Box 899
Jefferson City, MO 65102

Mark Comley
Newman, Comley & Ruth
Monroe Bluff Executive Ctr.
601 Monroe Street, Suite 301
P.O. Box 537
Jefferson City, MO 65102-0537

John Coffman
871 Tuxedo Blvd.
St. Louis, MO 63119

Mr. Jeffrey Keevil
Stewart & Keevil
4603 John Garry Drive, Suite 11
Columbia, MO 65203

William Steinmeier
William D. Steinmeier, PC
2031 Tower Drive, P.O. Box 104595
Jefferson City, MO 65110


