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**STANDARD BY WHICH AQUILA'S APPLICATION IS GOVERNED**

Q. WHAT IS THE ISSUE?

A. Public Counsel believes that Ms. Wandel has recommended the incorrect standard by which this Commission should govern the outcome of the Aquila, Inc. ("Aquila" or "Company") Application. On pages 19 and 20 of her Rebuttal Testimony, Ms. Wandel discusses three "standards" which she claims, upon the advice of counsel, could be applied to financing cases. After a brief description of each, she determines that the standard this Commission should rely on appears in Commission rule 4 CSR 240-3.110.

Beginning on page 20, line 21, Ms. Wandel states:

Q. What standard did the Staff use to develop its recommendation regarding this Application?

A. Although Aquila is not seeking to sell assets, Staff used the standard of "detriment to the public interest."

Q. WHY IS COMMISSION RULE 4 CSR 240-3.110 NOT THE CORRECT STANDARD TO GOVERN THIS CASE?

A. First, Commission rule 4 CSR 240-3.110 (commonly called the "merger" rule) is not a "standard," it is a rule that pertains to the selling, assignment, lease or transfer of a utility's assets. That is, it is merely a laundry list of information requirements that a utility must provide the Commission when

1 it wishes to sell the regulated business or its assets. Second, the rule does not pertain to the  
2 placement of **liens**, by lenders, on the regulated assets owned, or the regulated assets that will  
3 continued to owned, by a utility.  
4

5 Q. IS AQUILA SELLING, ASSIGNING, LEASING OR TRANSFERRING ITS REGULATED  
6 BUSINESS OR ASSETS AS CONTEMPLATED BY COMMISSION RULE 4 CSR 240-3.110?

7 A. No. Aquila's Application does not relate to the selling, assignment, leasing or transfer of any of its  
8 regulated utility assets. That is, Company has made no request to exchange or transfer ownership  
9 of its regulated utility assets. All that Aquila seeks in this current Application is the placement of  
10 **liens**, by its lenders, on it regulated utilities assets. Thus, Commission rule 4 CSR 240-3.110 has  
11 absolutely no relevance to Aquila's requests.  
12

13 Q. DOES AQUILA'S APPLICATION REFERENCE ANY "STANDARD" BY WHICH THE  
14 COMMISSION MUST ADJUDGE ITS REQUESTS?

15 A. No. Aquila's Application references only Sections 393.180 and 393.190.1RSMo 2000 and 4 CSR  
16 240-2.060(1) and (7) as the basis for its requests. However, I have been advised by counsel that in  
17 various court cases involving Section 393.190.1RSMo 2000, where utilities were in the process of  
18 selling their business (or assets) to new owners, the **standard** "not detrimental to the public  
19 interest" has been applied to the transactions.  
20  
21  
22

1 Q. DOES THE PUBLIC COUNSEL AGREE THAT THE STANDARD “NOT DETRIMENTAL TO  
2 THE PUBLIC INTEREST” IS THE APPROPRIATE STANDARD FOR THIS COMMISSION  
3 TO USE TO DECIDE THIS APPLICATION?

4 A. No. As I stated in my Rebuttal Testimony, Public Counsel believes that the current case is a non-  
5 typical financing case in which Aquila seeks to allow its lenders to put **liens** on regulated assets it  
6 already owns, and will continue to own; thus, the appropriate statutory section to govern this  
7 Application is Section 393.180 of the Missouri Revised Statutes. Section 393.180 states:

8  
9 393.180. Right to issue stocks, bonds, notes subject to regulation

10  
11 **The power of gas corporations, electrical corporations, water**  
12 **corporations, or sewer corporations to issue stock, bonds, notes and other**  
13 **evidences of indebtedness and to create liens upon their property situated in**  
14 **this state is a special privilege**, the right of supervision, regulation, restriction and  
15 control of which is and shall continue to be vested in the state, and such power shall  
16 be exercised as provided by law and under such rules and regulations as the  
17 commission may prescribe. (R.S. 1939, § 5650. Amended by L.1967, p. 578, § 1.)

