

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

In the Matter of the Application of	)	
Aquila, Inc., d/b/a Aquila	)	
Networks – MPS and Aquila	)	
Networks – L&P for Authority to	)	Case No.
Transfer Operational Control of	)	
Certain Transmission Assets	)	
to the Midwest Independent	)	
Transmission System Operator, Inc.	)	

**APPLICATION**

COMES NOW Aquila, Inc., d/b/a Aquila Networks – MPS and Aquila Networks – L&P (“Aquila”) in accordance with § 393.190 RSMo. 2000 and 4 CSR 240-3.110, and for its Application to transfer operational control of certain transmission assets to the Midwest Independent Transmission System Operator, Inc. (“MISO”), states to the Missouri Public Service Commission (“Commission”) as follows:

**The Applicant**

1. Aquila is a Delaware corporation with its principal office and place of business at 20 West Ninth Street, Kansas City, Missouri 64105. Aquila is authorized to conduct business in Missouri through its Aquila Networks – MPS and Aquila Networks – L&P operating divisions and, as such, is engaged in providing electrical and heating utility services in Missouri in those areas certificated to it by the Commission. A certified copy of Aquila’s amended Certificate of Authority to do business in this state as a foreign corporation was filed with the Commission in Case No. EU-2002-1053 and said documents are incorporated herein by reference in accordance with 4 CSR 240-2.060(1)(G).

Likewise, copies of the Registrations of Fictitious Name of Aquila Networks – MPS and Aquila Networks – L&P were filed in Case No. EU-2002-1053 and said documents are incorporated herein by reference in accordance with 4 CSR 240-2.060(1)(G).

2. Aquila is an “electrical corporation,” a “heating company,” and a “public utility” as those terms are defined in §386.020 RSMo. 2000. Consequently, it is subject to the jurisdiction and supervision of the Commission as provided by law.

3. Other than as set forth in the attached **Appendix A**, Aquila has no pending or final judgments or decisions against it from state or federal regulatory agencies or courts which involve customer service occurring within the three (3) years immediately preceding the filing of this Application.

4. Aquila has no overdue Commission annual reports or assessment fees.

5. Pleadings, notices and orders and other correspondence and communications concerning this Application should be addressed to the following individuals:

Gary Clemens, Director of Regulatory Services  
Aquila, Inc.  
20 West Ninth Street  
Kansas City, Missouri 64105  
Telephone: (816) 467-3807  
Email: gary.clemens@aquila.com

Paul A. Boudreau  
Brydon, Swearingen & England, PC  
312 East Capitol Avenue  
P. O. Box 456  
Jefferson City, Missouri 65102-0456  
Telephone: (573) 635-7166  
Facsimile: (573) 636-6450  
Email: [paulb@brydonlaw.com](mailto:paulb@brydonlaw.com)

**The Midwest Independent Transmission System Operator**

6. MISO, founded on February 12, 1996, is the nation's first Regional Transmission Organization ("RTO") to receive the approval of the Federal Energy Regulatory Commission ("FERC"). MISO is based in Carmel, Indiana, and is responsible for monitoring the electric transmission system that delivers power from generating plants to member wholesale power transmitters and load serving entities. MISO's role is to ensure equal access to the transmission system and to maintain or improve electric system reliability in the Midwest. MISO's primary objective is to "direct traffic" on the wholesale bulk electric power lines. In this role, MISO endeavors to ensure that every electric industry participant has access to the lines and that no entity has the ability to deny access to a competitor. MISO also manages the use of the electric transmission lines under its control to make sure that they do not become overloaded. MISO began selling transmission service under its FERC tariff on February 1, 2002. As of April 1, 2005, MISO also operates day-ahead and real-time wholesale energy markets within its region.

**Purpose of Filing**

7. The purpose of this filing is to obtain the approval of the Commission to transfer to MISO operational control of those same portions of the

Aquila transmission system in Missouri which were the subject of the FERC Application to the extent such approval may be required under § 393.190.1 RSMo. 2000. See, ¶9, *infra*.

