Exhibit No.:
Issues: *SO2 Emissions Expense and Inventories; Injuries and Damages Expenses, Transmission Reliability, C.W. Mining Contract; EPA Auction Proceeds; MPS Share of JEC Expenses; and L&P Share of Iatan Expenses*
Witness: *Graham A. Vesely*
Sponsoring Party: *MoPSC Staff*
Type of Exhibit: *Direct Testimony*
Case No.: *ER-2007-0004*
Date Testimony Prepared: *January 18, 2007*

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

DIRECT TESTIMONY

OF

GRAHAM A. VESELY

AQUILA, INC. d/b/a AQUILA NETWORKS-MPS - Electric and AQUILA NETWORKS-L&P – Electric

CASE NO. ER-2007-0004

Jefferson City, Missouri
January 2007

****Denotes Highly Confidential Information****

NP

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P, for authority to file tariffs increasing electric rates for the service provided to customers in the Aquila Networks-MPS and Aquila Networks-L&P service area.	))))))	Case No. ER-2007-0004

AFFIDAVIT OF GRAHAM A. VESELY

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

Graham A. Vesely, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Direct Testimony in question and answer form, consisting of 9 pages to be presented in the above case; that the answers in the foregoing Direct Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.

Graham A. Vesely

Graham A. Vesely

Subscribed and sworn to before me this 17th day of January 2007.

D. SUZIE MANKIN
Notary Public - Notary Seal
State of Missouri
County of Cole
My Commission Exp. 07/01/2008

D Suzie Mankin

Notary Public

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GRAHAM A. VESELY

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and AQUILA NETWORKS-L&P - Electric

CASE NO. ER-2007-0004

DIRECT TESTIMONY OF

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AQUILA, INC. d/b/a AQUILA NETWORKS-MPS - Electric

and AQUILA NETWORKS-L&P - Electric

CASE NO. ER-2007-0004

Q. Please state your name and business address.

A. Graham A. Vesely, 615 East 13th Street, Kansas City, MO 64106.

Q. By whom are you employed and in what capacity?

A. I am a Regulatory Auditor for the Missouri Public Service Commission (Commission).

Q. Please describe your education background.

A. In May of 1985, I received a Bachelor's degree in Civil Engineering from Saint Martins College, Olympia, Washington. In May of 1998, I completed an MBA degree with a focus in Accounting from Central Missouri State University, Warrensburg, Missouri. I am a Certified Public Accountant with a permit to practice in Missouri.

Q. Please describe your employment history.

A. In May of 1985, I was employed as a Facilities Maintenance Engineer by the United States Air Force. From March 1988 until May 1995, I was employed by the United States Army Corps of Engineers as a member of a construction management group. Subsequently, I began working with the engineering firm of Malsy & Associates, Lincoln, Missouri, as a Civil Engineer. On February 26, 1999, I began my current employment with the Commission.

Q. What is the nature of your duties while in the employ of this Commission?

A. I am responsible for assisting in the audits and examinations of the books and records of utility companies operating within the state of Missouri.

Q. With reference to Case No. ER-2007-0004 have you made an investigation of the books and records of Aquila, Inc. d/b/a Aquila Networks-MPS (MPS) and Aquila Networks-L&P (L&P), two divisions of Aquila Inc. (Aquila or Company) relating to the proposed rate application?

A. Yes, with the assistance of other members of the Commission Staff (Staff).

Q. Have you filed testimony previously?

A. Yes. Schedule 1 attached to this direct testimony identifies the cases in which I have participated.

EXECUTIVE SUMMARY

Q. Please summarize your testimony.

A. Staff recommends continuing to use a cost for high-Btu coal that Aquila would have paid under the C.W. Mining contract. This is the position that Staff took previously in Aquila's last rate case, Case No. ER-2005-0436; Staff believes this is the appropriate course of action until it can be determined whether Aquila has exhausted all of its legal remedies in attempting to secure damages from C.W. Mining's termination of that contract.

