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BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

February 25, 2004  
Jefferson City, Missouri  
Volume 8

In the Matter of Aquila, Inc., d/b/a Aquila )  
Networks - L&P and Aquila Networks - MPS, to )Case No.  
Implement a General Rate Increase in Electricity)ER-2004-0034

In the Matter of the Request of Aquila, Inc., )  
d/b/a Aquila Networks - L&P, to Implement a )Case No.  
General Rate Increase in Steam Rates. )HR-2004-0024

KENNARD JONES, presiding,  
Regulatory Law Judge

REPORTED BY:  
Jennifer L. Leibach  
ASSOCIATED COURT REPORTERS

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## PROCEEDINGS

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JUDGE JONES: Good morning. This is case number ER-2004-0034. My name is Kennard Jones, I'm the Administrative Law Judge presiding over this matter.

As all of you here know, the Circuit Court of Cole County has issued a Preliminary Order of Prohibition prohibiting these proceedings from going forward and stayed, in some manner. The purpose of this discussion is to address questions surrounding that writ.

Some preliminary questions I have that you all may want to consider are what issues don't include St. Joseph Power & Light in this case. What will happen on an operation of law date if nothing else happens in this matter? I'll give you all opportunity to catch up.

MR. MICHEEL: Could you repeat the second question, your Honor?

JUDGE JONES: Sure. What will happen on the operation of law date in this case if nothing else happens? A third question is can and should we consider the MPS portion of this case in light of the tariffs being filed together with the L&P portion.

MR. DOTTHEIM: Can you say that one more time?

JUDGE JONES: Can and should we consider the MPS portion of this case in light of the tariffs being filed together with the L&P portion? Tied into the second question

1 is a fourth question. A Preliminary Writ is in effect, the  
2 Pleadings for the Preliminary Writ are due March 17th,  
3 according to the preliminary order in prohibition. With  
4 regard to the operation of law date, what procedure should  
5 take place or be in place after that hearing is held on the  
6 prohibition?

7 MR. PAULSON: Can you go over that one again?

8 JUDGE JONES: What procedure should take place  
9 in this case in light of hearings on the Preliminary Writ  
10 Prohibition, and also what happens when the Commission issues  
11 an Order in the acquisition case, Case No. EM-2002-292.

12 MR. MICHEEL: A lawful order or an unlawful  
13 one?

14 JUDGE THOMPSON: Cute.

15 MR. DOTTHEIM: Judge, I assume when you said  
16 the Commission Orders an issue in the acquisition case,  
17 that's equivalent to the Report and Order deciding the issues  
18 that had been remanded to --

19 JUDGE JONES: Yes.

20 MR. DOTTHEIM: -- by the Supreme Court,  
21 ultimately by the Circuit Court?

22 JUDGE JONES: Yes. Okay. So those are some  
23 questions that we've come up with. I'm sure as a result of  
24 those questions, you all may come up with other ancillary  
25 questions.

1 JUDGE THOMPSON: They may come up with sillier  
2 ones, too.

3 MR. DOTTHEIM: We'll just save that for --

4 JUDGE JONES: If anyone has any input they  
5 want to throw in at this time, please feel free to do so.

6 MR. BOUDREAU: Judge Jones, Paul Boudreau for  
7 Aquila. Just a question, in terms of the questions that you  
8 have just posed to the parties, it's my understanding that  
9 the Commission will be looking for some of sort of written  
10 filing by the parties tomorrow morning?

11 JUDGE JONES: That's correct, Mr. Boudreau.

12 MR. BOUDREAU: And by 8:30 as I understand it,  
13 certainly before the 9:30 agenda discussion.

14 JUDGE JONES: Yes.

15 MR. BOUDREAU: Thank you.

16 MR. MICHEEL: Is there some way, Judge Jones,  
17 after we conclude this proceeding, that just so I -- I think  
18 I got the questions written down properly, but is there some  
19 way that you can e-mail those questions to us?

20 JUDGE JONES: What questions do you have?

21 MR. MICHEEL: What issues don't include St.  
22 Joe Light & Power? What will happen with the operation of  
23 law date if nothing else happens? Can and should MPS portion  
24 of the case be considered in light of the fact that L&P  
25 tariffs and MPS tariffs were filed together? The Preliminary

1 Writ is in effect and the answers are due March 17th, what  
2 impact does that have on the operation of the law date and  
3 what procedures should we take? What happens when the  
4 Commission issues an Order in EM-2002-292 with respect to the  
5 remanded issue?

