

Exhibit No.: _____
Issue(s): Manufactured Gas Plant
 Remediation Costs/
 Accounting Authority Order Costs/
Witness: Ted Robertson
Type of Exhibit: Rebuttal
Sponsoring Party: Public Counsel
Case Number: ER-2004-0034
Date Testimony Prepared: February 27, 2004

REBUTTAL TESTIMONY

OF

TED ROBERTSON

FILED⁴

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Missouri Public
Service Commission

Submitted on Behalf of
the Office of the Public Counsel

AQUILA, INC.

Case No. ER-2004-0034

February 27, 2004

TABLE OF CONTENTS

| Testimony | Page |
|---|------|
| Introduction | 1 |
| I. Aquila Networks - MPS | |
| A. Manufactured Gas Plant Remediation Costs | 2 |
| B. Accounting Authority Order Costs | 7 |

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**REBUTTAL TESTIMONY
OF
TED ROBERTSON**

**AQUILA INC.
d/b/a
AQUILA NETWORKS - MPS**

[REDACTED]

[REDACTED]

CASE NO. ER-2004-0034

[REDACTED]

[REDACTED]

15 **INTRODUCTION**

16 Q. ARE YOU THE SAME TED ROBERTSON THAT HAS PREVIOUSLY FILED
17 TESTIMONY IN THIS CASE?

18 A. Yes.

19
20 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

21 A. The purpose of this testimony is to express the Public Counsel's recommendations
22 regarding the ratemaking aspects of various costs associated with the electric [REDACTED]
23 operations of the Aquila Networks - MPS ("MPS") [REDACTED]
24 division of Aquila Inc. ("Aquila" or "Company"). The issues this testimony will address
25 include, 1) manufactured gas plant remediation costs, and 2) accounting authority order
26 costs.
27
28

1 I. AQUILA NETWORKS - MPS

2 A. MANUFACTURED GAS PLANT REMEDIATION COSTS

3 Q. WHAT IS THE ISSUE?

4 A. As I stated in my direct testimony, Company has booked in its financial records costs
5 relating to remediation activities associated with formerly operated manufactured gas
6 plant ("MGP"). Company's response to OPC Data Request No. 1029 identifies that
7 during the twelve months ended December 31, 2002, and the twelve months ended
8 September 30, 2003, MPS booked total net charges of \$53,780.64 and (\$50,510.63),
9 respectively, among several Uniform System of Accounts ("USOA") expense accounts.
10 The September 30, 2003 credit balance occurred due to Company receiving what it
11 termed as environmental settlements.

12
13 It's the Public Counsel's belief that no costs associated with the remediation of
14 manufactured gas plant should be allowed in the determination of the electric company
15 cost of service for ratemaking. Public Counsel opposes allowing any of the MGP
16 remediation costs to flow through to electric ratepayers because neither current nor historic
17 electric customers of MPS benefited from the manufactured gas service. Therefore, they
18 should not bear any responsibility for reimbursement of the costs to Company.

19
20 Q. WHAT IS A MANUFACTURED GAS PLANT?

1 A. Many years ago, before the advent of interstate gas pipelines, gas was produced or
2 manufactured for sale by utilities via a chemical process of coal gasification. The plant used
3 to produce the gas has been termed as a manufactured gas plant facility.

4
5 Q. WHAT ARE MANUFACTURED GAS SITE REMEDIATION COSTS?

6 A. The costs in question relate to the assessment and/or clean-up of sites on which
7 manufactured gas was produced many decades in the past. Remediation costs can be
8 defined as all investigations, testing, land acquisition if appropriate, remediation and/or
9 litigation costs/expenses or other liabilities excluding personal injury claims and
10 specifically relating to former gas manufacturing facility sites, disposal sites, or sites to
11 which material may have migrated, as a result of the operation or decommissioning of gas
12 manufacturing facilities. The remediation and cleanup costs, if applicable, are in actuality a
13 legal requirement that must be met in order to satisfy federal or state statutes on the proper
14 handling of hazardous wastes in order to alleviate adverse environmental effects. The
15 expenditures have been incurred to identify and assess the MGP sites contamination
16 potential. They are not expenditures related to the provision of electric utility service to
17 current or future MPS ratepayers.