Staff recommends a three-year average of cash payments for injuries and damages expense; SO2 emissions allowances expense at test year level; SO2 emissions inventory cost at September 30, 2006, reduced by the amount of EPA auction proceeds held in Account 254; amortization over a five-year period of the balance at September 30, 2006, of the amount of EPA auction proceeds held in Account 254; annualized Southwest Power Pool fees and revenues; transmission expense; Aquila's share of Jeffrey Energy Center and Iatan expenses.

Q. What knowledge, skills, experience, training, or education do you have in these subjects?

A. I have acquired general knowledge of these topics through my experience in previous rate cases before this Commission. I have reviewed the testimony and work papers from the previous MPS and L&P cases. I have reviewed the Company's testimony, work papers, and data request responses related to these topics. In addition, my college coursework included accounting, auditing, and engineering classes. During my employment with the Commission I have attended formal training on regulatory issues and received training from senior audit Staff throughout the course of this and previous audits.

Q. What adjustments are you sponsoring in Case No. ER-2007-0004?

A. I am sponsoring the following adjustments to the Income Statement Accounting Schedule 9:

MPS: S-8.1, S-36.2, S-84.3, S-15.1, S-80.4, S-84.4, S-85.19, S-91.3

L&P: S-8.2, S-83.3, S-16.1, S-36.2, S-11.3, S-13.2, S-14.2, S-15.1, S-18.3, S-19.3, S-20.3, S-21.3, S-34.3, S-79.4, S-84, 16, S-89.2.

I am also sponsoring the following addition to Schedule 2-Rate Base: SO_2 emissions allowances inventories.

C.W. MINING HIGH-BTU COAL CONTRACT

Q. Please describe this portion of your testimony.

A. I testified to this issue in Case ER-2005-0436, explaining in detail the history of this prematurely terminated coal contract. Under this coal supply contract, Aquila would have received high-Btu coal at a much more favorable price than it began paying once the supplier permanently stopped deliveries, claiming inability to perform under the terms of the contract. In Case ER-2005-0436, Staff took the position that, before customers should be asked to forgo the cost savings that Aquila would have experienced under the C.W. Mining contract, Aquila should be expected to prudently pursue all its legal remedies, and should otherwise be found to not have acted imprudently in any way in deciding to contract with this supplier. Staff believes this matter has not yet been fully resolved, and therefore maintains its position taken in ER-2005-0436. For additional background, I have included in my Schedule 2 attached hereto, the portion of my direct testimony filed in Case No. ER-2005-0436 related to this issue.

Q. What impact on Staff's revenue requirement in the current case does this issue have?

A. Staff witness Charles R. Hyneman has included in his calculations fuel prices the price for high-Btu coal that Aquila would be currently paying if the C.W. Mining contract had not terminated prematurely. This price is considerably lower than current market prices for coal of similar properties. Staff witness Cary G. Featherstone includes, in his direct testimony in the current case, an additional discussion of Staff's recommended treatment of this item.

<u>INJURIES AND DAMAGES EXPENSE</u>

Q. Please explain how the Company accounts for the costs of work-related injuries to persons and damages to property.

A. For both MPS and L&P, Aquila charges to FERC Account 925, <u>Injuries and Damages</u>, a variety of estimated expense accruals, including claims for general liability, auto liability, and workers compensation. Such accrual charges are related to the passage of time and the occurrence of casualty events, but are not related to actual payment of claims. When

Account 925 is debited for any of these accrual amounts, Account 228 is credited by the same amount.

Q. Where does Aquila reflect the actual amounts paid for injuries and damages claims?

A. When an actual payment is made, the amount is debited to Account 228.

Q. How did you determine the proper level of Staff's annualized injuries and damages expense?

A. I replaced the test year claims accrued to Account 925 with the three-year average, ended September 30, 2006, of cash payments reflected in Account 228. This takes into account the fluctuations of Aquila's actual cost of electric injuries and damages expense, for MPS and L&P operations, respectively.

