

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

In the Matter of the Application of Aquila,)	
Inc. for Authority to Assign, Transfer,)	
Mortgage or Encumber its Utility Franchise,)	Case No. EF-2003-0465
Works or System in Order to Secure)	
Revised Bank Financing Arrangements)	

AQUILA, INC.'S OBJECTION TO STAFF'S MOTION TO FILE EXHIBITS LATE

Comes now Aquila, Inc. ("Aquila"), by and through counsel, and for its objection to Staff's Motion to File Exhibits Late states as follows to the Missouri Public Service Commission ("Commission"):

1. On or about November 14, 2003, the Staff of the Missouri Public Service Commission ("Staff") filed Staff's Motion to File Exhibits Late (the "Motion") in the captioned case. The Motion requests authority to late-file as exhibits in this case copies of various confidential pleadings filed by Aquila with the Kansas Corporation Commission and, certain press releases related to announced, but pending, agreements Aquila has with various parties to sell certain of its interests in foreign operations or specified assets.

2. Aquila objects to the Motion and contends that it should be denied. The record in this case was closed on October 23, 2003 and, with one agreed-to exception (Exhibit 59), no reservations were made for late-filed exhibits to be filed and made part of the record in this case. The integrity of the record in this case should not be disturbed without compelling cause. Staff offers no sufficient justification. The stated purpose is cryptic at best.

3. Additionally, the voluminous documents for which Staff requests leave to file as late-filed exhibits in this case are not self-proving and are not the best evidence of the facts with respect to which the documents purport to make reference. The documentation offered is not capable of being understood in appropriate context. There is no sponsoring testimony or explanation by any individual with first-hand knowledge of the transactions to which the documents make reference. There is no foundation for their admission into the record. Absent an appropriate evidentiary foundation, the documents are not competent and substantial evidence of any particular fact or circumstance. To the contrary, the raw references to pending agreements are inherently unreliable. Their possible financial impacts and implications cannot be known. They simply will be grist for more speculation and confusion.

4. As noted above, the purpose for which the documents are being offered by Staff is vague and uncertain and, consequently, Staff's interpretation will not be subject to inquiry or cross-examination by any other party to the case, including Aquila. Section 536.070(2) RSMo 2000 provides that each party to an administrative proceeding shall have the right to, among other things, cross-examine opposing witnesses on any matter relevant to the issues, to impeach witnesses and to rebut evidence against him. To permit these documents to be thrown into the record as if it were no more than a data hopper would deny Aquila this statutory right.

5. More fundamentally, granting the Motion will effectively violate Aquila's due process rights guaranteed by virtue of the Constitutions of the State of Missouri and the United States. *Mo. Const.*, Art. I, §10; *U.S. Const.*, Art. XIV, §1. Due process requires that


administrative hearings be fair and consistent with elements of fair play. *State ex rel. Fischer v. Public Service Commission*, 645 S.W. 2d 39,43 (Mo. App. 1982). This principle is applicable as well to the Commission acting in its quasi-judicial capacity. To grant Staff's request for the receipt of late-filed exhibits, including those having no foundation, dubious reliability, no context and with respect to which other parties have been given no opportunity to offer explanation or context by cross-examination or rebuttal evidence would violate Aquila's constitutional rights to due process.

6. Also, as a practical matter, the Commission should be aware that the execution by Aquila of its financial plan is an ongoing and inherently fluid situation. If the Commission were to permit additional documents to be placed in the record in this case indiscriminately each time a new press release is issued or a pleading in another state is filed, the record in this case will never effectively be closed. Rather, it will become the regulatory equivalent of the never-ending case of *Jarndyce v. Jarndyce*, about which Dickens wrote in his novel, Bleak House. The record in this case should not be allowed to degenerate into nothing more than a portfolio for press clippings and unrelated pleadings.

7. Finally, post-hearing briefs in this case soon will be filed. The parties cannot be expected to brief the case effectively if the record is in a continual state of flux and uncertainty.

WHEREFORE, for the reasons aforesaid, Aquila requests Staff's Motion to file Exhibits Late be denied.

Respectfully submitted,



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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 20th day of November 2003 to the following:

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