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April 17, 2002

Secretary of the Public Service Commission
Governor Office Building
200 Madison Street, Suite 100
P.O. Box 360
Jefferson City, MO 65102-0360

**Re: Avon Energy Partners Holdings
Case No. EO-2002-215**

Dear Mr. Roberts:

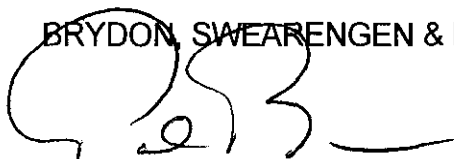
On behalf of Aquila, Inc., enclosed for filing in the above-referenced case please find an original and eight (8) copies of a proposed Order Approving Second Amended Application. A copy has also been hand-delivered to the Office of the Public Counsel this date. Please note that I have further enclosed a receipt copy of this document, which I ask that you file stamp and return with the messenger delivering same.

Thank you for your assistance with this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND, P.C.

By:



Paul A. Boudreau

PAB/aw
Enclosures

cc: Mr. David A. Meyer, PSC
Mr. John Coffman, OPC

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

In the Matter of the Application of UtiliCorp)
United Inc. for Authority to Acquire the Shares)
of Avon Energy Partners Holdings and to) Case No. EO-2002-215
Take All Other Actions Reasonably Necessary)
to Effectuate Said Transaction.)

ORDER APPROVING SECOND AMENDED APPLICATION

(Aquila Inc. Proposal)

Syllabus

On March 18, 2002, Aquila, Inc. ("Aquila"), f/k/a UtiliCorp United Inc. ("UtiliCorp"), filed a Second Amended Application requesting approval of a Purchase and Sale Agreement between Aquila Europe, Inc. (a wholly owned Aquila subsidiary) and EI UK Holdings, Inc. ("EI UK") dated March 15, 2002, providing for Aquila to acquire an interest in Avon Energy Partners Holdings ("Avon") from EI UK. This order approves the Second Amended Application and authorizes Aquila to complete the transaction.

Procedural History

On December 18, 2001, the Commission issued an Order Approving Application in this case authorizing UtiliCorp to acquire the outstanding shares of Avon as provided in a Share Purchase and Sale Agreement between UtiliCorp and EI UK. The Commission's Order was subject to certain conditions set forth in the Order. Among those conditions was the following:

"That the authority granted in this order is conditioned on the participation of a financial partner and the representations described in the application, particularly paragraphs 8 and 12. If UtiliCorp United Inc. determines to proceed differently, UtiliCorp shall file a new application."

Thereafter, on February 15, 2002, UtiliCorp filed its First Status Report pursuant to Ordered: ¶15 of the Commission's Order Approving Application in which it advised the

Commission that subsequent events had resulted in an arrangement under which UtiliCorp's partner in the acquisition of the shares of Avon was to be FirstEnergy Corp. ("FirstEnergy") instead of Deutsche Bank, as originally had been contemplated.

On February 28, 2002, the Commission issued an Order Directing Filing. The Order directed that the Staff of the Commission file a response to UtiliCorp's First Status Report. The primary purpose for Staff's response would be to determine whether UtiliCorp's new proposal would require the filing of a new application. The Commission directed that the Staff file its response by no later than March 15, 2002.

On March 15, 2002, UtiliCorp filed its Second Status Report, as required by Ordered: ¶15 of the Commission's Order Approving Application. The Second Status Report advised that the negotiations leading to the participation of FirstEnergy as UtiliCorp's financial partner in the acquisition and ownership of Avon were nearing completion. Also on March 15, 2002, the Staff of the Commission filed its Response to UtiliCorp's First Status Report. Staff's response updated the Commission on events that had occurred since the filing of UtiliCorp's First Status Report. Staff stated its understanding that UtiliCorp intended to make a formal filing with the Commission seeking additional approval through a motion for supplemental order or, alternatively, a second amended application as soon as the new financial partner arrangement was formalized. Staff requested that it have an opportunity to review the final documentation concerning the revised acquisition transaction and to make a further recommendation to the Commission regarding the transaction.