SO_2 EMISSIONS ALLOWANCES

Q. What were your responsibilities in this area?

A. I was responsible for including in the Staff's case the annualized level of expense Aquila pays to secure rights in accordance with federal regulations to produce sulfur dioxide emissions from its power plants as a result of burning fossil fuels. Aquila secures these rights in part by purchasing emission credits, or allowances, which are then held in reserve until they are either used up by Aquila or possibly, if not entirely needed for its operations, sold to other utilities. I have included in rate base for MPS and L&P, respectively, the unused level of emissions allowances purchased that Aquila carried on its books at September 30, 2006, at the 13-month average shown by Aquila.

Q. How did you compute the annualized expense of SO_2 allowances used each year due to the sulfur content of the fuel Aquila burns for electrical generation?

A. Aquila is required to use one emission allowance credit for each ton of sulfur emitted in the process of burning fuel at its power plants. Each year the federal Environmental Protection Agency (EPA) issues a certain number of allowances to every electric utility at no cost. The EPA determined this allotment of no-cost allowances based on the amount of sulfur emissions that a utility produced during the 1985-1987 period. Under this approach any increased generation over the 1985-1987 levels requires electric utilities to either refrain from also increasing their sulfur emissions (by burning cleaner coal or installing smokestack scrubbers), or to incur the cost of acquiring additional allowances. Aquila has offered that during the 1985-1987 period it was running its Sibley plant at a low percent of capacity because it was more economical instead to buy power from the much newer and more efficient Iatan and/or JEC plants. Because of this, the EPA has ever since issued Aquila relatively few no-cost sulfur allowances. Aquila has offered a similar explanation regarding the Lake Road plant it later acquired. However, since that time Sibley has undergone extensive modifications to increase its efficiency and permit it to use cleaner-burning coal. The result has been that Aquila uses the Sibley plant much more than it used to; for example, Staff had previously obtained information indicating that the amount of coal used at Sibley, in terms of its heating value, has nearly tripled between 1985 and 2002. Though Sibley and Lake Road burn a lower sulfur coal than in the 1985-1987 period, the increased coal usage nonetheless now results in Aquila needing to buy additional SO_2 emission allowances beyond those allotted to it each year at no cost by the EPA. I have reviewed the allowances expense charged to the test year and recommend using that level in Staff's direct case. Staff will continue its discovery on this item and will update this expense, for MPS and L&P, respectively, in its December 31, 2006, updated filing.

PROCEEDS FROM EPA AUCTION OF EMISSIONS ALLOWANCES

Q. Please explain what this item is.

A. Each year, the Environmental Protection Agency withholds some of the no-cost allowances it issues to Aquila and auctions them off to the highest bidder. All owners of coal plants receive this treatment, and Aquila has been accumulating the proceeds of the sale as a liability in Account 254, which serves as an offset to the value of the emissions allowances held in inventory. Since it considers the balance in Account 254 to have become material, the Company has proposed beginning to amortize the balance, at September 30, 2006, over a five year period. Staff is agreeable to this treatment, for both MPS and L&P, which has the same effect on rates as recognizing an increase in revenue, or a decrease in expense.

MPS SHARE OF JEC EXPENSE, L&P SHARE OF IATAN EXPENSES

Q. Please explain the Iatan pension expense adjustment.

A. Kansas City Power & Light operates the Iatan plant and charges Aquila-L&P its 18% share of all operating expenses, including employee pension expense. Aquila has explained that an adjustment to the amounts accrued throughout the test year is necessary to remove 2004 true-up amounts made in 2005. Also, 2005 true-up items made in 2006 must be added back to the test year. The end result of this adjustment process is to produce Aquila-L&P's normalized level of its share of Iatan expenses not reflected elsewhere.