18  
19 Emphasis added by OPC.  
20  
21

22 Q. HOW DOES THE PUBLIC COUNSEL RECOMMEND THE COMMISSION VIEW  
23 AQUILA’S REQUESTS?

24 A. Since this Application does not pertain to a merger or sale of Aquila’s regulated utility assets,  
25 Public Counsel is adamant in its view that the standard “not detrimental to the public interest”  
26 does not apply. Public Counsel believes that Aquila’s current Application represents a non-typical  
27 financing case or a case of “first impression.” Thus, Public Counsel believes that this Commission

1       should not rely on a known but unrelated standard. Section 393.180 recognizes that when a  
2       regulated utility seeks encumber its property situated in this state, doing so is a special privilege.  
3       The Commission, on a case by case basis based upon the specific facts and circumstances of each  
4       case, should determine whether or not to grant the special privilege to encumber Missouri regulated  
5       assets. The special privilege to encumber Missouri regulated assets should not be granted when it  
6       is not in the best interest of the regulated utility and/or its ratepayers. As demonstrated in Public  
7       Counsel's testimony, Aquila should not be granted the special privilege of encumbering its  
8       Missouri jurisdictional regulated assets because doing so is not in the best interest of the regulated  
9       utility or its customers.

10  
11    Q.    IF THE COMMISSION WERE TO FIND THE "NOT DETRIMENTAL TO THE PUBLIC  
12       INTEREST" STANDARD RELEVANT TO THIS APPLICATION, DO DETRIMENTS EXIST  
13       TO SUPPORT ITS DENIAL?

14    A.    Yes. In my Rebuttal Testimony, and those of the other OPC witnesses, we identify and explain  
15       various detriments to the public interest that will occur should this Commission grant Aquila's  
16       Application. Public Counsel believes the detriments we describe in those testimonies provide  
17       sufficient reasons to allow this Commission to deny the Application.

**VALUES OF REGULATED AND ENCUMBERED UTILITY ASSETS**

Q. WHAT IS THE ISSUE?

A. It's the Public Counsel's belief that Ms. Wandel has mistakenly provided this Commission with a few inaccurate numbers regarding the actual value of the Missouri regulated utility assets and the appraised collateral value of the regulated utility assets which are currently encumbered to support the Term Loan.

Q. DID MS. WANDEL INCORRECTLY IDENTIFY THE ACTUAL VALUE OF THE MISSOURI REGULATED UTILITY ASSETS?

A. Yes. Beginning on page 29, line 8, of Ms. Wandel's Revised Rebuttal Testimony, in reference to the question regarding the pledging of 100% of Missouri assets, she states:

According to Schedule RD-2 attached to Mr. Dobson's direct testimony, for purposes of collateralizing this loan, Missouri's regulated assets represent approximately \*\* \_\_\_\_\_ \* million of a total regulatory asset pool of \* \_\_\_\_\_ \* billion or \*\* \_\_\_\_\_

The problem that OPC has with this statement is that the \*\* \_\_\_\_\_ \* million Ms. Wandel identifies as the value of the Missouri regulated assets does not equal the actual value of the Missouri regulated utilities assets. The \*\* \_\_\_\_\_ \*\* million is in reality nothing more than a debt capacity estimate associated with an earnings approximation that Credit Suisse First Boston put together to market the Term Loan to potential lenders. The actual value of the assets, of all the

Missouri regulated utilities owned by Aquila, according to the Company's rate base schedules in its most recent rate case filings, approximates **\$1 billion**. Thus, **\$1 billion** represents the actual approximate value of the total Missouri regulated utility assets that Aquila seeks to encumber with this Application.

Q. DID MS. WANDEL INCORRECTLY IDENTIFY THE APPRAISED COLLATERAL VALUE OF THE REGULATED UTILITY ASSETS CURRENTLY ENCUMBERED BY THE TERM LOAN?