On March 18, 2002, UtiliCorp filed its Motion for Supplemental Order or Alternatively Second Amended Application. In doing so, UtiliCorp filed a copy of a Purchase and Sale Agreement dated March 15, 2002, an updated diagram of the

acquisition structure, and updated *pro forma* financial information. UtiliCorp stated that its arrangement with FirstEnergy had been formalized, providing for a joint venture vehicle indirectly owned by UtiliCorp and FirstEnergy to hold one hundred percent (100%) of the outstanding shares of Avon. UtiliCorp stated that it expected to acquire an indirect 79.9% economic interest in Avon, with FirstEnergy retaining a 20.1% economic interest. UtiliCorp stated that there would be no change from the original partnership arrangement with respect to voting rights, with UtiliCorp and its partner each having fifty percent (50%) control. UtiliCorp stated that the updated *pro forma* financial statements reflected only very slight changes from the original partnership arrangement, having an insignificant impact on ratios relevant to its credit rating. UtiliCorp requested that the Commission issue an order stating that no further Commission authority was required for UtiliCorp to proceed in accordance with the terms of the new Purchase and Sale Agreement. Alternatively, UtiliCorp further amended its Application and requested that the Commission issue an order approving its Application, as further amended, and authorizing it to perform in accordance with the terms of the Purchase and Sale Agreement, providing for the new partnership arrangement, investment level and acquisition structure described in its pleading.

On March 26, 2002, the Commission issued an Order Denying Motion for Supplemental Order, Granting Request for Amended Application, and Directing Staff Recommendation. The Commission denied UtiliCorp's request for a supplemental order, but granted UtiliCorp's motion to further amend its Application. The Commission directed its Staff to expeditiously review the amended Application and to make its recommendation by no later than April 20, 2002.

On March 27, 2002, Aquila, Inc. (formerly known as UtiliCorp) filed a Notice of Applicant Name Change. The Notice stated that UtiliCorp had completed the merger authorized by the Commission in its Case No. EM-2002-297, and that its name had been changed to Aquila, Inc. ("Aquila") upon completion of the merger in accordance with §253 of the Delaware General Corporation Law. Consequently, any further references to the Applicant in this case will be to the new name, Aquila, except where reference to its former name, UtiliCorp, is necessary for clarity.

On April 16, 2002, Staff filed a Staff Response and Memorandum. Staff recommended conditional approval of the Second Amended Application. On April 17, 2002, Aquila filed a Response of Aquila, Inc., to Staff's Supplemental Recommendation in which it ratified its certification of corporate commitments and, also, stated that it had no objection to the conditions proposed by Staff.

Standard of Review

Aquila has requested approval of its Application, as amended, and proposed acquisition pursuant to §393.190 RSMo. 2000 and 4 CSR 240-2.060(12). Section 393.190 requires an electrical corporation regulated by the Commission to obtain the Commission's approval to acquire the stock of any other corporation engaged in the same or similar business. The Commission must approve the Application, as amended, absent a showing that the transaction is detrimental to the public interest. *State ex rel. City of St. Louis v. Public Service Commission*, 73 S.W.2d 393, 400 (Mo. banc 1934).

The requirement of a hearing has been fulfilled when all those that have a desire to be heard are offered an opportunity to be heard. If no proper party is granted intervention and neither the Commission Staff nor the Office of the Public Counsel requests a hearing, the Commission may determine that a hearing is not necessary and

that the applicant may submit evidence in support of the application by verified statement. *State ex rel. Rex Deffenderfer Enterprises Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

No applications for intervention have been filed in this case. No proper party to the case has requested a hearing.

Staff Recommendation

Staff filed a Staff Response and Memorandum addressing the Second Amended Application of Aquila on April 16, 2002. Staff recommended approval of the Second Amended Application provided that the Commission include the conditions proposed by Staff and certain commitments previously made by UtiliCorp. Aquila's response to Staff's supplemental recommendation states that it has no objections to the conditions proposed in the Staff Response and recommendation.

