

**AMENDMENT NO. 1  
TO ASSET PURCHASE AGREEMENT**

AMENDMENT NO. 1 TO ASSET PURCHASE AGREEMENT (this "Amendment"), dated as of February 27, 2006, among Aquila, Inc., a Delaware corporation ("Seller"), The Empire District Electric Company, a Kansas corporation ("EDE"), and The Empire District Gas Company, a Kansas corporation ("EDG").

**WITNESSETH:**

**WHEREAS**, Seller and EDE have entered into that certain Asset Purchase Agreement dated as of September 21, 2005 (as modified by this Amendment, the "Purchase Agreement," and capitalized terms not defined herein have the meanings ascribed to them in the Purchase Agreement);

**WHEREAS**, EDE and EDG have entered into that certain Assignment and Assumption Agreement dated as of January 4, 2006, pursuant to which EDE has assigned all of its right, title and interest in and to the Purchase Agreement to EDG, and EDG has assumed all obligations and liabilities of EDE arising under or pursuant to the terms of the Purchase Agreement;

**WHEREAS**, pursuant to Section 2.3(f) of the Purchase Agreement before giving effect to this Amendment, the Assumed Environmental Liabilities include liabilities and obligations related to the former manufactured gas plant identified in item 3 on Schedule 5.10(c) to the Purchase Agreement, which was located on the real property described on Schedule A attached hereto (the Assumed Environmental Liabilities, to the extent related to such former manufactured gas plant, are referred to herein as the "Retained MGP Liabilities"); and

**WHEREAS**, Seller, EDE and EDG wish to amend the Purchase Agreement to provide for, among other things, (i) the retention by Seller of the Retained MGP Liabilities, (ii) an increase in the Base Price by an amount equal to \$1,000,000, and (iii) the inclusion of EDG in the definition of "Buyer" in the Purchase Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Designation of the Retained Liabilities. The parties agree that the Retained MGP Liabilities constitute Excluded Liabilities under the Purchase Agreement, and in no event will the Retained MGP Liabilities constitute Assumed Obligations under the Purchase Agreement (including, without limitation, Assumed Environmental Liabilities under Section 2.3(f) thereof).

2. Impact of Designation on the Purchase Price, Representations and Schedules. The designation of the Retained MGP Liabilities as Excluded Liabilities, based upon the books and records of the Business as of the date hereof, results in a reduction of \$305,596 to the regulatory assets account (FERC Account No. 182) and other deferred liabilities account (FERC Account No. 253) of the Business. The parties agree that, rather than revise any of the Schedules to the Purchase Agreement (including, without limitation, Schedules 3.1.A, 3.1.B, 3.1.C, 5.5(a), and 5.5(b)) to give effect to the designation of the Retained MGP Liabilities as Excluded Liabilities pursuant to this Amendment, such designation:

(a) will not be taken into account or given effect for purposes of determining the accuracy Seller's representations and warranties in Article V of the Purchase Agreement as of the

Effective Time, and the certification required to be delivered pursuant to Section 8.2(d) of the Purchase Agreement may be given without referring to this Amendment or the effects hereof and will not be deemed inaccurate due to the omission of any such reference; and

(b) will be given effect by the parties in calculating the Purchase Price under Article III of the Purchase Agreement (including, without limitation, the determination of the Closing Payment Amount and the Post-Closing Payment Amount).

3. Amend Section 3.1 of the Purchase Agreement. Section 3.1 of the Purchase Agreement is amended by replacing the dollar amount referenced therein (\$84,000,000) with the following dollar amount: \$85,000,000.

4. Inclusion of EDG as "Buyer" and "Party". The parties agree that references to "Buyer" and "Party" in the Purchase Agreement will hereafter be deemed to include EDG. In connection with the inclusion of EDG in these definitions:

(a) EDG agrees, for the benefit of Seller, to fully perform, satisfy, and discharge the obligations, covenants, agreements, and liabilities of EDE under the Purchase Agreement ("Buyer's Obligations"). and Seller agrees to accept such performance, satisfaction, and discharge by EDG; provided, that EDE will remain fully liable to Seller for the performance, satisfaction, and discharge of Buyer's Obligations. For avoidance of doubt, Seller, EDE and EDG agree and confirm that (i) Seller will, to the extent reasonably possible, perform, satisfy, and discharge the obligations, covenants, agreements, and liabilities of Seller under the Purchase Agreement ("Seller's Obligations") for the benefit of EDG (including conveyance of the Purchased Assets to EDG at the Closing), and that such performance, satisfaction, and discharge will constitute complete performance of Seller's Obligations; (ii) the designation of EDG as a Buyer is not intended to, and will not, alter or diminish the character of any of Buyer's Obligations (including the obligations of EDE with respect to Seller's employees, retirees, employee benefits, and collective bargaining agreements), and EDE will, or will cause EDG to, perform all of Buyer's Obligations in the same manner and to the same extent as if this Section 4 was not included in this Amendment; and (iii) each of EDE and EDG will deliver to Buyer at Closing the certification executed by its chief executive officer required under Section 8.3(c) of the Purchase Agreement.

(b) EDE and EDG hereby represent and warrant to Seller that each of the representations and warranties of Buyer set forth in Article VI of the Purchase Agreement is true and accurate as of the date hereof with respect to EDG as if each of such representations and warranties were set forth in full in this Amendment with the term "EDG" substituted for the term "Buyer." The certification required at Closing under Section 8.3(c) of the Purchase Agreement will refer to this Section 4(b).

(c) Seller, EDE, and EDG will each take, or cause to be taken, all actions (including, without limitation, execution and delivery of any additional agreements or other documents), and do, or cause to be done, all things reasonably necessary, proper, or advisable to effect the agreements and intention of the parties set forth in this Section 4.

5. Binding Agreement; Construction. This Amendment will be a valid and binding agreement of the parties only if and when it is fully executed and delivered by each of the parties, and until such execution and delivery no legal obligation will be created by virtue hereof. This Amendment, together with the Schedule hereto (which is incorporated herein by this reference), supersedes all prior agreements and understandings between the parties with respect to the matters specifically contemplated by this Amendment. Except as expressly provided in this Amendment, all of the terms, conditions and

provisions of the Purchase Agreement remain unaltered and are in full force and effect, and the Purchase Agreement and this Amendment shall be read and construed as one Purchase Agreement.

6. Effectiveness. Notwithstanding any other provision of this Amendment, this Amendment will not become effective unless each of the following conditions is satisfied: (a) the parties hereto and other parties to Missouri Public Service Commission (the "Commission") Case No. GO-2006-0205 (the "Sale Proceeding") execute a Stipulation and Agreement (the "Stipulation") recommending that the transactions contemplated by the Purchase Agreement be approved by the Commission upon the terms and conditions contained in the Stipulation, (b) the Stipulation is treated by the Commission as unanimous, thereby allowing the parties to avoid litigating the Sale Proceeding, and (c) the Commission issues an order authorizing the transactions contemplated by the Purchase Agreement, in accordance with the terms and conditions contained in the Stipulation, and such order satisfies the conditions set forth in the definition of "Final Regulatory Order" in the Purchase Agreement. This Amendment will become effective on the date upon which all of the aforementioned conditions are satisfied.

7. Counterparts. This Amendment may be executed simultaneously in two or more counterparts (including by means of facsimile signature pages), any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same Amendment.

\* \* \* \* \*

*[Execution Page Follows Immediately Hereafter]*

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this Amendment as of the date first above written by their respective duly authorized officers.

**AQUILA, INC.**

By: Richard C. Green, Jr.

Name: Richard C. Green, Jr.

Title: President and Chief Executive Officer

**THE EMPIRE DISTRICT ELECTRIC COMPANY**

By: William L. Gipson

Name: William L. Gipson

Title: President and Chief Executive Officer

**THE EMPIRE DISTRICT GAS COMPANY**

By: Ronald F. Gatz

Name: Ronald F. Gatz

Title: Vice President

## Schedule "A"

### **Property Description**

The property known as the Lafayette site located on the northeast corner of the intersection of Boyd and Lafayette within the city limits of Marshall, Missouri, having an address of 400 N. Lafayette, Marshall, Missouri 65340. A legal description of the property follows: Lots 5 and 6 of Block 3 of Boyd's Addition to the City of Marshall, Missouri, fronts 125 feet on east side of Lafayette Avenue and extends east 161 feet 6 inches along north line of Boyd Street, encompassing approximately 0.46 acres.