Q. Please explain the adjustment to Aquila-MPS' share of JEC expense.

A. Westar is the operating partner at JEC and it bills Aquila for its 8% ownership share of operating expenses. Aquila has explained that, in order to normalize its test year bookings of these shared expenses, all out-of-period entries made in 2005 relating to the year

2004 need to be removed, and all true-up entries relating to 2005 made in the year 2006 must be added back to 2005. Additional adjustments were necessary to reflect a revised A&G expense loading rate. I have accepted Aquila's adjustment in this area as being correct.

TRANSMISSION EXPENSE

Q. Please explain your adjustment in this area.

A. Aquila has contracts securing the ability to use the transmission lines owned by other companies or organizations, in order to be able to receive the power it purchases under certain firm commitments. For MPS I have annualized the fixed transmission expense required to receive power under the Gray County and NPPD-CNS contracts. I have further included the costs of transmission-only contracts with AEC, JEC, and L&P. For L&P I have annualized the transmission expense required to receive power under the GCWE and NPPD-GGS contracts. I have further included the costs of transmission-only contracts with AEC and MPS.

Q. How did Staff treat transmission expense for non-fixed purchases of energy?

A. For the MPS system, Aquila is indicating that the test year level of this expense has increased greatly since the last case, and even more so, on an annualized basis, as evidenced by the Company's adjustment. Staff has left this portion of transmission expense at test year level, as it has not completed discovery in this area. Staff will complete it discovery for this item and will reflect any revisions to its position in its December 31, 2006, filing. For the L&P system the non-fixed transmission expense increase has not been as large, but is still significant in percentage terms. Therefore, here also, Staff recommends using the test year level at this time, with any increases beyond that to be reflected after further discovery, in Staff's December 31, 2006, updated filing.

<u>TRANSMISSION RELIABILITY/RTO EXPENSE</u>

Q. Please explain this item.

A. Aquila has stated that as of July 1, 2005, it ended its membership in the Mid-Continent Area Power Pool (MAPP) and began its membership in the Southwest Power Pool (SPP). SPP is a regional transmission operator (RTO), who on its website states that it is "mandated by the Federal Energy Regulatory Commission (FERC) to ensure reliable supplies of power, adequate transmission infrastructure, and competitive wholesale prices", throughout the portion of the transmission grid under its jurisdiction. For both MPS and L&P, I have annualized the monthly SPP membership fees, and eliminated test year MAPP fees.

<u>TRANSMISSION RELIABILITY/RTO REVENUES</u>

Q. What are RTO revenues?

A. As explained above, Aquila became a member of SPP, beginning July 1, 2005. Just as Aquila pays fees for access to SPP membership assets, it also receives revenues from SPP for permitting others to use its transmission plant assets.

Q. What adjustment have you made for RTO revenues?

A. As Aquila was only a member of SPP during the second half of the test year, revenues from SPP membership must be annualized, and revenues received in 2005 from MAPP must be removed, in order to the produce the normalized RTO revenues levels for MPS and L&P.