### **Historical Context for Filing**

8. In 1999, Aquila (f/k/a UtiliCorp United Inc. (UtiliCorp)) entered into an Agreement and Plan of Merger with St. Joseph Light & Power Company which was subject to various regulatory approvals, including the approval of the Commission<sup>1</sup> and FERC. Aquila's FERC application coincided with the issuance of FERC Order 2000 that embodied, among other things, FERC's expectation that electric utilities join an RTO. Consequently, its order approving the merger contained a requirement that the merged company file a plan to join an RTO. MISO was the only FERC-approved RTO then in existence. Aquila entered into an agreement to join MISO on July 16, 2001. Its decision to join MISO also was based on the understanding that MISO would be operational on December 15, 2001, and that AmerenUE would function as if it were a part of the MISO footprint through its involvement in the Alliance RTO. The Alliance RTO and MISO were parties to an Inter-RTO Coordination Agreement which provided for the two entities to coordinate activities for transmission and transmission-related services in order to eliminate the effect of seams separating the two entities so that the regions would be able to operate as a seamless market. However, on December 20, 2001, FERC issued an order finding that the Alliance entity lacked sufficient scope to be an RTO and, on April 25, 2002, FERC issued an order requiring

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<sup>1</sup> The Commission issued a Report and Order approving the merger on December 14, 2000, in its Case No. EM-2000-292. Thereafter, on February 26, 2004, the Commission issued a Second Report and Order upon remand from the Missouri Supreme Court.

AmerenUE and other Alliance participants to join other RTOs. AmerenUE subsequently decided to join MISO through GridAmerica LLC, but such participation was not effective until May 1, 2004.

9. On August 20, 2001, Aquila (then, UtiliCorp) filed with FERC an Application to transfer operational control over certain designated transmission facilities to MISO, pursuant to § 203 of the Federal Power Act, 16 USC §824b, as required by FERC Order 2000. A copy of that filing (the “FERC Application”) is attached hereto as **Appendix B**.<sup>2</sup> The FERC Application requested FERC approval to transfer to MISO operational control for portions of the Aquila transmission system in Missouri, 100 kV and above, and other systems in another state. FERC, in an Order Authorizing Disposition of Jurisdictional Facilities issued September 13, 2001, approved the transfer subject to certain specified conditions. See, 96 FERC ¶ 62,256 (attached hereto as **Appendix C**). On November 14, 2001, Aquila filed with FERC a supplemental application in order to list certain additional facilities that had been inadvertently omitted from the August 20, 2001 application. FERC issued an order on December 13, 2001 approving the supplemental application. A copy of the supplemental FERC application is attached hereto as **Appendix D** and the December 13, 2001 FERC order is attached as **Appendix E**.<sup>3</sup>

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<sup>2</sup> A map depicting MPS and SJLP transmission facilities as originally supplied to the FERC in Exhibit K has been replaced with a more current map of the Aquila transmission system in Missouri.

<sup>3</sup> As a result of a subsequent decision of the United States Court of Appeals for the District of Columbia Circuit, *Atlantic City Electric Co. et al. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002), FERC approval under Section 203 of the Federal Power Act is no longer required for a transmission owner to transfer operational control over its transmission facilities to an RTO.

10. Aquila also filed applications for approval to transfer operational control of certain of its transmission assets with the Kansas Corporation Commission (KCC) and the Commission<sup>4</sup> on November 8, 2001, and August 29, 2001, respectively. The KCC approved Aquila's request on December 18, 2001.

11. UtiliCorp was one of the original transmission-owning members of Southwest Power Pool (SPP) and historically had obtained security coordination services from SPP. On July 12, 2001, however, FERC rejected SPP's initial application to become an RTO. As a result, Aquila transferred security coordination responsibilities from SPP to MISO on December 15, 2001, in anticipation of the commencement of its operations as an RTO which was to begin that month.

12. Because AmerenUE had withdrawn from membership in MISO<sup>5</sup>, which left Aquila with no physical connection to the MISO control area, Aquila withdrew its application for Commission approval to join MISO on January 2, 2002.

13. On December 20, 2002, Aquila filed with FERC a protest against MISO challenging the reasonableness of certain administrative costs being assessed by MISO pursuant to Schedule 10-B to the MISO tariff. MISO's proposed Schedule 10-B was assigned Docket No. ER02-871-000. That case was resolved by settlement, (hereinafter, the "MISO Settlement"); one of the terms included a commitment by Aquila to re-file for Commission approval to

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<sup>4</sup> Case No. EO-2002-125.