6 JUDGE JONES: You have the questions correct.

7 MR. MICHEEL: Okay.

8 JUDGE JONES: So the answer to your question  
9 is no, then.

10 MR. MICHEEL: Good enough.

11 JUDGE JONES: I don't need to e-mail them  
12 then.

13 MR. DOTTHEIM: I think we may have jotted them  
14 down a little bit differently, so maybe if we circulate a  
15 list.

16 JUDGE ROBERTS: Judge Jones. I'm sorry, go  
17 ahead.

18 JUDGE JONES: What difference do you have, Mr.  
19 Dottheim?

20 MR. DOTTHEIM: Well, I don't have it word for  
21 word as Mr. Micheel.

22 MR. MICHEEL: I guess that's what I was trying  
23 to avoid, Judge. You know, I think we all have the gist of  
24 it, I just don't know that all of our questions are going to  
25 be exactly the same because we each took notes differently,

1 and I tried to take it down word for word, Judge, but I don't  
2 have that capability, and I read back to you what I thought  
3 you said, and those are the answers to the questions I'm  
4 going to answer.

5 JUDGE JONES: Mr. Dottheim, do you see a  
6 difference in where the issues are framed, the way you've  
7 taken them down?

8 MR. DOTTHEIM: Basically, basically no.

9 JUDGE JONES: Okay.

10 MR. DOTTHEIM: But I don't know that everyone  
11 perceives it in the same manner.

12 JUDGE MILLS: There's nothing magical or  
13 tricky about the phrasing.

14 MR. DOTTHEIM: Well, and I'm not thinking that  
15 there was anything of that nature.

16 JUDGE ROBERTS: Judge Jones, if I may, I mean,  
17 what I was going to say is I don't think you're limited to  
18 those questions. We worked through what problems we might  
19 foresee or what -- you know, what the immediate questions  
20 were, and had some sporadic discussion with the  
21 Commissioners, but not a whole lot. I don't know if you can  
22 see our notes, they may not mean much, but if there are other  
23 issues you see that -- that we haven't, by all means, address  
24 them.

25 I apologize, I was out of the room calling

1 Mark Comley and he's checking with his client to see if he  
2 needs to call in or respond to these inquiries, so I don't  
3 know what happened while I was out of the room, but the  
4 obvious problems, can the Commission act, can these things go  
5 into effect by operation of law, can they -- all the  
6 different permutations, as I said, if you see an issue that  
7 we didn't see, jump on it.

8 MR. MICHEEL: One other question, just about  
9 the procedure, is it EFAC'd by 8:30 or did you want us to  
10 deliver written copies up here or how does -- or does it  
11 matter?

12 JUDGE ROBERTS: I would say electronic is  
13 preferable just because that enhances our ability, and I'm  
14 just speaking as the Secretary of the Commission now, I mean,  
15 that enhances our ability to grab them, copy them, distribute  
16 them, all that sort of thing, but, you know, for example, you  
17 know, Stu Conrad is here from out of town, I don't know -- he  
18 probably does, but many of you are here from out of town.  
19 I don't know if you have your computers and the ability to go  
20 into EFAC and back around, and if you need to hand it to us  
21 in paper, that's fine, or if you -- I will say this as an  
22 aside.

23 We accept things on disc. I mean, if you have  
24 your laptop here and you're here from out of town, you don't  
25 have a way to get into EFAC, if you bring it to us on a disc,



1 if you want to print a cover letter that says this disc is my  
2 response, we would love it. Fewer pieces of paper we scan,  
3 the fewer mistakes and glitches show up, and we'll take your  
4 documents, and somehow they have a process of uploading them  
5 and they're electronic and that just keeps us moving, so.

6 JUDGE JONES: One thing I didn't do that I  
7 probably should do is take a role call of the parties that  
8 are here. We'll start over here with you, Ms. Woods, and  
9 please state who you are and who you're representing.

10 MS. WOODS: Shelly Woods, I'm representing the  
11 Missouri Department of Natural Resources.

12 MS. WHEELER: I'm Janet E. Wheeler,  
13 representing Aquila.

14 MJR. PAULSON: Major Craig Paulson,  
15 representing the Federal Executive Agencies.

16 MR. BOUDREAU: Paul Boudreau, with Brydon,  
17 Swearngen & England, 312 East Capitol Avenue, Jefferson  
18 City, appearing on behalf of Aquila, Inc.