Q. Does this conclude your direct testimony?

A. Yes, it does.

GRAHAM A. VESELY

CASE PARTICIPATION

Date Filed	Issue	Case Number	Exhibit	Case Name
5/13/1999	Maintenance Expense Normalization	ER99247	Direct	St. Joseph Light & Power Company
5/13/1999	Maintenance Expense Normalization	EC98573	Direct	St. Joseph Light & Power Company
5/13/1999	Customer Growth	EC98573	Direct	St. Joseph Light & Power Company
5/13/1999	Customer Growth	ER99247	Direct	St. Joseph Light & Power Company
5/13/1999	Maintenance Expense	GR99246	Direct	St. Joseph Light & Power Company
5/13/1999	Normalization	GR99246	Direct	St. Joseph Light & Power Company
3/1/2000	Pension Asset Transfer	GM2000312	Rebuttal	Atmos Energy Company and Associated Natural Gas Company
4/19/2001	Payroll	GR2001292	Direct	Missouri Gas Energy, A Division of Southern Union Company
4/19/2001	Payroll Taxes	GR2001292	Direct	Missouri Gas Energy, A Division of Southern Union Company
4/19/2001	Cash Working Capital	GR2001292	Direct	Missouri Gas Energy, A Division of Southern Union Company
4/19/2001	Bonuses	GR2001292	Direct	Missouri Gas Energy, A Division of Southern Union Company
12/6/2001	Payroll Taxes	EC2002265	Direct	UtiliCorp United Inc. d/b/a Missouri Public Service
12/6/2001	Incentive Compensation	EC2002265	Direct	UtiliCorp United Inc. d/b/a Missouri Public Service
12/6/2001	Payroll	EC2002265	Direct	UtiliCorp United Inc. d/b/a Missouri Public Service
12/6/2001	Fuel Inventories	ER2001672	Direct	UtiliCorp United Inc. d/b/a Missouri Public Service

Date Filed	Issue	Case Number	Exhibit	Case Name
12/6/2001	Fuel Inventories	EC2002265	Direct	UtiliCorp United Inc. d/b/a Missouri Public Service
12/6/2001	Incentive Compensation	ER2001672	Direct	UtiliCorp United Inc. d/b/a Missouri Public Service
12/6/2001	Payroll	ER2001672	Direct	UtiliCorp United Inc. d/b/a Missouri Public Service
12/6/2001	Employee Benefits	EC2002265	Direct	UtiliCorp United Inc. d/b/a Missouri Public Service
12/6/2001	Payroll Taxes	ER2001672	Direct	UtiliCorp United Inc. d/b/a Missouri Public Service
12/6/2001	Employee Benefits	ER2001672	Direct	UtiliCorp United Inc. d/b/a Missouri Public Service
1/22/2002	Incentive Compensation	EC2002265	Surrebuttal	UtiliCorp United Inc. d/b/a Missouri Public Service
1/22/2002	Incentive Compensation	ER2001672	Surrebuttal	UtiliCorp United Inc. d/b/a Missouri Public
8/16/2002	Fuel Inventory	ER2002424	Direct	The Empire District Electric Company
8/16/2002	Fuel and Purchase Power	ER2002424	Direct	The Empire District Electric Company
10/16/2002	Fuel and Purchase Power Expense	ER2002424	Surrebuttal	The Empire District Electric Company
12/9/2003	Fuel and Purchase Power Expense	ER20040034	Direct	Aquila, Inc.
1/26/2004	Fuel and Purchase Power Expense	ER20040034	Rebuttal	Aquila, Inc.
2/4/2004	Fuel and Purchase Power Expense	ER20040034	Surrebuttal	Aquila, Inc.
10/14/2005	Overview of Electric Generation; Fuel and Purchased Power Expense; Fuel Prices; Demand Charges-Fuel Inventories; Transmission Expense; Pipeline Reservation Charge; and Emission Allowances	ER20050436	Direct	Aquila, Inc. d/b/a Aquila Networks-MPS – Electric and Aquila Networks-L&P - Electric
12/13/2005	Coal Prices; Fuel Oil Prices; SO2 Emissions	ER20050436	Surrebuttal	Aquila, Inc. d/b/a Aquila Networks-MPS – Electric and Aquila Networks-L&P – Electric
2006	Kansas City Power and Light Company	ER20060314	Direct, Surrebuttal	Corporate Project Costs, SO2 Emissions Allowances, Injuries and Damages Expense, Advertising Expense
12/2006	Algonquin Water Resources of Missouri, LLC	WR20060425 & SR-2006-0426 (Consolidated)	Direct, Rebuttal, Surrebuttal	Rate Base, Plant in Service, CIAC, Payroll Expense

INFORMAL CASES

Raytown Water Company
Timbercreek Sewer Company
Silverleaf Resorts
Taney County Utilities
Stockton Hills

provided the coal and freight contract prices in effect at June 30, 2005 to Staff witness Elliott for input to the Staff's fuel model.

