

**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 RESPONSE TO JOINT MOTION FOR SUMMARY DISPOSITION
AND REQUEST FOR ORAL ARGUMENT**

Comes now Applicant Aquila, Inc. ("Aquila"), pursuant to Commission Rule 4 CSR 240-2.117(1)(C) and offers the following response in opposition to the Joint Motion for Summary Disposition and Request for Oral Argument (hereinafter, the "Motion") by the Office of the Public Counsel (OPC), the State of Missouri by the Office of the Attorney General (AGO), Sedalia Industrial Energy Users Association (SEIUA) and AG Processing, Inc. (AGP) (hereinafter, collectively, the "Joint Movants"):

INTRODUCTION

1. Joint Movants are not entitled to summary disposition in this case. The Commission is only authorized to grant summary disposition in those circumstances where (1) there is no genuine issue as to any material fact, (2) the moving parties are entitled to relief as a matter of law as to all or any part of the case, and (3) the Commission determines that it is in the public interest to give summary relief. 4 CSR 240-2.117(E). Joint Movants have failed to establish that they are entitled to relief under the demanding standards established by the Commission. As explained in Aquila's separate supporting memorandum of law, the standard for approval of the Application is not a needs test, as

has been suggested by Joint Movants but, rather, whether granting the authority requested would be detrimental to the public interest.

2. The central and fatal error in the Motion is that Joint Movants have misapprehended the applicable law and, consequently, have alleged facts that are in large part not pertinent to the solitary issue presented by the application. Also, Joint Movants have failed to note key material facts that remain in dispute in this case and need to be resolved by the Commission. Because of these deficiencies in the Motion, Joint Movants have failed to establish they are entitled to summary relief.

3. Beyond the obvious legal deficiencies evident throughout the Motion, important questions of public policy and fairness will be circumvented if the Motion is granted. Consequently, the public interest would not be served by the Commission granting summary disposition in favor of the Joint Movants.

ADMISSIONS AND DENIALS OF SPECIFIC FACTUAL ALLEGATIONS

4. Aquila admits the facts alleged in paragraph three (3) of the Motion.
5. Aquila admits the facts alleged in paragraph four (4) of the Motion.
6. Aquila admits the facts alleged in paragraph five (5) of the Motion.
7. Aquila admits the facts alleged in paragraph six (6) of the Motion.
8. Aquila admits the facts alleged in paragraph seven (7) of the Motion.
9. Aquila admits the facts alleged in paragraph eight (8) of the Motion.
10. Aquila admits the facts alleged in paragraph nine (9) of the Motion.
11. Aquila admits the facts alleged in paragraph ten (10) of the Motion.
12. Aquila admits the facts alleged in paragraph eleven (11) of the Motion.

13. Aquila admits the facts alleged in paragraph twelve (12) of the Motion.

14. Aquila admits paragraph thirteen (13) of the Motion correctly quotes the language of Section 5.13 of the Term Loan. Aquila denies each and every other allegation contained in paragraph 13 on the grounds that the Term Loan does not contain a rationale setting forth the objective(s) sought to be achieved by that language by the parties thereto and, further, the meaning of the Term Loan cannot be expanded or modified by Aquila's representations. See, Section 9.12 of the Term Loan.

15. With respect to paragraph fourteen (14) of the Motion, Aquila admits that it has filed applications in the states of Colorado, Iowa, Minnesota, Kansas and Missouri seeking approval to encumber its works and system located in those states to secure First Mortgage Bonds issued under its Indenture of Mortgage and Deed of Trust dated April 1, 2003 to Bank One Trust Company, N.A. as amended and supplemented by a First Supplemental Indenture dated April 9, 2003. Aquila further admits that the applications were filed in furtherance of its contractual obligations contained in the Term Loan including Sections 5.13.

16. Aquila admits the facts alleged in paragraph fifteen (15) of the Motion.

17. Aquila admits the facts alleged in paragraph sixteen (16) of the Motion.

18. Aquila admits the facts alleged in paragraph seventeen (17) of the Motion.

19. Aquila denies the facts alleged in paragraph eighteen (18) of the Motion because if Aquila were to become insolvent, the secured creditors will have access to the first \$430 million of sale proceeds from the liquidation of regulated and non-regulated assets and the unsecured creditors would receive the balance. In practice, a worst case

scenario could require the total liquidation of assets to meet the demands of all creditors with the secured creditors demands met first. (Dobson Direct p. 16, l. 21-26; p. 17, l. 1-4)

20. Aquila admits the appraised value of its utility properties located in the States of Colorado, Michigan and Nebraska combined currently exceed the value of utility collateral needed to support its \$250 million in working capital requirements for its domestic utilities.

