

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Aquila, Inc., for)
Approval of its Experimental Regulatory Plan and for)
a Certificate of Convenience and Necessity Authorizing)
It to Participate in the Construction, Ownership,)
Operation, Maintenance, Removal, Replacement,) Case No. EO-2005-0293
Control and Management of a Steam Electric)
Generating Station in Platte County, Missouri, or)
Alternatively for an Order Specifically Confirming That)
Aquila, Inc. Has the Requisite Authority under Its)
Existing Certificate(s))

STIPULATION AND AGREEMENT

As a result of discussions among the Staff of the Missouri Public Service Commission ("Staff"), the Office of the Public Counsel ("Public Counsel"), Missouri Department of Natural Resources ("MDNR"), Sedalia Industrial Energy Users` Association ("SIEUA"), The Empire District Electric Company ("Empire"), Union Electric Company d/b/a AmerenUE, ("Ameren"), Kansas City Power & Light Company ("KCPL"), and Aquila, Inc., d/b/a Aquila Networks, Aquila Networks-MPS and Aquila Networks-L&P, ("Aquila" or "Company"), (collectively, the "Parties"), the signatory Parties hereby submit the following Stipulation and Agreement ("Agreement") to the Missouri Public Service Commission ("Commission").

I. BACKGROUND

Aquila is an electrical corporation under the jurisdiction of the Commission as provided by law. On March 2, 2005, Aquila filed its Application with the Commission. The Commission docketed the Application as Case No. EO-2005-0293. Subsequently, Aquila limited the relief it was seeking through its May 23,

2005 First Amended Application and its June 10, 2005 Second Amended Application. Generally, Aquila seeks Commission approval to use certain of its Aquila Networks-MPS electric properties as collateral to support the Company's financing arrangements which are necessary to permit Aquila's participation in latan Unit 2 and participation in latan Unit 1 air pollution control upgrades.

TERMS OF AGREEMENT

The signatory Parties agree as follows:

II. AQUILA'S COMMITMENTS

A. Successorship

All obligations and conditions agreed and assumed by Aquila shall be and become obligations and conditions of any Aquila affiliate, successor, or assignee.

B. Capital Investment in latan Units 1 and 2 ("The Project")

Aquila agrees to participate in the ownership of approximately 140 MW of new generation capacity of the 800-900 MW latan Unit 2 generation facility (to be regulated capacity). Aquila agrees to use its best efforts to demonstrate to KCPL that Aquila has a commercially feasible financing plan for meeting its financial commitments to participate in the ownership of latan Unit 2 by the later of August 1, 2005, or such date that KCPL shall issue its request(s) for proposal(s) for latan Unit 2.

Aquila further agrees to participate in the funding of its ownership percentage of environmental investments related to latan Unit 1 for accelerated compliance with environmental regulations, subject to the execution of a

participation agreement with KCPL, and further subject to the sale contingency referenced in Section II E, *infra*.

The construction of Iatan Unit 2 and the air pollution control upgrades to Iatan Unit 1 together are collectively referred to in this Agreement as the "Project."

There is no agreement at this time that there are transmission project expenditures related to the Project. The signatory Parties agree to continue to meet to explore the possibility of an agreement related to transmission project expenditures that can be drawn on the Facility. Aquila reserves the right to petition the Commission to allow certain transmission project expenditures to be drawn from the Facility on the ground that they are primarily related to Aquila's ownership of Iatan Unit 2.

Aquila will not assert in any future proceeding that this Agreement represents the concurrence by the other signatory Parties that the Company was prudent, reasonable, and created no detriment to its Missouri electric operations in 1) the acquisition of 140 MW of the Iatan Unit 2 plant, 2) the commitment to make its Iatan Unit 1 common facilities investment available to other entities, or 3) the assignment of all of Iatan Unit 2 capacity to its MPS Division. The other signatory Parties to this Agreement have expressly made Aquila aware of issues in these areas. Aquila agrees to address these matters to the extent they become issues in future rate cases.

C. Proposal of Cost Disallowances

If any party proposes the disallowance of latan Unit 1 or latan Unit 2 costs, Aquila agrees not to seek to avoid such disallowance on the ground that such expenditures were the responsibility of KCPL and were not within Aquila's control. Aquila maintains the ability to litigate prudence issues related to these expenditures on any other basis.

D. Financing

In order to initially finance its participation in latan Unit 2, Aquila has entered into a five-year secured credit facility with Union Bank of California (the "Agent Bank") providing up to \$300 million of credit or borrowing capacity in support of the latan Unit 2 construction and air pollution upgrades of latan Unit 1 (hereinafter, the "Facility"). The Facility will allow the Company to make cash draws to fund expenditures relating to the Project, and to issue letters of credit, as necessary, to support these activities. The Facility will mature shortly after the completion date for latan Unit 2, and will be replaced with an appropriate mix of equity and longer-term debt financing. The replacement financing is beyond the scope of this Agreement. The signatory Parties make no provision for any of the financing beyond the terms of the Facility.