A. Yes. In her Revised Rebuttal Testimony, Ms. Wandel states incorrectly that the collateral value of the regulated utilities assets currently encumbered is \*\* \_\_\_\_\_ \*\* million. Beginning on page 9, line 12, she states:

Q Since the Term Loan closed on April 9, 2003, have any additional utility assets been added as collateral to support the loan?

A. Yes. The Company reached an agreement with the Colorado Public Service Commission Staff. As a result of that settlement, the regulated assets of Colorado were appraised as of May 31, 2003, to have a value of \* \_\_\_\_\_ \*\* million. After applying the 60 percent loan value factor to the appraised value, the properties in Colorado have a debt capacity value of \* \_\_\_\_\_ \*\* million. **This increases the value of the pledged regulated collateral to approximately \*\* \_\_\_\_\_ \*\* million.**

Emphasis added by OPC.

Continuing on page 45, line 17, she states:

The Company had each of the assets originally pledged as collateral for this loan appraised by BearingPoint to determine its debt capacity value. Aquila later had the Colorado assets appraised. **The value of the original domestic regulated utility assets and the value of Colorado assets that were added to the collateral pool for purposes of meeting the debt capacity, is now \*\* \_\_\_\_\_ \*\* million.**

Emphasis added by OPC.

Q. WHAT IS THE ACTUAL APPRAISED VALUE OF THE COLLATERAL PROVIDED BY THE ASSETS OF THE MICHIGAN, NEBRASKA AND COLORADO REGULATED UTILITIES?

A. As I stated in my Rebuttal Testimony, according to the language of the Term Loan, the collateral value of all the encumbered assets that would support the loan was to be determined by an independent appraiser. BearingPoint, Inc. was the company which actually performed those appraisals. BearingPoint's analysis placed a value on the Michigan and Nebraska assets at \* \_\_\_\_\_ \*\* million (see Schedule TJR-13.3 (HC) Robertson Rebuttal). Furthermore, BearingPoint's analysis of the Colorado utility assets placed a value of \*\* \_\_\_\_\_ \* million for those assets (see Schedule TJR-14.3 (HC) Robertson Rebuttal). The total value of the Michigan, Nebraska and Colorado assets equals \*\* \_\_\_\_\_ \* million. The \*\* \_\_\_\_\_ \*\* million represents the collateral value of the encumbered regulated utility assets currently supporting the Term Loan using the collateral principles required by the lending institutions.

Q. WHY DOES MS. WANDEL'S NUMBER DIFFER FROM THE \*\* \_\_\_\_\_ \*\* MILLION DETERMINED BY THE INDEPENDENT APPRAISER?

A. Ms. Wandel's testimony confuses debt capacity with collateral value (debt capacity being the



1 amount of the Term Loan debt that the collateralized assets will support). The \* \_\_\_\_\_ \*\* million  
2 she identifies as being added to the collateral pool is the sum of \*\* \_\_\_\_\_ \*\* million (i.e.,  
3 Colorado \*\* \_\_\_\_\_ \* million appraised value multiplied by .60 percent loan factor) plus the \*\*  
4 \_\_\_\_\_ \*\* million debt capacity value for the Michigan and Nebraska jurisdictions she pulled from  
5 Mr. Dobson's Schedule RD-2. In essence, her \*\* \_\_\_\_\_ \*\* million, **were it calculated correctly**,  
6 represents the amount of the Term Loan debt supported by the \* \_\_\_\_\_ \*\* million of collateral  
7 provided by the Michigan, Nebraska and Colorado regulated utility assets.

8  
9 Q. IS MS. WANDEL'S \*\* \_\_\_\_\_ \*\* MILLION NOT THE ACTUAL AMOUNT OF TERM LOAN  
10 DEBT SUPPORTED BY THE COLLATERAL ASSOCIATED WITH THE REGULATED  
11 UTILITIES ASSETS?