<sup>5</sup> FERC denied RTO status to the Alliance RTO on December 20, 2001.

transfer to MISO operational control of its transmission facilities by June 22, 2003, and to diligently pursue said approval.

14. In accordance with the terms of the MISO Settlement and Aquila's expectation of an electrical connection to the MISO control area through AmerenUE's participation, Aquila filed with the Commission its second Application to participate in the MISO RTO on June 20, 2003, a case docketed by the Commission as Case No. EO-2003-0566. The proceedings in that case were continued on a number of occasions, initially to assess the outcome of the then-pending Commission Case No. EO-2003-0271, a case concerning AmerenUE's application to transfer operational control of its transmission system to MISO and a companion filing at the FERC level. Subsequent continuances were permitted to allow for the completion of comparative cost/benefit studies being prepared by, or on behalf of, the SPP Regional State Committee and MISO.<sup>6</sup> That Application was dismissed by the Commission on May 12, 2005, without prejudice to be refiled at such time as additional system cost information became available.

15. The Commission on February 26, 2004, in Case No. EO-2003-0271 approved AmerenUE's participation in MISO for an interim period of five (5) years subject to FERC's approval. On March 25, 2004, FERC approved the Service Agreement between MISO and AmerenUE.

16. The KCC rescinded Aquila's authority to participate in MISO by separate orders dated February 23, 2005 and September 15, 2005. The KCC concluded that "significant changes" concerning the options available to Aquila

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<sup>6</sup> FERC granted the SPP RTO status on January 24, 2005.

had occurred since the issuance of its December 2001 order; specifically, that FERC had approved SPP as an RTO. The KCC concluded its prior order was no longer in the public interest.

17. On September 21, 2005, Aquila announced that Mid-Kansas Electric Company, a coalition of six consumer-owned cooperatives that also own Sunflower Electric Power Corporation, a regional generation and transmission service provider, had agreed to purchase the assets and liabilities of Aquila's electric operations in the State of Kansas. The transaction closed on April 1, 2007.

18. On September 28, 2005, Kansas City Power & Light Company ("KCPL") and The Empire District Electric Company each filed with the Commission separate applications to transfer operational control of their respective electric transmission systems to SPP. Those cases were docketed by the Commission, respectively, as Case Nos. EO-2006-0142 and EO-2006-0141. Those applications both were approved by the Commission on June 13, 2006.

19. On April 4, 2007, Great Plains Energy Incorporated ("GPE"), KCPL and Aquila filed a Joint Application with the Commission requesting authority to undertake a series of transactions whereby Aquila, like KCPL, will become a wholly-owned subsidiary of GPE. That filing was docketed by the Commission as Case No. EM-2007-0374. The Commission subsequently adopted a procedural schedule that set the hearing dates on December 3-14 with post-hearing briefing to be completed by January 11, 2008.



### **Miscellaneous Filing Requirements**

20. As to the material required by 4 CSR 240-3.110 (1)(A), Aquila states that the property involved in the transaction is Aquila's transmission facilities, 100 kV and above, located in the State of Missouri (the "Facilities"). A map showing the involved system is contained in Appendix B, Exhibit K.

21. As to the material required by Commission rule 4 CSR 240-3.110 (1)(B), Aquila states that there is no agreement to "sell" the Facilities. The currently effective version of the agreement that is the subject of the transaction (the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc. ("MISO Agreement")) is attached hereto as **Appendix F**.<sup>7</sup> As a transmission-owning member of the MISO Agreement, Aquila is obligated to transfer operational control over its transmission facilities upon receipt of all required regulatory approvals. The MISO Agreement further obligates Aquila to pay annual membership fees to MISO and to follow operational directions of MISO once its transmission facilities are under MISO's control. Pursuant to Article V, Section I to the MISO Agreement, unless otherwise permitted under Article VII, a transmission owner member may withdraw from the MISO Agreement as of December 31 of the year after the year in which a notice of withdrawal is provided, subject to FERC approval and payment of an "exit fee" determined by MISO. Article VII provides that any transmission owner member may withdraw from the MISO Agreement

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<sup>7</sup> A preceding agreement by and between UtiliCorp and MISO appears as Exhibit I to the FERC Application. Appendix F is a subsequent agreement that has been approved by FERC and is now effective.

within 30 days after any regulatory order denying or unreasonably conditioning such member's participation in MISO.