The Transaction and Its Impact

As noted in the Commission's earlier Order Approving Application, Avon owns and operates Midlands Electricity plc ("Midlands"), which conducts a substantial electrical utility distribution business and related businesses based in the United Kingdom ("UK"). Midlands is one of twelve regional electricity companies in the UK that came into existence as a result of the privatization of the UK electric industry in 1990. Midlands provides regulated distribution of electricity to approximately 2.3 million industrial, commercial and residential consumers in south central England. Midlands also has unregulated businesses in electrical contracting, metering services and related businesses and, through a subsidiary, owns minority interests in three generating plants in the UK and overseas.

Aquila proposes to pay approximately \$285 million (U.S.) to acquire a 79.9% economic interest in Avon. FirstEnergy, the current owner of one hundred percent (100%) of the outstanding shares of Avon, will retain a 20.1% economic interest in Avon. Aquila and FirstEnergy will each control fifty percent (50%) of the voting power of Avon. Aquila has stated that its acquisition of Avon and the Midlands is intended and to provide it with a base to expand and diversity its operations in the UK and the rest of Europe.

Following the acquisition, Avon and its subsidiaries will maintain significant debt related to operations. That debt will be non-recourse to Aquila, meaning that creditors cannot demand payment from Aquila. Aquila may, however, borrow monies to fund its share of the acquisition of Avon. Aquila expects eventually to structure its funding of the acquisition as fifty percent (50%) debt and fifty percent (50%) equity, but initially it will be one hundred percent (100%) debt.

Staff calculated and evaluated the impact of the acquisition on the financial position of Aquila based upon the "most conservative scenario" of 100% debt financing. Based upon Staff's review of current and pro forma financial data submitted by Aquila, the company's capital structure as of June 30, 2001, consisted of 44.50% long-term debt, 2.70% short-term debt, 6.30% preferred stock, and 46.50% common equity. If Aquila incurs \$285 million of long-term debt to complete the transaction, its capital structure would consist of 47.20% long-term debt, 2.60% short-term debt, 6.00% preferred stock, and 44.20% common equity. The total debt of the company would increase 1.80% from 47.20% to 49.80% of total capital.

Staff stated that a 49.80% debt ratio would be consistent with credit ratings above BBB rated electric utilities. Staff further states that other pro forma financial data

concerning pre-tax interest coverage, funds from operations interest coverage and funds from operations to total debt ratio is consistent with credit ratings above that of BBB rated utilities. This is in line with Aquila's current BBB rating assigned by Standard & Poors. Staff concluded it does not have a concern about Aquila's future credit rating and its ability to attract capital as a result of the transaction.

Aquila Commitments

Aquila has represented in its Application that it is committed to maintaining its investment grade credit rating. Aquila stated that cost allocations to Missouri jurisdictional operations would not increase as a result of the transaction and that it will reduce allocations where appropriate to reflect the effect of the transaction. Aquila stated that any acquisition premium paid by Aquila will be treated below the line for ratemaking purposes and that no recovery of any acquisition premium from this transaction will be sought in any future Missouri rate case. Aquila stated that it will not seek an increase in cost of capital or request a risk premium as a result of the acquisition. Aquila stated that it would provide the Staff and the Office of the Public Counsel with post-closure information about the transaction if it is approved and current credit agency reports, as available. Aquila ratified those representations and commitments in its April 17 response to Staff's supplemental recommendation.

Staff Conditions

Staff has recommended approval of the Application, as amended, subject to the following conditions:

1. that nothing in the Commission's order be considered a finding by the Commission of the value of this transaction for rate making purposes and that

the Commission reserves the right to consider the rate making treatment to be afforded the transaction in any subsequent proceeding;

2. that the Commission's order shall not be deemed to be precedent for any future acquisition, even if the facts may be similar;
3. that any adverse financial effects of this acquisition be borne by the shareholders of Aquila, and not by Missouri ratepayers;
4. that all records pertaining to this transaction be maintained at Aquila's headquarters at 20 West Ninth Street, Kansas City, Missouri 64105-1704 and be made available to the Commission's Staff as Staff deems necessary;
5. that Aquila provide documentation of proper cost allocations to non-regulated entities;
6. that Aquila include any costs borne by Missouri Public Service and St. Joseph Light & Power divisions related to the non-regulated subsidiaries in monthly surveillance reports sent to the Commission's Staff; and
7. that Aquila shall not take any action that would cause the financial statements of Aquila Sterling Holdings LLC to become consolidated with those of Aquila until it files and receives approval to do so from the Missouri Public Service Commission.