12 A. No, it is not. It's my understanding that the \*\* \_\_\_\_\_ \*\* million number was calculated  
13 incorrectly. The amount of Term Loan debt actually supported by the encumbered regulated  
14 utilities assets approximates \*\* \_\_\_\_\_ \*\* million (i.e., \*\* \_\_\_\_\_ \* million multiplied by .60  
15 percent loan value factor). Ms. Wandel's debt capacity value is in fact short by approximately \*\*  
16 \_\_\_\_\_ \*\* million (i.e., \*\* \_\_\_\_\_ \* million minus \*\* \_\_\_\_\_ \*\* million).

17  
18 Q. WHY IS MS. WANDEL'S DEBT CAPACITY AMOUNT LESS THAN THE ACTUAL TERM  
19 LOAN DEBT CURRENTLY SUPPORTED BY THE ENCUMBERED REGULATED UTILITY  
20 ASSETS?

21 A. The reason it is less is that the \*\* \_\_\_\_\_ \*\* million she identified on page 6, line 21, of her Revised

1 Rebuttal Testimony as the value of the assets pledged in the states of Michigan and Nebraska is in  
2 actuality a debt capacity amount shown on Schedule RD-2 attached to the Direct Testimony of  
3 Company witness, Mr. Rick Dobson. Schedule RD-2 represents nothing more than a **marketing**  
4 document utilized by Credit Suisse First Boston in order to sell the Term Loan to potential lenders.  
5 The \*\* \_\_\_\_ \*\* million is not the appraised collateral value of the Michigan and Nebraska assets.  
6 It is a debt capacity estimate based on an earnings approximation analysis performed by Credit  
7 Suisse First Boston, not an appraisal such as that performed by BearingPoint, Inc. to fulfill the  
8 contractual requirements of the Term Loan.

9  
10 An appraisal of the Michigan and Nebraska regulated assets was performed by BearingPoint, Inc. in  
11 conjunction with the valuation of all other collateral assets utilized to secure the original loan, and  
12 the appraiser's conclusion was that the appraised collateral value of the assets in those two states  
13 was in fact \*\* \_\_\_\_ \*\* million. Thus, the \*\* \_\_\_\_ \*\* million supports approximately \*\* \_\_\_\_ \*  
14 million of the Term Loan debt (i.e., \*\* \_\_\_\_ \* million multiplied by .60 percent loan value factor),  
15 and \*\* \_\_\_\_ \*\* million less Ms. Wandel's incorrect \*\* \_\_\_\_ \* million equals the difference of  
16 \*\* \_\_\_\_ \*\* million.

17  
18 Q. DOES AQUILA ALREADY HAVE SUFFICIENT REGULATED UTILITY COLLATERAL TO  
19 COVER THE WORKING CAPITAL NEEDS OF ALL ITS DOMESTIC REGULATED  
20 UTILITIES?

21 A. Yes. On page 4 of Aquila Inc.'s Response To Joint Motion For Summary Disposition And Request

1        For Oral Argument, dated September 22, 2003, Company states:

2  
3            20.     Aquila admits the appraised value of its utility properties located in the  
4            States of Colorado, Michigan and Nebraska combined currently exceed the value of  
5            utility collateral needed to support its \$250 million in working capital requirements  
6            for its domestic utilities.  
7  
8

9            Aquila alleges that \$250 million of the Term Loan is needed as working capital for its domestic  
10           regulated utilities and that equates to a collateral requirement of approximately \$417.50 million  
11           (i.e., \$250 multiplied by 1.67). However, the appraised collateral value of the Michigan, Nebraska  
12           and Colorado regulated utility assets is \*\* \_\_\_\_ \*\* million. Thus, the portion of the Term Loan  
13           Aquila claims as working capital for its domestic regulated utilities is **over-collateralized** by  
14           approximately \*\* \_\_\_\_\_ \*\* million (i.e., \*\* \_\_\_\_ \*\* million less \$417.50 million).  
15

16        Q.       DOES THIS CONCLUDE YOUR CROSS-SURREBUTTAL TESTIMONY?

17        A.       Yes, it does.