22. As to the material required by 4 CSR 240-3.110 (1)(D), Aquila states that there is no proposed sale. The transfer of operational control of the Facilities is not detrimental to the public interest because it furthers the interest of MISO in accordance with FERC's expressed desire to establish RTOs. FERC Order No. 2000<sup>8</sup> strongly encouraged all public utilities that own, operate or control interstate transmission facilities to participate in an RTO. Additionally, FERC has found the transfer to be "consistent with the public interest" (see, Appendix C). Finally, Aquila's participation in MISO represents a net benefit of approximately \$21 million over 10 years to Aquila's retail electric customers. A copy of a cost-benefit study prepared by CRA International for Aquila in March of 2007 is attached hereto as **Appendix G**.

23. As to the material required by Commission rule 4 CSR 240-3.110 (1)(E), Aquila states that there is no "purchaser" because there is no sale of the Facilities. Additionally, Aquila does not anticipate that MISO will be subject to the jurisdiction of the Commission.

24. As to the material required by Commission rule 4 CSR 240-3.110 (1)(F), Aquila states that there is no expected impact on the tax revenues of any political subdivision in which the Facilities are located because there will be no transfer of title concerning any such Facilities from Aquila to MISO. Aquila will

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<sup>8</sup> *Regional Transmission Organizations*, Order No. 2000, III FERC Stats & Regs. Regs Preambles ¶ 31,089 (1999), Order on Rehearing, Order No. 2000 – A, III FERC Stats & Regs. Regs Preambles ¶ 31,092 (2000).

continue to be the owner of the Facilities and will continue to be responsible for property taxes levied thereon.

### **Recovery of Prudently Incurred Costs**

25. Aquila anticipates that, as a result of participation in MISO, it will incur costs that generally fall into two categories: (a) FERC-approved costs and fees under the MISO tariff assessed against and paid by Aquila; and (b) other costs of participating in MISO, which Aquila may have some ability to control.<sup>9</sup> Aquila seeks recognition by the Commission that all FERC-approved costs and fees addressed by item (a) above, and costs prudently incurred by Aquila and included in the description of item (b) above would be included by the Commission in Aquila's retail electric rates when properly requested.

WHEREFORE, Aquila respectfully requests the Commission to issue an order:

A. Authorizing Aquila to perform in accordance with the terms described in the MISO Agreement, and to take any and all other actions which may be reasonably necessary and incidental to Aquila's performance under the MISO Agreement and to include performance under such subsequent agreements as may be approved by FERC;

B. Authorizing Aquila, to the extent such authority is deemed necessary and appropriate, to take network integration transmission services from MISO to serve its retail native load in Missouri;

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<sup>9</sup> This latter category would generally include the cost of internal systems Aquila would be required to install to participate in MISO.

C. Acknowledging that if the Commission approves this Application, the Commission would consider as prudently incurred expenses, all of the FERC-approved administrative fees Aquila is assessed and all costs Aquila incurs from MISO to make prudent purchases of capacity and/or energy to serve its bundled retail load under the agreement and, thus, that those fees and costs will be included by the Commission in the cost of service for rate-making purposes for bundled retail customers in Aquila's next general electric rate case when the Commission determines the price to be charged for electricity after consideration of all relevant factors; and

D. Granting such other relief as may be deemed necessary and appropriate which is not inconsistent with the foregoing pleading.

Respectfully submitted,

/s/ Paul A. Boudreau  
Paul A. Boudreau MO Bar # 33155  
Brydon, Swearengen & England, P.C.  
312 East Capitol Avenue  
P. O. Box 456  
Jefferson City, Missouri 65102-0456  
Telephone: (573) 635-7166  
Facsimile: (573) 636-6450  
Email: paulb@brydonlaw.com

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, electronic mail or hand delivery, on the 20th day of August, 2007, to the following:

Missouri Public Service Commission  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102-0360

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

/s/ Paul A. Boudreau  
Paul A. Boudreau