Appendix A to this Agreement specifies the terms and conditions that the signatory Parties are requesting that the Commission approve related to the Facility. The signatory Parties agree that they will not oppose Aquila's request for authority to pledge its MPS division electric utility properties by creating a lien on said properties as collateral for the Facility subject to the Company's

agreement in Section II, B. The signatory Parties make no provision in this Agreement regarding the proper assignment of the Iatan Unit 2 facility as between Aquila's MPS and L&P Divisions.

If authority to pledge MPS division electric utility properties is granted, Aquila agrees that any drawings on the Facility secured thereby will be restricted to financial obligations associated with the Project. Aquila agrees to apply the proceeds from any such drawings to pay only those invoices received from KCPL after the date that the Facility is activated and directly related to the construction of the Project ("Project Expenditures"). Aquila will provide copies of all such invoices to Staff and Public Counsel to facilitate a tracking of all such expenses. With the assent of KCPL, Aquila agrees to direct the Agent Bank to make payments directly to KCPL for invoices in excess of the Facility's draw minimum of \$10 million subject to Aquila's approval.

For payment of invoices in amounts less than the draw minimum of the Facility, Aquila will make payments directly to KCPL. Invoices will be submitted to Staff and Public Counsel for verification that the invoices: 1) are KCPL bills for Project Expenditures and 2) have been paid by Aquila. Within thirty (30) days of receipt of the required documentation, Staff and Public Counsel will provide Aquila either their verifications or notice that the requested reimbursements are not KCPL bills for Project Expenditures or have not been paid by Aquila. When the accumulated payments equal or exceed the draw minimum Aquila will notify the manager of the Commission's auditing department at P.O. Box 360, Jefferson City, Missouri, by certified mail, a copy of which will be delivered to

Public Counsel, that accumulated Project Expenditures have met the Facility draw minimum and that a request for reimbursement is to be delivered to the Agent Bank. If Staff and Public Counsel do not provide such verification or notice within thirty (30) days of the date they receive a request for verification from Aquila, then Aquila may make the draw on the Facility for that request. Unresolved disputes regarding requested reimbursements that are asserted not to be KCPL bills for Project Expenditures or have not been paid by Aquila will be taken to the Commission for resolution. Upon verification, Aquila may draw down on the Facility to reimburse itself for payments made to KCPL. Any verifications or notices to the Company contemplated herein will be sent to Treasurer at Aquila, Inc., 20 West Ninth Street, Kansas City, Mo., 64105.

E. Iatan Sale Contingency

In the event that Aquila sells any portion of its interest in Iatan Unit 1 or Iatan Unit 2, Aquila agrees to require that any purchaser assume all liabilities and any further financial obligations associated with its purchased portion of Iatan Unit 1 or Iatan Unit 2.

A proportionate level of expenditures made by Aquila on Iatan Unit 1 air pollution control upgrades will be assumed to have been included in the purchase price associated with the sale of any fractional interest therein. Likewise, to the extent a purchaser acquires a portion of Aquila's subscribed share of Iatan Unit 2, a pro-rata level of expenditures made by Aquila for Iatan Unit 2 construction will be assumed to have been included in the purchase price associated with the sale of any fractional interest therein. Aquila agrees that the

required Commission approval of any such sale shall be conditioned upon Aquila demonstrating that it has made payment to the Agent Bank of that amount of the sale proceeds imputed or assumed as reimbursement for Iatan Unit 1 air pollution upgrades or Iatan Unit 2 construction costs. That amount, if any, shall be determined by the Commission in the sale approval proceeding.

F. Confirmation of Aquila's CCN Authority

Aquila, as successor to St. Joseph Light & Power Company ("SJLP") holds a Certificate of Convenience and Necessity issued to SJLP in Case No. 17,894 on November 14, 1973, which authorizes SJLP (now Aquila) "...to participate in the construction, ownership, operation, maintenance, removal, replacement, control and management of Iatan Steam Generation Station...as a tenant in common with undivided ownership interests in all or any portions thereof." The term "Iatan Steam Electric Generating Station" is defined in that Order as a "multi-unit site, designed for four generating units to be constructed and operated by KCPL." In addition to this authority, Aquila holds area certificates which together encompass a portion, if not all, of the site of the Iatan Steam Electric Generating Station.

The signatory Parties agree that they will not assert that further Commission authorization is required regarding Aquila's participation in the siting of Iatan Unit 2 upon and as modified by the conditions and commitments set forth herein, the signatory Parties agree not to oppose Aquila's Second Amended Application.

III. DISCLAIMERS

This Agreement will be deemed to have become effective as of the effective date of the Order of the Commission approving same.

This Agreement does not constitute any rate making determination or commitment on behalf of the signatory Parties. This Agreement does not bar any signatory party from contending in a future rate proceeding that Aquila's commitment to a participation level in Iatan Unit 2 of approximately 140 MW was insufficient.