21. Aquila admits the facts alleged in paragraph twenty (20) of the Motion.

22. Aquila admits the facts alleged in paragraph twenty-one (21) of the Motion.

ADDITIONAL MATERIAL FACTS WHICH REMAIN IN DISPUTE

23. Joint Movant OPC denies that (1) rates for regulated electric, natural gas and steam service will not increase in Aquila's Missouri service territories and (2) customer service will not be immediately and directly impaired if the Application is approved by the Commission. (Exhibit 1, attached)

24. Joint Movant AGO denies that (1) rates for regulated electric, natural gas and steam service will not increase in Aquila's Missouri service territories and (2) customer service will not be immediately and directly impaired if the Application is approved by the Commission. (Exhibit 2, attached)

25. Joint Movants SEIUA and AGP deny that (1) rates for regulated electric, natural gas and steam service will not increase in Aquila's Missouri service territories and (2) customer service will not be immediately and directly impaired if the Application is approved by the Commission. (Exhibit 3, attached)

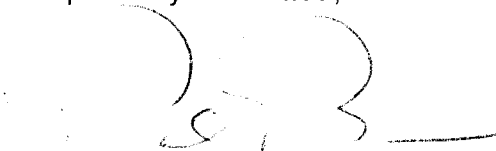
26. The staff of the Commission (Staff) denies that (1) rates for regulated electric, natural gas or steam service will not increase in Aquila's Missouri service territories and (2) customer service will not be immediately and directly impaired if the Application is approved by the Commission. (Exhibit 4, attached)

27. Staff has stated seven (7) specific reasons it believes that granting the relief requested in the Application would be detrimental to the public interest. (Verified testimony of Joan Wandel, pp. 14-18, "Conclusions and Recommendations")

28. OPC has alleged that Aquila's Financial Plan, including its proposal to secure its obligations under the Term Loan with its Missouri works or system, is detrimental to the public interest. (Verified testimony of Ted Robertson, p. 34, l. 9-21; p. 35, l. 1-3)

WHEREFORE, for good cause shown, Aquila requests that the Commission deny Joint Movant's request for summary disposition.

Respectfully submitted,



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(573) 635-7166

Attorneys for Applicant

CERTIFICATE OF SERVICE

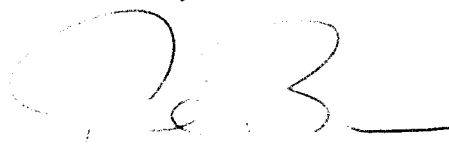
I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail or by hand delivery, on this 22nd day of September 2003 to the following:

Mr. Nathan Williams
General Counsel's Office
Missouri Public Service Commission
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Jefferson City, MO 65102-0360

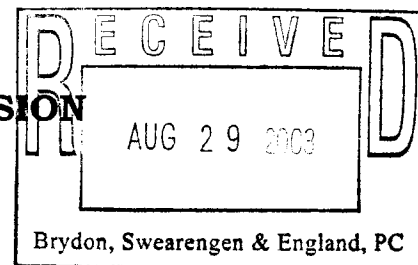
Mr. Stuart W. Conrad
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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the matter of the Application by Aquila, Inc. for)
authority to assign, transfer, mortgage or encumber)
its franchise, works or system.)

Case No. EF-2003-0465

**PUBLIC COUNSEL'S RESPONSE TO APPLICANT'S
FIRST REQUEST FOR ADMISSIONS**

1. Please admit that in the event that the Commission grants the relief requested by Aquila in its Application filed in this case Aquila will not be authorized by such an order to make any changes in the rate schedules for regulated electric, natural gas or steam service on file with and approved by the Missouri Public Service Commission in either the Aquila Networks-MPS or Aquila Networks-L&P service territories.

Response:

Public Counsel does not possess enough information to admit or deny this request. At this juncture in the proceeding, Public Counsel has absolutely no way of ascertaining what the Commission will or will not order in this proceeding. Therefore, Public Counsel denies RFA No. 1.

2. Please admit that in the event that the Missouri Public Service Commission grants the relief requested by Aquila in its Application, to include its Missouri works and system to the collateral pool to support the \$430,000,000 Credit Agreement will not cause any immediate and direct deterioration in the quality of service provided to the public in the State of Missouri in the Aquila Networks-MPS and Aquila Networks-L&P service territories.

