

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of a Management Audit of       )  
Aquila, Inc. d/b/a Aquila Networks-MPS       )     Case No. EO-2006-0356  
And Aquila Networks-L&P                       )

**AQUILA'S RESPONSE TO PUBLIC COUNSEL'S  
MOTION TO OPEN A NEW CASE TO CONDUCT A MANAGEMENT AUDIT**

Comes now Aquila, Inc. ("Aquila" or the "Company"), by counsel, and for its Response to the Motion to Open a New Case to Conduct a Management Audit filed by the Office of the Public Counsel ("Public Counsel"), respectfully states as follows to the Missouri Public Service Commission (the "Commission"):

1.     Aquila is confident that the Company's financial circumstances and management practices have in no way adversely impacted its ability to provide safe and adequate utility service at just and reasonable rates to its Missouri customers. The circumstances cited by the Public Counsel in its Motion do not demonstrate otherwise, and Public Counsel's Motion should be denied by the Commission.

2.     Neither Aquila's efforts to encumber its Missouri properties in Case No. EF-2003-0465 nor the compensation of its management team have adversely impacted the Company's service or resulted in unjust or unreasonable rates and do not demonstrate problems with respect to Aquila's management. The bonuses to which Public Counsel refers were recommended by the compensation committee of the Board – not by management, and the Company has never sought recovery of executive bonuses from customers. Additionally, Aquila's management has in fact changed since the financial problems began. Aquila's 2001 Annual Report published in March 2002 listed nine corporate officers of which only three are still with Aquila. Contrary to Public

Counsel's allegations, the same management team does not exist today. There have also been significant changes in Aquila's Board of Directors, with only five of Aquila's ten 2001 Board members still serving. There is also a new audit committee led by the former Chief Financial Officer of Texaco, and seven of Aquila's current eight Board members are independent and have no relationship with Aquila other than serving on the Board. These Board members have been very active in overseeing the Company's operations. For example, during 2004 and 2005, there were a total of 30 meetings of the Board, plus another 51 meetings of Board committees.

3. The allegations concerning Aquila's funding of its OPEB obligations also do not support the opening of a new case. In fact, the OPEB allegations, which are the subject of a separate proceeding before the Commission (Case No. EC-2006-0171), were resolved in Aquila's most recent rate case. Aquila denied any violation of law, and Public Counsel agreed to dismiss the complaint in Case No. EC-2006-0171 with prejudice as part of the settlement agreement in Case No. ER-2005-0436. In fact, contrary to Public Counsel's representations, the settlement required Public Counsel to file to dismiss, with prejudice, the complaint in EC-2006-0171 as soon as the Commission issued its order approving the settlement in the rate case. Aquila agreed to fund the VEBA:

. . . on the date the Commission's order dismissing said complaint and Case No. EC-2006-0171, with prejudice, is final, effective and no longer subject to judicial review, and the Commission, in any order approving this Nonunanimous Stipulation and Agreement, may direct the Company to so act. For the purposes of this paragraph, 'dismissal with prejudice' means that Public Counsel will not file another complaint based upon the allegations in its complaint in Case No. EC-2006-0171 unless Aquila fails to fund the additional \$1.4 million as provided herein.<sup>1</sup>

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<sup>1</sup> Page 7, paragraph 11, Nonunanimous Stipulation and Agreement, Case No. ER-2005-0436.

Aquila is disappointed that Public Counsel has now violated the terms of the settlement and has not complied with its stated responsibilities to immediately initiate the dismissal of the complaint case and not raise the issue in any subsequent filing.

4. As evidence in other proceedings before the Commission has demonstrated, Aquila's decision to add gas generation to its portfolio through the construction of the South Harper Facility was appropriate and in the best interests of all of Aquila's customers in view of the least cost alternatives available to the Company. The Staff of the Commission has filed sworn testimony that Aquila needed more gas peaking capacity and that Aquila should have built a total of 500 megawatts of gas-fired generation.<sup>2</sup> Aquila is perplexed by Public Counsel's position that adding more gas-fired generation to its portfolio is an example of mismanagement, particularly since Public Counsel never raised that issue in the just-settled rate case. Additionally, construction of the South Harper Facilities was undertaken consistent with historical regulatory practice in Missouri, and Aquila is now following the court-recommended process to resolve the matter.