19 MR. DOTTHEIM: Steven Dottheim, Post Office  
20 Box 360, Jefferson, City, Missouri, 65102, appearing on  
21 behalf of the Staff of the Missouri Public Service  
22 Commission.

23 MR. MICHEEL: Doug Micheel appearing on behalf  
24 of the Office of the Public Counsel.

25 MR. CONRAD: Stu Conrad appearing on behalf of

1 SIEUA and Ag Processing.

2 MR. WILLIAMS: Nathan Williams appearing on  
3 behalf of the Staff.

4 JUDGE JONES: Thank you all.

5 MR. DOTTHEIM: There's a matter as far as the  
6 questions are concerned as regarding the numbers, and that is  
7 there are allocations to Missouri Public Service, Aquila  
8 Networks, MPS, and Aquila Networks L&P, so even in answering  
9 -- and I don't mean to indicate an answer now, but it may be  
10 a situation where a party may take a view that the issue does  
11 not involve Aquila Networks L&P, but there may be some  
12 allocation involved.

13 I really don't know without thinking more  
14 about that and visiting with the technical staff as to  
15 whether that is in any manner a consideration in answering  
16 these questions. To -- so there may be additional work  
17 required of the parties in attempting to disaggregate the  
18 cases. I mean, the Staff would intend in providing responses  
19 tomorrow morning to address that matter.

20 JUDGE ROBERTS: And Mr. Dottheim, one thing  
21 that I also wanted to bring to the parties attention if -- if  
22 something needs to be rescheduled, the Commission has those  
23 five days open in March, and those are, at the moment, March  
24 15, 16, 17, March 25th and 26th. The Commission has April  
25 9th and April 19th when there's no hearing, and the

1 Commission has May 10th through 14th, and to meet the  
2 theoretical ten-day effective date for an order, I believe it  
3 would have to be -- if an Order were issued in this case, it  
4 would have to issue not later than May 20th, so that there's  
5 the obvious scheduling problem if the Commission doesn't go  
6 forward now, you know, when will it go forward in order to  
7 get all the work done and issue an Order before the deadline,  
8 and actually, I wasn't just addressing that to Mr. Dottheim,  
9 I'm sorry, I was just following after you spoke, that's to  
10 everybody.

11                   And I'm not suggesting that we wait or don't  
12 wait, I'm just saying we kept going through all these  
13 decision trees about if we wait, this is what happens, if we  
14 don't wait, this is what happens, the concern that I had  
15 about trying to do, I guess, the reason I wanted to follow  
16 your comment, issues that you were talking about trying to  
17 separate that in terms of common costs or rate design, things  
18 of that sort.

19                   If the Commission is able to decide those now,  
20 having to do with only whichever part it is, then is -- is  
21 the other half of the rate case, so to speak, are those  
22 parties going to be collaterally estopped to attack those  
23 issues or to address those issues if they're addressed now,  
24 if you understand what I'm saying. And maybe not, I just --  
25 these are among the many issues we've been trying to think

1 through in terms of how to cut the baby in half.

2 JUDGE MILLS: And to complicate the picture a  
3 little more, although those dates that Judge Roberts said  
4 appear open now, I know on a least a couple of them, there  
5 are rate hearings that are going to be -- that aren't on the  
6 calendar yet, but that have been published in the Register,  
7 so that they will be scheduled, so those date --

8 JUDGE ROBERTS: Are they rule makings?

9 JUDGE MILLS: Yes, those dates look open, but  
10 they may not actually be open in a couple of days.

11 MR. DOTTHEIM: And they're already committed,  
12 you're not saying that if the parties propose some other  
13 dates now, that those dates won't be committed, it just  
14 hasn't been transferred to the schedule.

15 JUDGE MILLS: That's correct.

16 MR. DOTTHEIM: Okay. Because of other  
17 matters, such as this case, I was -- I have been planning for  
18 a while to submit a Pleading suggesting -- there are hearings  
19 scheduled on March 18th and 19th, in an AmerenUE proceeding,  
20 and I was going to suggest that those dates be switched with  
21 March 25, 26.