Response:

Public Counsel does not possess enough information to admit or deny this request. The provision of service is wholly within the purview of Aquila's management. Public Counsel is aware that in the informal interviews Aquila witness Empson stated Aquila intended to provide safe and reliable service regardless of whether this Application is approved or not. (Transcript Informal Interview p. 590, l. 11-22). Therefore, Public Counsel denies RFA No. 2.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Douglas E. Micheel

BY:



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been faxed, mailed or hand-delivered to the following counsel of record on this 29th day of August 2003:

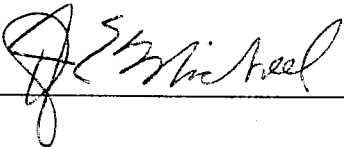
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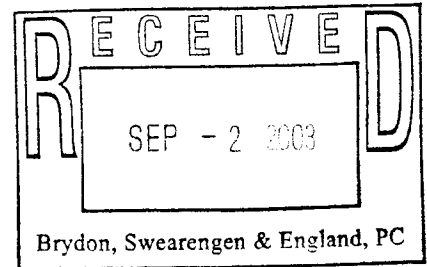
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/s/ **Douglas E. Micheel**



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,)
Works or System in Order to Secure)
Revised Bank Financing Arrangements)

Case No. EF-2003-0465

APPLICANT'S FIRST REQUEST FOR ADMISSIONS TO THE STATE OF MISSOURI,
ATTORNEY GENERAL'S OFFICE

Comes now Applicant, Aquila, Inc. ("Aquila"), pursuant to Commission Rule 4 CSR 240-2 090(1) and Civil Rule 59.01 and submits the following Request for Admissions:

1. Please admit that in the event that the Commission grants the relief requested by Aquila in its Application filed in this case Aquila will not be authorized by such an order to make any changes in the rate schedules for regulated electric, natural gas or steam service on file with and approved by the Missouri Public Service Commission in either the Aquila Networks-MPS or Aquila Networks-L&P service territories.

Response:

The State cannot predict what an order not yet written by the PSC will say, and accordingly, denies RFA No. 1.

2. Please admit that in the event the Missouri Public Service Commission grants the relief requested by Aquila in its Application, to include its Missouri works and system to the collateral pool to support the \$430,000,000 Credit Agreement will not cause any immediate and direct deterioration in the quality of service provided to the public in the State of Missouri in the Aquila Networks-MPS and Aquila Networks-L&P service territories.

Response:

Denied.

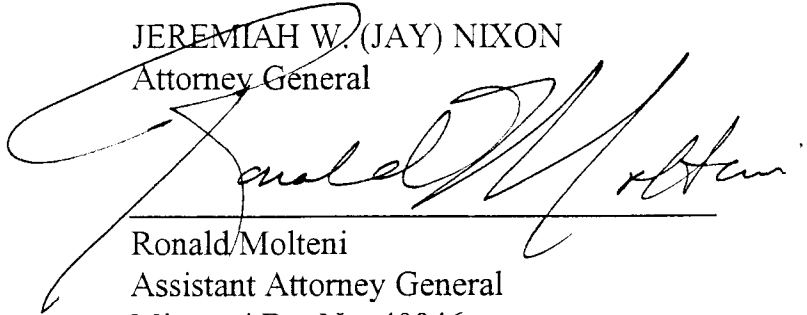


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Attorneys for Applicant

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General

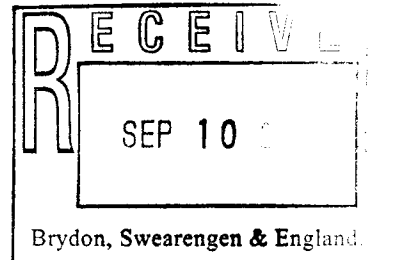
A large, stylized handwritten signature in black ink, appearing to read 'Ronald Molteni', is written over a horizontal line. The signature is fluid and cursive, with a large initial 'R' and a long, sweeping tail.

Ronald Molteni
Assistant Attorney General
Missouri Bar No. 40946

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Attorneys for State of Missouri

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI



In the matter of the Application by)
Aquila, Inc. for authority to As-)
sign, Transfer, Mortgage or Encum-)
ber its Franchise, Works or System)

EF-2003-0465

SIEUA/AGP RESPONSE TO APPLICANT'S
FIRST REQUEST FOR ADMISSIONS

1. Please admit that in the event that the Commission grants the relief requested by Aquila in its Application filed in this case Aquila will not be authorized by such an order to make any changes in the rate schedules for regulated electric, natural gas or steam service on file with and approved by the Missouri Public Service Commission in either the Aquila Networks-MPS or Aquila Networks-L&P service territories.

Response:

This request is objectionable because it does not seek admission of a fact but rather seeks disclosure of opinions. Without waving that objection, these parties do not have sufficient information or the ability to predict with certainty what relief the Commission may grant or what the Commission may authorize or not authorize in this proceeding. Reasonable inquiry would not enhance the information known or readily obtainable to this party. Request to admit No. 1 is therefore denied.