Natural Gas, Fuel Oil for Generation

In the section above titled "Overview of Electric Generation" I list the plants at which Aquila uses natural gas and/or fuel oil for generation, whether as a primary fuel source or as an alternate. To reiterate, I have provided the most recent fuel oil price Aquila paid to Staff witness Elliott for input to the fuel model. In his direct testimony, Staff witness Hyneman is sponsoring the natural gas prices that the Staff is using in this case.

TERMINATION OF C.W. MINING HIGH-BTU COAL CONTRACT

Q. Please describe how Aquila came to enter into a contract with C.W. Mining for the supply of high-Btu coal to be used at its Sibley and Lake Road plants?

A. In its response to Staff Data Request No. 287, Aquila indicated that it sent a request for proposal (RFP) to six firms in April 2003, one of which was C.W. Mining, seeking a suitable source of coal supply. The existing high-Btu coal contract with Genwal Coal Company was due to expire at the end of 2003.

Q. What responses did Aquila receive to the RFP?

A. Aquila received proposals from four suppliers, including C.W. Mining.

Q. What selection process did Aquila use before finally deciding to award the contract to C.W. Mining?

A. In its response to Staff Data Request 289 Aquila indicates that for reasons relating to either the proposed quantity or quality of the coal, the number of potential suppliers was narrowed down to Andalex Resources (Genwal), and C.W. Mining. The two proposals were close in price, but C.W. Mining's coal performed better in the test burns and was ultimately selected.

Q. What were the terms of the C.W. Mining contract?

A. Aquila signed the contract in September, 2003 to commence ** ____ **

Q. Had Aquila previously purchased coal from C.W. Mining?

A. Yes. In response to Staff Data Request No. 303 Aquila indicated having previously purchased coal from C.W. Mining, at least as recently as November 1999.

Q. Briefly discuss how the contract progressed after signing.

A. Before the first coal delivery was even due, by letter dated ** ____ **

Q. Did C.W. Mining provide any other contract status updates?

A. Yes. By letter dated ** ____

____________________ **

Q. In summary, is it correct that even before terminating the contract prematurely C.W. Mining made coal deliveries that failed to comply with the contract?

A. Yes. In addition to the above-cited correspondence by C.W. Mining documenting reduced coal deliveries, Aquila's letter of ** ____________________ ** raised the issue of both unsatisfactory coal quantity and quality.

Q. Did Aquila dispute the termination of the contract and have its legal counsel notify C.W. Mining of its position?

A. Yes. By letter dated ** ____________________ **

Q. Did Aquila take legal action against C.W. Mining?

A. Yes. On July 5, 2005 Aquila filed a law suit in the U.S. Circuit Court, District of Utah Central Division, seeking recovery of alleged damages from C.W. Mining.

Q. How has Aquila been impacted financially by C.W. Mining's failure to comply with the contract?

A. The contract price in 2004 was ** ______ ** per ton of coal. In May of 2004 Aquila made its first purchase of high-Btu coal to make up for shortfalls in the C.W. Mining contract; by this time the market price had increased to the point where, as indicated in Data Request 163, Aquila generally paid ** _________ ** per ton for coal of similar quality for the remainder of the year. Aquila did buy some coal from a source in Illinois for ** ___ ** per ton but its higher sulfur content made its ultimate cost higher and therefore purchases of this coal have been discontinued. As the market price for replacement coal went up further, Aquila increasingly began paying as much as ** ______ ** per ton in 2005 for a suitable coal from Consolidation Coal Company on a spot purchase basis. This is the same source for which Aquila has provided the Staff with the draft contract, mentioned above, that the Staff will use for setting the upper end of the range of the price of high-Btu coal if the contract is signed by the October 31, 2005 true-up date. Currently, this draft contract provides for ____ **. For comparison purposes, the C.W. Mining contract required coal to be delivered in 2005, 2006, 2007, and 2008 at a price/ton of ** ____________________________ ** respectively.