18
19 Q. WHY WERE THESE COSTS RECORDED IN THE ELECTRIC FINANCIAL BOOKS
20 OF THE COMPANY?

1 A. Company's response to OPC Data Request No. 1086 in Aquila, Inc., Case No. GR-2004-
2 0072 states:

3
4 MGP remediation costs relating to the Company's MPS operations are
5 booked in both electric and gas financial records. The Company treats
6 MGP remediation costs in this manner because they are prudently incurred
7 costs and a company-wide (MPS) obligation.
8
9

10 Q. SHOULD ELECTRIC RATEPAYERS BE HELD RESPONSIBLE FOR COSTS
11 ASSOCIATED WITH GAS COMPANY ASSETS THAT ARE NO LONGER IN
12 SERVICE?

13 A. No. Electric ratepayers should not be held responsible for gas company costs. The MGP
14 site remediation costs being incurred are associated with gas plant that is no longer in
15 service, and therefore no longer used and useful. The Company is asking the Missouri
16 Public Service Commission ("MPSC" or "Commission") to have current electric
17 ratepayers pay plant decommissioning costs for MGP plant that does not operate to
18 provide current utility service. I don't believe this is a normal practice of this
19 Commission, and it is unreasonable to force a consumer to pay for something they are not
20 using. In this instance, it's the Public Counsel's belief that MPS is only entitled the
21 opportunity to earn a fair rate of return and recover expenses associated with money
22 prudently invested in property used and useful in rendering electric utility service.
23

1 Q. PLEASE EXPLAIN THE CONCEPT "USED AND USEFUL".

2 A. One of the Public Counsel's main objections to the Company proposed treatment of this
3 issue is that it violates the regulatory "used and useful" standard. The general rule is that,
4 "the rate base on which a return may be earned is the amount of property used and useful, at
5 the time of the rate inquiry, in rendering a designated utility service." (A.J.G. Priest,
6 Principles of Public Utility Regulation (1969), p. 139, vol. 1). This principle is certainly
7 grounded in common sense. In dividing the responsibility for a utility's operations between
8 ratepayers and stockholders, regulators have traditionally required that stockholders rather
9 than ratepayers be required to bear the costs of any utility investment which is not used and
10 useful to provide service to the ratepayers.

11
12 In a discussion of the policy in Missouri, State ex rel. Union Electric v. Public Service of
13 the State of Missouri, 765 S.W. 2d 618 (Mo. App. 1988), the Court of Appeals for the
14 Western District endorsed the used and useful policy. That case involved Union Electric's
15 appeal of the Commission's denial of the costs of cancellation of its Callaway II nuclear
16 unit. The Commission ruled that the risk of cancellation should be borne by the
17 shareholder, since if it was not, the shareholder's investment would be practically risk free.

18 The Court, in upholding the Commission's decision, stated:

19
20 The utility property upon which a rate of return can be earned must be
21 utilized to provide service to its customers. That is, it must be used and

1 useful. This used and useful concept provides a well-defined standard for
2 determining what properties of a utility can be included in its rate base.
3
4

5 Q. WHAT WERE THE REMEDIATION ACTIVITIES FOR WHICH COMPANY
6 INCURRED THE COSTS?

7 A. According to the Company's response to OPC Data Request No. 1074, Aquila, Inc., Case
8 No. GR-2004-0072, the costs were related to the following MGP sites and activities:
9

10 Four sites - Clinton, Lexington Highland, Nevada and Sedalia.
11

12 Clinton - Company conducted an investigation and removal action under
13 an EPA Administrative Order on Consent. The site has been fenced and a
14 deed restriction placed on the property. The Company inspects the site at
15 least annually.
16