2. Please admit that in the event that the Missouri Public Service Commission grants the relief requested by Aquila

in its Application, to include its Missouri works and system to the collateral pool to support the \$430,000,000 Credit Agreement will not cause any immediate and direct deterioration in the quality of service provided to the public in the State of Missouri in the Aquila Networks-MPS and Aquila Networks-L&P service territories.

Response:

This request is objectionable because it does not seek admission of a fact but rather seeks disclosure of opinions. Without waiving that objection, these parties disclaim any ability to predict what steps Aquila will take in response to any Commission order of presently unknown content or to control those steps. Decisions regarding the provision of utility service and the quality and reliability thereof are within the control of Aquila management. Reasonable inquiry would not enhance the information known or readily obtainable to these parties and such

inquiry would be directed to the requesting party. Request to admit No. 2 is therefore denied.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.



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ATTORNEYS FOR SEDALIA INDUSTRIAL
ENERGY USERS' ASSOCIATION and AG
PROCESSING INC. A COOPERATIVE

September 9, 2003

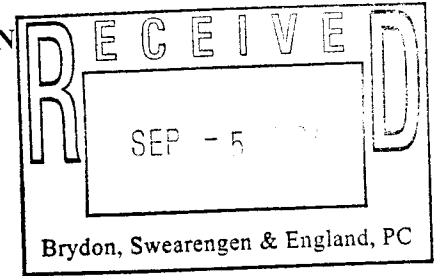
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Application to Intervene by U.S. mail, postage prepaid or by electronic means to all parties by their attorneys of record as provided by the Secretary of the Commission.


Stuart W. Conrad

Dated: September 9, 2003

**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, Works or System in Order to)
Secure Revised Bank Financing)
Arrangements)

Case No. EF-2003-0465

**STAFF'S RESPONSES TO APPLICANT'S FIRST REQUEST FOR ADMISSIONS TO
THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION**

Comes now the Staff of the Missouri Public Service Commission and for its responses to Applicant, Aquila, Inc. ("Aquila"), First Request for Admissions to the Staff of the Missouri Public Service Commission made pursuant to Commission Rule 4 CSR 240-2.090(1) and Civil Rule 59.01 states:

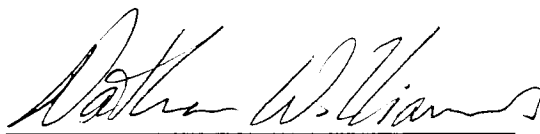
1. Please admit that in the event that the Commission grants the relief requested by Aquila in its Application filed in this case Aquila will not be authorized by such an order to make any changes in the rate schedules for regulated electric, natural gas or steam service on file with and approved by the Missouri Public Service Commission in either the Aquila Networks-MPS or Aquila Networks-L&P service territories.

Response: Denied. The Staff does not and cannot know what additional relief the Commission may grant in an order that includes granting to Aquila, Inc. the relief it seeks in its application in this case. Aquila, Inc. has pending before this Commission both general rate increase cases and a rate design case.

2. Please admit that in the event the Missouri Public Service Commission grants the relief requested by Aquila in its Application, to include its Missouri works and system to the collateral pool to support the \$430,000,000 Credit Agreement will not cause any immediate and direct deterioration in the quality of service provided to the public in the State of Missouri in the Aquila Networks-MPS and Aquila Networks-L&P service territories.

Response: Denied. The Staff does not and cannot know how such an order would impact Aquila, Inc.'s decisions as to the quality of service it would provide to the public in the Company's regulated electric and gas service territories.

It is known that Aquila, Inc. does not have the same access to capital to support its Missouri regulated electric and gas service territories as the Missouri service territories served by the other the investor-owned utilities. Aquila, Inc. does not have the same access to capital as Missouri service territories served by other investor-owned utilities because of the negative financial consequences of Aquila, Inc.'s unregulated operations. Inclusion of Aquila, Inc.'s Missouri works and system in the collateral pool to support the \$430,000,000 three-year loan will not increase the funds available to provide service to customers in Aquila, Inc.'s Missouri regulated electric and gas service territories. Inclusion of Aquila, Inc.'s Missouri works and system in the collateral pool to support the \$430,000,000 three-year loan will reduce the Company's ability to raise additional capital to provide service to Aquila, Inc.'s Missouri regulated electric and gas service territories at a time when Aquila, Inc. has fewer options available to it for raising capital than the other electric or gas utilities in Missouri.



Nathan Williams
Senior Counsel
Missouri Bar No. 35512

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or e-mailed to all counsel of record this 5th day of September 2003.