22 I just haven't gotten around to filing  
23 anything, so, but then again, of course, there is the -- I  
24 think it's the Pleadings that are scheduled to be filed in  
25 Circuit Court on March 17th, so I would imagine some parties

1 may have some views even regarding dates March 15, 16, 17,  
2 18, and 19, so.

3 JUDGE ROBERTS: One of the thoughts that was  
4 -- that seems to be fleeting around, at least a discussion we  
5 had this morning was it would appear that the Commission  
6 cannot act as to the tariffs for -- is it MPS?

7 JUDGE MILLS: L&P.

8 JUDGE ROBERTS: L&P, I'm sorry, which we think  
9 means we can't reject them, we can't act, and the question is  
10 will they just go into effect by operation of law. One  
11 possible response to that was, well, the parties could  
12 conceivably go back to the Court and say oh, by the way, you  
13 need to stop the tariffs, too, and we think there's case law  
14 out there that says the Circuit Court cannot tell us, I mean,  
15 we think there are cases from higher courts that address  
16 whether or not courts can tell us what to do -- well, that's  
17 the question.

18 You understand what I'm asking. If you -- I  
19 don't know if that was one of the questions you wrote down,  
20 but if you can shed any light on that, we'd love to have it.

21 JUDGE MILLS: And on the related question of  
22 the tariff filing, and it's my understanding that this was  
23 simply one tariff filing, although there's some sheets that  
24 apply to L&P and some sheets that apply to MPS. It was filed  
25 all together as one rate case, one tariff filing, and so the

1 question that's -- one of the questions that was posed was, I  
2 think, No. 3 or No. 4, is if we can't proceed on half of it,  
3 can we nonetheless go ahead on the other half, and if the  
4 parties say we can, what's the authority for that.

5 JUDGE ROBERTS: And the -- let me continue on  
6 that. The problem -- the concern with that, the Commission  
7 has -- Mr. Dottheim has been here longer than I have and  
8 perhaps maybe a few others in the room, but as long as I've  
9 been here, the Commission has had a policy and believe that  
10 as a matter of law they cannot sort of split a tariff.

11 You know, if a company files a three-page  
12 tariff, and then subsequently decides we're going to, you  
13 know, change Page 2 or remove Page 2, the Commission's policy  
14 has always been it's all or nothing, you know, you've  
15 submitted a tariff filing, we will proceed on that tariff  
16 filing or you can withdraw it and refile the proper tariff,  
17 and to my knowledge, we've never split one in half in the way  
18 we're contemplating here if this tariff was, in fact, filed  
19 the way we think it was filed.

20 We're not sure if we want to open Pandora's  
21 box and establish a precedent that going forward we can do a  
22 little bit of a tariff but not all of it.

23 MR. DOTTHEIM: I don't know how this would  
24 figure in, but there are situations where corrections are  
25 made in tariffs --

1 JUDGE ROBERTS: Certainly.

2 MR. DOTTHEIM: -- that are filed, and  
3 corrections are made within that 30-day period between the  
4 issue date and the effective date, and these instances, I'm  
5 generally thinking of filings that are not general rate  
6 increase filings.

7 MR. MICHEEL: I would say this about that,  
8 Judge, that my experience has been with every single rate  
9 case, the Commission generally rejects the company's tariffs  
10 that are filed in total for that rate case, and then says if  
11 you file tariffs in compliance with this Order, that set  
12 rates consistent with our report and order, we will approve  
13 those rates, then the Staff of the Commission reviews those  
14 rates and gives the Commission a memorandum saying approve  
15 those rates, so I guess I just fundamentally disagree with  
16 your statement that the Commission hasn't separated tariffs,  
17 I mean in this case, the commission could reject all of the  
18 MPS filed tariffs and Order them to file tariffs consistent  
19 with -- I'll deal with that in my paper.

20 MR. DOTTHEIM: I think --

21 JUDGE MILLS: The question I was asking is can  
22 we -- can we reject the MPS tariffs and leave the L&P tariffs  
23 alone or vice versa. Can you separate those out, it wasn't  
24 so much the question of whether can we reject them or not, I  
25 think we may -- we may differ, but I think the Court has

1 talked about what we can do the L&P tariffs, and my question  
2 was can we say, you know, Aquila made this tariff filing, we  
3 liked the first 100 pages, the Court says we can't touch the  
4 second 100 pages, so we're going to act on the first 100  
5 pages without touching the second 100. That's the question I  
6 was looking for an answer.