IV. EFFECT OF THE NEGOTIATED SETTLEMENT

A. Except as specifically provided herein, none of the signatory Parties shall be deemed to have approved or acquiesced in any question of Commission authority, accounting authority order principle, cost of capital methodology, capital structure, decommissioning methodology, ratemaking principle, valuation methodology, cost of service methodology or determination, depreciation principle or method, rate design methodology, cost allocation, cost recovery, or prudence that may underlie this Agreement, or for which provision is made in this Agreement. This Agreement shall not be construed as fulfilling any requirements for environmental permits necessary for construction or operation of the infrastructure investments delineated in this Agreement.

Nothing in this Agreement shall be construed to limit the ability of any party to assert that the appropriate amount of these investments to include in Aquila's rate base or in its cost of service is an amount different than that proposed by Aquila.

B. This Agreement is based on the unique circumstances presented by Aquila to the signatory Parties. This Agreement shall not be construed to have precedential impact in any other Commission proceeding.

1. The signatory Parties enter into this Agreement in reliance upon information provided to them by Aquila. In the event that the Commission finds that Aquila failed to provide the signatory Parties with material and relevant information in its possession, or which should have been available to Aquila through reasonable investigation, or in the event that the Commission finds that Aquila misrepresented facts relevant to this Agreement, this Agreement shall be terminated.
2. This Agreement represents a negotiated settlement. Except as specified herein, the signatory Parties to this Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Agreement in the instant proceeding, or in any way condition its approval of same.
3. The provisions of this Agreement have resulted from negotiations among the signatory Parties and are interdependent. In the event that the Commission does not approve and adopt the terms of this Agreement in total, it shall

be void and no party hereto shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof.

4. When approved and adopted by the Commission, this Agreement shall constitute a binding agreement among the signatory Parties hereto. The signatory Parties shall cooperate in defending the validity and enforceability of this Agreement and the operation of this Agreement according to its terms.
5. This Agreement does not constitute a contract with the Commission. Acceptance of this Agreement by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forego the use of any discovery, investigative or other power which the Commission presently has. Thus, nothing in this Agreement is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right to access information, or any statutory obligation. Nothing in this Agreement is intended to impinge, restrict or limit in any way Public Counsel's discovery powers, including the right to access information and investigate matters related to Aquila.
6. This Agreement contains the entire generally applicable agreements or arrangements of the signatory Parties. There are no other generally applicable agreements or arrangements that pertain to these matters. Silence in this Agreement on a

particular topic or issue indicates that the signatory Parties reached no agreement on the handling of that topic or issue.

V. COMMISSION APPROVAL OF THE STIPULATION AND AGREEMENT

A. Aquila or any other party may file testimony and/or schedules in support of this Agreement.

B. Public Counsel reserves the right to request local hearings in the Aquila service area in this case.

C. The Staff shall file suggestions or a memorandum in support of this Agreement and the other Parties shall have the right to file responsive suggestions or prepared testimony.

D. If requested by the Commission, the Staff shall have the right to submit to the Commission an additional memorandum addressing the matter requested by the Commission. Each party of record shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of the Staff's memorandum, a responsive memorandum, which shall also be served on all parties. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other Parties to this Agreement, whether or not the Commission approves and adopts this Agreement.

E. The Staff shall also have the right to provide, at any agenda meeting at which this Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other Parties with advance

notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order issued in this case.

F. If the Commission does not unconditionally approve this Agreement without modification, and notwithstanding its provision that it shall become void thereon, neither this Agreement, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any party has to a hearing on the issues presented by the Agreement, for cross-examination, or for a decision in accordance with Section 536.080 RSMo 2000 or Article V, Section 18 of the Missouri Constitution, and the parties shall retain all procedural and due process rights as fully as though this Agreement had not been presented for approval, and any suggestions, memoranda, testimony or exhibits that have been offered or received in support of this Agreement shall thereupon become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

G. In the event the Commission accepts the specific terms of the Agreement, the signatory Parties waive their respective rights to cross-examine witnesses; their respective rights to present oral argument and written briefs pursuant to Section 536.080.1 RSMo 2000; their respective rights to the reading

of the transcript by the Commission pursuant to Section 536.080.2 RSMo 2000; and their respective rights to judicial review pursuant to Section 386.510 RSMo 2000. This waiver applies only to a Commission Order Approving Stipulation and Agreement or other Report And Order approving this Agreement issued in this proceeding, and does not apply to any matters raised in any subsequent Commission proceeding, or any matters not explicitly addressed by this Agreement.

WHEREFORE, the undersigned parties respectfully request that the Commission approve this Agreement by its Order, said Order to be effective by as close to August 1, 2005, as possible.

Respectfully Submitted,

/s/

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ATTORNEYS FOR SEDALIA INDUSTRIAL
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by electronic mail, first class mail or by hand delivery, on this 18th day of July, 2005 to the following:

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