17 Lexington Highland - Company is addressing the site under an
18 Administrative Order on Consent with EPA. Work completed to date
19 includes a Removal Site Evaluation and Baseline Risk Assessment. The
20 Company is currently preparing an Engineering Evaluation/Cost Analysis.
21

22 Nevada - Company conducted a Preliminary Assessment. The MDNR
23 conducted a site investigation. Company had a property survey performed.
24 Company has not conducted either an investigation or any removal action
25 at the site.
26

27 Sedalia - Company conducted an investigation and removal action under
28 an EPA Administrative Order on Consent. A deed restriction was placed
29 on the property.
30
31

1 It's my understanding that the Clinton and Sedalia are fully owned by Company, but it is
2 only a partial owner in the Nevada site and has no ownership interest in the Lexington
3 (10th St. & Highland Ave.) site.

4
5 Q. WHAT IS THE PUBLIC COUNSEL'S RECOMMENDATION?

6 A. Our recommendation depends on which of the Company's test periods is utilized. If the
7 Company's know and measurable period was not updated for MPG remediation costs, it is
8 the Public Counsel's recommendation that the Company's cost of service expense for the
9 period twelve months ended December 31, 2002 be **decreased** \$53,781. If the
10 Company's known and measurable period was updated for MGP remediation costs, then
11 the cost of service expense for the period twelve months ended September 30, 2003
12 should be **increased** by \$50,511 to zero out the net negative balance booked for the
13 period. This last recommendation is based upon the belief that since it is inappropriate
14 for ratepayers to be held responsible for reimbursement of expenses associated with the
15 remediation activities of the MGP; thus, it would also be unfair to the Company to allow
16 ratepayers to benefit or share in any environmental settlement or payments it receives that
17 offset the remediation expenses it incurs.

18
19 B. **ACCOUNTING AUTHORITY ORDER COSTS**

20 Q. WHAT IS THE ISSUE?

1 A. Company, and the MPSC Staff, in their respective direct testimony, have recommended rate
2 base treatment for the unamortized deferred balances associated with two of the accounting
3 authority orders (i.e., the Sibley rebuild and western coal conversion deferrals) discussed in
4 my direct testimony. Also, Company appears to have failed to appropriately track the
5 deferred income tax balances associated with those same accounting authority orders.
6

7 Q. DID COMPANY, AND THE MPSC STAFF, INCLUDE IN RATE BASE THE
8 UNAMORTIZED DEFERRED BALANCE ASSOCIATED WITH THE ICE STORM
9 AAO AUTHORIZED IN CASE NO. EU-2002-1053?

10 A. Company did, however, the MPSC Staff did not. Apparently, the costs were not included
11 because the MPSC Staff has an ongoing documentation availability dispute with Company.
12 However, in the direct testimony of MPSC Staff witness, Ms. Trisha D. Miller, page 9, line
13 11, she states that the inclusion of the deferred costs associated with the Ice Storm AAO are
14 subject to change.
15

16 Q. DOES THE PUBLIC COUNSEL OPPOSE THE INCLUSION OF THE AAO
17 UNAMORTIZED DEFERRED BALANCES IN RATE BASE?

18 A. Yes.
19

1 Q. WHY DID THE MPSC STAFF INCLUDE THE UNAMORTIZED DEFERRED
2 BALANCES IN RATE BASE?

3 A. On page 8, lines 16-18, of Ms. Miller's direct testimony, she states:

4
5 Unamortized AAO balances at September 30, 2003 were included in rate
6 base, to reflect in the cost of service a return on the unamortized balance of
7 the AAO deferrals authorized by the Commission in Case Nos. ER-90-101,
8 EO-91-247 and ER-93-37.
9
10

11 Q. DOES THE PUBLIC COUNSEL BELIEVE THAT COMMISSION CASE NOS. ER-90-
12 101, EO-91-247 AND ER-93-37 ARE VALID WITH REGARD TO THE
13 APPROPRIATENESS OF RATE BASE TREATMENT FOR THE UNAMORTIZED
14 DEFERRED COSTS?