7 MR. MICHEEL: I'm sorry, I misunderstood your  
8 question, and the Chief Judge's question.

9 JUDGE ROBERTS: Because you're absolutely  
10 correct that, Mr. Micheel, that's -- that is the procedure we  
11 follow in terms of rejecting tariffs and saying but if you  
12 filed one that got you this much of an increase, the  
13 Commission would approve it. Our concern here is if we say  
14 -- how we split it in half and you understand.

15 MR. MICHEEL: Yeah, I misunderstood the  
16 question initially, your Honor.

17 JUDGE ROBERTS: And I will say I'm having  
18 trouble artfully framing these issues because most of them  
19 have never come up before, and we're trying to figure out how  
20 to work through how we can move forward in light of where we  
21 stand today, and I'm not -- and I'm trying not to step on  
22 Judge Jones' case. This is his case, but between he and  
23 deputies and I, we all had multiple issues that we were  
24 trying to figure out.

25 MR. BOUDREAU: I guess my observation, as I



1 understand, the Judges are looking for some answers in  
2 exploring some -- I think it's a broader discussion, and I  
3 understand Judge Jones is the principal Regulatory Law Judge,  
4 but I understand the questions are broader, and my sense of  
5 it is you're looking for some guidance and some feedback from  
6 the parties about whether and how to proceed.

7                   My reading of the Preliminary Order is just  
8 that the Court has ordered the Commission to refrain from  
9 acting or continuing to act to process or hear the rate  
10 indication, doesn't really say anything about the tariffs, so  
11 there's a tariff filing and the Order, I think, just affects  
12 whether or not the hearings proceed, and I'm a little  
13 troubled -- I mean, it may just be the Commission is looking  
14 for some guidance about mechanically, practically speaking,  
15 how to react to it, but there's nothing in the Order that I  
16 see that says that tariffs have to be rejected.

17                   I mean, I'm hoping -- I'm just hoping that  
18 that's not a preconceived notion at this point.

19                   JUDGE ROBERTS: Our belief, unencumbered by  
20 more than a few hours legal research is that at this moment,  
21 all the tariffs, which have been filed by Aquila, are filed,  
22 tariffs with an operation of law date of, I believe --

23                   JUDGE THOMPSON: June 2nd.

24                   JUDGE ROBERTS: -- June 2nd, and if we don't  
25 act between now and June 2nd, they will go into effect.

1 The train has left the station and --

2 MR. BOUDREAU: I appreciate that  
3 clarification. Thank you.

4 JUDGE ROBERTS: And as to your comments that  
5 the Judges are looking for information, of course, ultimately  
6 the Commissioners are looking for the opinion of the  
7 attorneys in this case. We're here to work through the  
8 questions with you, and then obviously it will be a  
9 discussion for the Commissioners tomorrow morning at 9:30.

10 MR. BOUDREAU: Okay. And I appreciate that.  
11 Thank you.

12 JUDGE ROBERTS: And of course, you're welcome  
13 to attend the agenda. It's not a formal parties are allowed  
14 to address the issue and obviously there's some limits, but  
15 you can certainly come and listen, I'm sure it will be  
16 interesting.

17 MR. DOTTHEIM: And I don't know whether I  
18 should just say this for a response, but I took as the  
19 question from the RLJ going to the tariffs, I think there can  
20 be an argument that the Aquila case is based upon the  
21 tariffs, case is initiated either by a tariff filing or an  
22 application.

23 I think most utilities in the state, I think,  
24 for example, years ago, Southwestern Bell was -- was one of  
25 the utilities that didn't take that approach, and they --

1 well, they took the approach I believe of filing both an  
2 application and tariffs, and I think most utilities for  
3 general rate increase cases don't file applications because  
4 there's no operation of law date on an application, but of  
5 course, there's the statutory maximum of 11 months on  
6 tariffs, and I don't recall Aquila filing an application that  
7 the Aquila filing was a tariff filing. There was direct  
8 testimony with it, but it was in support of the tariff.

9 MR. BOUDREAU: Well, I think our charge is  
10 clear.

11 JUDGE JONES: Anyone else have anything else  
12 they'd like to state on the record? Hearing nothing then,  
13 we'll adjourn.

14 WHEREUPON, the recorded portion of the  
15 conference was concluded.

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