5. Furthermore, contrary to Public Counsel's allegations, Aquila attempted to work with the residents of the City of Peculiar and Cass County regarding the siting of the South Harper Facilities, holding public planning meetings, providing tours of the site, and meeting with various officials. Also contrary to Public Counsel's allegations, Aquila initially purchased the turbines from an affiliate at a value that was determined by an independent consultant to be \$10 million dollars below cost. In Case No. EO-2005-0156, Aquila, Public Counsel, and Staff reached a stipulation regarding the value that should be used for the turbines and related equipment, arriving at the amount of

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<sup>2</sup> Cary Featherstone's Direct Testimony, Case No. ER-2005-0436, page 60, lines 5-9.

\$66,760,000. Staff, in Case No. ER-2005-0436, confirmed that this value was still appropriate even though the Commission had not approved the stipulation regarding the value.

6. Aquila does not dispute that it has experienced significant financial challenges since 2001. However, Aquila laid out a detailed financial recovery plan, and that plan has been the subject of review by multiple commission staffs, bond rating agencies, outside consultants, debt holders, and various other parties. The plan is being successfully executed by Aquila, and the Company has met or exceeded all timelines and objectives of its plan in terms of value and performance. During this process, Aquila has gone to extensive lengths to insure that customers are not detrimentally impacted from both an operational and financial perspective.

7. Aquila also does not dispute that there is more to do, but Aquila does question the need and effectiveness of a formal management audit by the Commission in terms of Staff resources, the Company's resources, and the ultimate outcome for the ratepayers. Virtually every allegation raised by Public Counsel in its Motion has had or will be having an airing before this Commission. In December 2002, Staff issued a report on Aquila's financial position stating as follows:

Following Enron's collapse last year, many energy companies have suffered from falling power prices, decreased trading activity and lowered investor confidence, as well as an industry-wide credit squeeze. This situation has had a significant negative impact on Aquila's financial condition, forcing it to sell assets, cut costs and seek other means to raise cash.

Staff made certain recommendations to the Commission about monitoring Aquila's progress, and Aquila has worked diligently with Staff to provide the required information. In addition, Staff just recently completed a very detailed customer service review, and

no significant issues were identified. Aquila is filing monthly operational metrics with the Staff and has been through two rate cases in the past four years where detailed financial information has been reviewed by both Staff and Public Counsel. Not one of these reviews has resulted in any findings of mismanagement or wrongdoing impacting Missouri ratepayers.

8. In Commission Case No. EO-2004-0263, In the Matter of the Public Counsel's Investigation into Certain Resource Planning Decisions of The Empire District Electric Company, Public Counsel moved to open a case to serve as a vehicle for Public Counsel's investigation of planning decisions of Empire. Public Counsel was particularly concerned with Empire's decision not to move forward with a new coal-fired generating plant. In response to Public Counsel's motion, Empire offered to provide a presentation to the Commission. If a case were to be opened, Empire requested that Public Counsel be required to file a report indicating what steps should be taken by the Commission. Empire also suggested that the traditional complaint process would be a better mechanism for Public Counsel to use if Public Counsel believed Empire's decisions were not consistent with Empire's obligation to provide safe and adequate service at just and reasonable rates. The Staff of the Commission pointed out that the purpose of a formal case is to bring the matter to the Commission's attention. Following an on-the-record presentation, the Commission held that a formal, contested case was not necessary.

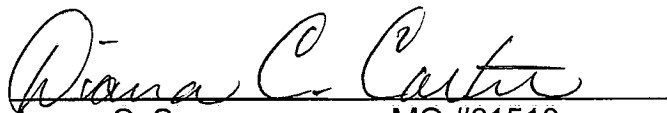
9. Aquila encourages the Commission to follow the path which was taken in the Empire case. The Commission is well aware of and has addressed or is addressing all matters mentioned in Public Counsel's Motion. The denial of Public Counsel's Motion

will allow all interested parties to continue to communicate freely and openly, and the traditional complaint process will remain available to Public Counsel if Public Counsel truly believes that Aquila's management decisions are preventing Aquila from providing safe and adequate service at just and reasonable rates.

10. If Public Counsel's Motion is denied, Aquila will continue to work with Staff, will voluntarily provide requested information to Public Counsel, and, if desired, will make a presentation to the Commission regarding Aquila's management practices. Aquila may be an easy target, but there is simply no reason for the establishment of a contested case and a formal management audit of Aquila.

Wherefore, for the reasons set forth above, Aquila requests that the Public Counsel's Motion to Open a New Case to Conduct a Management Audit of Aquila, Inc. be denied by the Commission and that the Commission grant such other and further relief as the Commission deems appropriate under the circumstances.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Diana C. Carter", is written over a horizontal line.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was hand delivered on this 20<sup>th</sup> day of March, 2006 to the following:

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