

The Office of the Public Counsel,
Complainant,
v.
Aquila, Inc., d/b/a Aquila Networks – MPS
and Aquila Networks – L&P

V.

2. Public Counsel will first address the overly optimistically entitled “Notice of Satisfaction.” A typical notice of satisfaction in a complaint states that the respondent

has taken steps to cure the action complained of.¹ Thus, in a case in which the complainant asks for and is awarded \$100 in damages, a true notice of satisfaction would state that the respondent has paid the \$100, not that the respondent plans to pay \$80 sometime in the future. But that is exactly what Aquila has done in its notice of satisfaction. Aquila does not assert that it has yet contributed any amount to its VEBA² trust, nor that it plans to contribute the full deficiency quantified in Public Counsel's complaint (and it doesn't even mention any damages that may be awarded in court). Instead, Aquila has simply made an unverified assertion that it plans to soon pay the amount by which it believes it is deficient. If this payment is made, it will narrow the scope of – but not resolve – one of the points on which Public Counsel requested relief, and it will not even address the rest.

3. In paragraph 5 of its answer, Aquila merely offers boilerplate language that the complaint fails to set forth facts that support the relief requested and fails to state a claim on which relief can be granted. Public Counsel disagrees with both of these conclusions, but they are so vague that a detailed response here is impossible; the complaint speaks for itself.

4. In paragraph 6 of its answer, Aquila seems to be arguing that Section 386.315 RSMo 2000 does not require Aquila to contribute to its VEBA trust, and that such a trust can be established and continue to be a qualified trust without Aquila making any employer contributions. Aquila interprets the phrase “independent external

¹ As the Commission has noted, “[a] Notice of Satisfaction is a pleading that a prevailing plaintiff must file in circuit court when the relief authorized by the judgment has been received.” Notice Closing Case issued March 5, 2004, in Case No. TC-2004-0325. The Commission's rules appear to contemplate the filing of some type of a notice of satisfaction early in the proceeding (4 CSR 240-2.070(7)). But Aquila cannot satisfy the complaint by stating its intention to pay part of the amount in dispute several years late.

² Voluntary Employee Beneficiary Association

funding mechanism” in that statute as allowing Aquila to make or not make contributions to its trust entirely at its own discretion. Public Counsel disagrees; when Aquila stopped all contributions to the fund in 2002, it ceased to have an “independent external funding mechanism” as required by law. Aquila also asserts that it has fully funded its VEBA trust “to the extent contributions have been included in rates.” Public Counsel disagrees with this assertion as well, and will prove at hearing that Aquila recovered from its ratepayers amounts calculated to cover its obligation to fund to its VEBA trust.

5. In paragraph 7 of its answer Aquila argues that the Commission orders and the statutes cited by Public Counsel in its complaint are so vague and indefinite as to be unenforceable. Public Counsel once again disagrees. The Commission orders clearly include amounts sufficient to cover annual contributions, and the statute clearly requires a fund to which contributions are made.

6. In conclusion, Public Counsel notes that there are unresolved issues of fact and of law, and suggests that the Commission take steps to move this matter to an evidentiary hearing and a resolution on the merits.

WHEREFORE, Public Counsel respectfully requests that the Commission: A) explicitly reject Aquila’s so-called Notice of Satisfaction and deny the request in the prayer that the complaint be dismissed; and B) set a date for the filing of a procedural schedule.

Respectfully submitted,

OFFICE OF THE Public Counsel

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 2nd day of December 2005:

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