Decision

Aquila has provided the Commission with a copy of its Purchase and Sale Agreement to acquire an interest in Avon and a copy of the Resolutions of its Board of Directors authorizing the transaction. Aquila's Second Amended Application and supplemental information and responses filed by the Staff demonstrate that the transaction is not detrimental to the public interest and offer conditions to protect the

public interest. Thus, the Application, as amended, satisfies all the requirements of §393.190 RSMo. 2000 and 4 CSR 240-2.060(12).

The acquisition will permit Aquila to expand and diversity its operations by extending and expanding its operations in the UK and the rest of Europe. The investment and any related debt will not adversely affect Aquila's investment grade credit rating or its ability to attract capital to fund its operations. Therefore, approval of the Application will benefit Aquila with no detriment to the public interest.

In addition, commitments offered by Aquila and Staff's recommended conditions provide further assurance that there will be no detriment to the public interest by the Commission's approval of the Application.

The Commission finds that the transactions presented in Aquila's Second Amended Application are not detrimental to the public interest and may be approved subject to the commitments offered by Aquila and the specific conditions recommended by Staff.

It is therefore ORDERED:

1. That the Second Amended Application of Aquila, Inc. requesting the Commission to authorize Aquila's acquisition of an interest in Avon Energy Partners Holdings from, and in partnership with, FirstEnergy Corp. as provided in the Purchase and Sale Agreement between Aquila Europe, Inc. and EI UK Holdings, Inc. is hereby approved.
2. That Aquila may take the actions necessary and as authorized in this proceeding to carry out the transactions described in the Second Amended Application.

3. That nothing in this order shall be considered a finding by the Commission of the value of this transaction for ratemaking purposes, and that the Commission reserves the right to consider the ratemaking treatment to be afforded the transaction in any subsequent proceeding.
4. That the Commission's order shall not be deemed to be precedent for any future acquisition, even if the facts are similar.
5. That any adverse financial effects of this acquisition are to be borne by the shareholders of Aquila.
6. That all records pertaining to this transaction shall be maintained at Aquila's headquarters and be made available for the Commission's Staff, as Staff deems necessary.
7. That Aquila provide documentation of proper cost allocations to non-regulated entities.
8. That Aquila include any costs borne by Missouri Public Service and St. Joseph Power & Light divisions related to the non-regulated subsidiaries in monthly surveillance reports sent to the Commission's Staff.
9. That Aquila shall not take any action that would cause the financial statements of Aquila Sterling Holdings LLC to become consolidated with those of Aquila without the prior approval of the Commission.
10. That Aquila exercise reasonable diligence and prudence to maintain its investment grade credit rating.
11. That Aquila's costs allocations to its Missouri jurisdictional operations not increase as a result of the transaction and that Aquila will reduce allocations, where appropriate, to reflect the effect of the transaction.

12. That Aquila treat any acquisition premium from this transaction below the line for ratemaking purposes and that it shall not seek recovery from any acquisition premium resulting from the transaction in any future Missouri rate case.
13. That Aquila shall not seek an increase in its cost of capital or request a risk premium as a result of the acquisition.
14. That Aquila shall provide the Commission's Staff and the Office of the Public Counsel with post-closure information concerning the transaction thirty (30) days after the closing and shall provide current credit agency reports, as available.
15. That Aquila continue to file status reports in this proceeding beginning sixty (60) days from the date of this Order and each thirty (30) days thereafter advising of the status of this transaction so that the Commission may be apprised of when this case may be closed.
16. That this Order shall become effective on **[ten days from the date of issuance]**.