15 A. No. The cases Ms. Miller cites occurred early in the Commission's process of developing,
16 or adopting, what commonly became known as accounting authority orders. In later cases,
17 the Commission recognized that allowing a utility to earn a return on the deferred costs was
18 not an appropriate regulatory policy.
19

20 Q. WHY DOES THE PUBLIC COUNSEL OPPOSE RATE BASE INCLUSION OF THE
21 UNAMORTIZED DEFERRED BALANCES?

22 A. As discussed in my direct testimony, Public Counsel believes that the AAO process has the
23 effect of protecting Company from regulatory lag. This Commission has recognized that

1 lessening the effect of regulatory lag by deferring costs is beneficial to a utility but not
2 particularly beneficial to ratepayers. Companies do not propose to defer profits to
3 subsequent rate cases to lessen the effects of regulatory lag, but insist it is a benefit to defer
4 costs. Regulatory lag is a part of the regulatory process and can be a benefit as well as a
5 detriment.

6
7 Later Commissions (i.e., subsequent to the cases referenced by Ms. Miller) recognized that
8 the unamortized deferred balances associated with AAOs should not be afforded rate base
9 treatment. They stated that the AAOs issued by the Commission authorize the utility to
10 book and defer the costs requested but do not approve any ratemaking treatment of the
11 deferred balances. Furthermore, AAOs are not intended to eliminate regulatory lag but are
12 intended to mitigate the cost incurred by the Company because of regulatory lag. They also
13 stated that the purpose of the AAO is to lessen the effect of the regulatory lag, not to
14 eliminate it nor to protect utilities completely from risk. Without the inclusion of the
15 unamortized balance of the AAO account included in the rate base, the utility will still
16 recover the amounts booked and deferred, including the cost of carrying the deferred
17 balances, property taxes and depreciation expenses.

18
19 However, the deferral of costs to maintain current financial integrity, though, is of
20 questionable benefit. If a utility's financial integrity is threatened by high costs so that its

1 ability to provide service is threatened, then it should seek interim rate relief. If maintaining
2 financial integrity means sustaining a specific return on equity, this is not the purpose of
3 regulation. It is not reasonable to defer costs to insulate shareholders from any risks.
4

5 Q. DOES THE PUBLIC COUNSEL KNOW THE CORRECT AMOUNT OF DEFERRED
6 INCOME TAXES ASSOCIATED WITH THE DEFERRED AAO COSTS THAT
7 SHOULD BE SUBTRACTED FROM RATE BASE?

8 A. No. Company's response to Public Counsel data requests (e.g., OPC DR No. 1031) indicate
9 that it has not properly maintained the financial bookkeeping required to track those costs.
10 As a matter of fact, Company's failure to maintain the proper financial records has been a
11 factor in the tracking of these particular costs at least as far back as its 1993 electric rate
12 case.
13

14 Q. WHAT DOES THE PUBLIC COUNSEL PROPOSE REGARDING THE AMOUNT OF
15 DEFERRED INCOME TAXES ASSOCIATED WITH THE DEFERRED AAO COSTS
16 THAT SHOULD BE SUBTRACTED FROM RATE BASE??

17 A. Inasmuch as the Company has proposed a surrogate amount (i.e., Company work-paper
18 RBO 31 - \$3,190,470) for the deferred income tax effect of the September 30, 2003
19 deferred cost balances, Public Counsel recommends that the Commission accept the
20 Company's calculation as the amount of deferred income taxes associated with the AAO

1 unamortized deferred balances that should be subtracted from rate base. However, with
2 regard to the MPSC Staff's documentation dispute with the Company, if the Commission
3 later determines that the amount of the total deferred costs associated with the Ice Storm
4 AAO is different than that proffered by Company, the income tax effect would require
5 further appropriate adjustment.

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

Rebuttal Testimony of Ted Robertson

Case No. ER-2004-0034 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
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7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
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16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

Rebuttal Testimony of Ted Robertson

Case No. ER-2004-0034 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

17 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

18 A. Yes, it does.