Q. What is the Staff recommending be done with the financial impact of the C.W. Mining contract issue?

A. First of all, a distinction needs to be made between the impact under current rates and the impact on the new rates that the Commission may issue in this rate case. Current rates were set previously in Aquila's Case Nos. ER-2004-0034 and HR-2004-0024 wherein the Commission ordered that fuel and purchased power expenses incurred between April 22, 2004 and April 22, 2006 be trued up and any over-collections refunded to customers as computed under the terms of the IEC contained in that case. Therefore, the additional high-Btu coal costs incurred under current rates will tend to increase the amount of total fuel and purchased power expense that is subject to true-up and will, all else being equal, tend to decrease, or completely eliminate, the likelihood of customer refunds. Alternatively, it is possible that due to other factors not related to the C.W. Mining issue, Aquila's total fuel and purchased power expense on the IEC true-up date will be too high to permit full or even partial recovery of the additional cost of high-Btu coal. This detrimental impact on Aquila's earnings would not be the result of any defect in the terms of the IEC as agreed upon by all parties and included in said previous rate case, but rather would be entirely due to the non-performance of the C.W. mining contract leaving Aquila in essence completely exposed to rising coal market prices in 2004 and 2005. Staff witness Cary G. Featherstone expands on this and other factors that will affect Aquila's cost recovery under the current IEC mechanism put in place in the previous case. Second, based on all the available evidence, new rates will be higher than they otherwise would be if the C.W. Mining contract had progressed as scheduled since the much lower prices included in that contract would have carried into 2006, 2007, and 2008. Specifically, the Staff recommends that the bottom of the IEC built into permanent rates be calculated using the price that Aquila would be paying for high-Btu coal if the C.W. Mining contract were still in effect according to its original terms. The Staff also conditionally recommends that the price of the more expensive replacement high-Btu coal necessitated by C.W. Mining's failure to deliver be used in computing the refundable top of the IEC proposed in this case.

Q. Under what conditions is the Staff recommending that the cost of the more expensive replacement high-Btu coal be made part of the IEC calculation in this case?

A. Since in a more normal course of business Aquila would be receiving coal at the lower prices included in the C.W. Mining contract instead of the higher prices it is actually paying, the Staff recommends that Aquila be required to diligently and exhaustively pursue recovery of all damages through the legal action it has brought against C.W. Mining before being allowed to pass any of these higher costs permanently on to ratepayers. Any funds Aquila recovers as a result of litigation must offset the cost of coal. If at a future date the Commission finds that Aquila did not adequately pursue recovery of its damages through the legal process, some or all of the additional costs of high-Btu coal above those it was scheduled to pay under the C.W. Mining contract should be adjusted out of Aquila's recoverable fuel costs.

Q. How does the Staff recommend computing the monetary damages Aquila must seek recovery of in its legal action against C.W. Mining?

A. Aquila should pursue any and all additional costs traceable to C.W. Mining's failure to perform according to contract, but at a minimum these should include an assessment of direct coal costs, freight costs, emission allowance costs if due to higher sulfur content of replacement coal, and litigation costs.

DEMAND CHARGES-PURCHASED POWER CAPACITY CONTRACTS

Q. Please list all of Aquila's capacity contracts as of the end of the update period.

A. Aquila had contracted with the following organizations to secure firm purchased power arrangements:

MPS

- Nebraska Public Power District Cooper Nuclear Station (NPPD-CNS)-75MW
- Gray County Wind Energy (GCWE)-40 MW

L&P

- Nebraska Public Power District Gerald Gentleman Station Unit Participation Agreement NPPD-GGS- 100 MW
- Gray County Wind Energy (GCWE)-20 MW

Q. How did you reflect the fixed capacity (demand) costs in this case?