BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

The Office of the Public Counsel,	)	
	)	
Complainant,	)	
	)	
v.	)	**Case No. EC-2006-__**
	)	
Aquila, Inc., d/b/a Aquila Networks – MPS and Aquila Networks – L&P	)	
	)	
	)	
Respondent.	)	

COMPLAINT

Comes now the Office of the Public Counsel, pursuant to Section 386.390 RSMo. 2000[1] and files the instant Complaint. In support of the instant Complaint, Public Counsel states as follows:

1. Aquila, Inc., d/b/a Aquila Networks – MPS and Aquila Networks – L&P (referred to herein as "MPS" and "L&P," or jointly as "Aquila") is a Delaware corporation. Aquila's principal office and place of business is located at 20 West Ninth Street, Kansas City, Missouri 64105.

2. Aquila is an "electrical corporation" and a "public utility" as those terms are defined in Section 386.020, and is subject to the jurisdiction, regulation, and supervision of the Commission pursuant to Chapters 386 and 393.

3. Aquila provides electric service within an area in Missouri certificated to it by the Commission.

[1] All statutory references are to the Revised Statutes of Missouri, 2000.

4. In Case Number ER-97-394, the Commission authorized MPS (then UtiliCorp United Inc. d/b/a Missouri Public Service) to fund its obligations to retirees, other than pension obligations, according to Financial Accounting Standards No. 106 (FAS 106).[2] These obligations are items such as retiree medical expenses, and are commonly referred to as "other post-retirement employee benefits" or "OPEBs."

5. In Case Number EM-2000-292, the Commission authorized the merger of L&P (then St. Joseph Light and Power Company) into Aquila (then UtiliCorp United Inc.).[3] Pursuant to that merger, Aquila assumed the responsibility to fund the former St. Joseph Light and Power Company's obligations to retirees, other than pension obligations, according to Financial Accounting Standards No. 106 (FAS 106).

6. At all times since 1998, MPS rates have included an amount calculated to cover MPS' OPEB funding requirement.

7. At all times since 2001, L&P rates have included an amount calculated to cover L&P's OPEB funding requirement.

8. Section 386.315 provides:

> 386.315. 1. In establishing public utility rates, the commission shall not reduce or otherwise change any wage rate, benefit, working condition, or other term or condition of employment that is the subject of a collective bargaining agreement between the public utility and a labor organization. Additionally, the commission shall not disallow or refuse to recognize the actual level of expenses the utility is required by Financial Accounting Standard 106 to record for postretirement employee benefits for all the utility's employees, including retirees, if the assumptions and estimates used by a public utility in determining the Financial Accounting Standard 106 expenses have been reviewed and approved by the commission, and such review and approval shall be based on sound actuarial principles.

[2] ER-97-394, Report and Order issued March 6, 1998, page 34.

[3] EM-2002-0292, first Report and Order issued December 14, 2000.

> 2. A public utility which uses Financial Accounting Standard 106 shall be required to use an independent external funding mechanism that restricts disbursements only for qualified retiree benefits. In no event shall any funds remaining in such funding mechanism revert to the utility after all qualified benefits have been paid; rather, the funding mechanism shall include terms which require all funds to be used for employee or retiree benefits. This section shall not in any manner be construed to limit the authority of the commission to set rates for any service rendered or to be rendered that are just and reasonable pursuant to sections 392.240, 393.140 and 393.150, RSMo.
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> 3. Any public utility which was the subject of a rate proceeding resulting in the issuance of a report and order subsequent to January 1, 1993, and prior to August 28, 1994, directing or permitting the establishment of new rates by such utility, may file one set of tariffs modifying its rates to reflect the revenue requirement associated with the utility's expenses for postretirement employee benefits other than pensions, as determined by Financial Accounting Standard 106, including the utility's transition benefit obligation, regardless of whether the deferral or immediate expense recognition method was used, if such utility is funding the full extent of its Financial Accounting Standard 106 obligation at the time such tariffs are filed. The tariffs shall reflect the annual level of expenses as determined in accordance with Financial Accounting Standard 106. The commission may suspend such tariffs for no longer than one hundred fifty days to examine the assumptions and estimates used and to review and approve the expenses required by Financial Accounting Standard 106, including an amortization of the transition benefit obligation over no greater amortization period than twenty years based upon sound actuarial principles, and to address any rate design issues associated with the utility's Financial Accounting Standard 106-based revenue requirement. The commission shall not examine any other revenue requirement issues.

8. Aquila has established a Voluntary Employee Beneficiary Association (VEBA) trust as the independent external funding mechanism required by Section 386.315.2.

9. Aquila has not made any contributions to its VEBA trust for the years 2003, 2004, and 2005. (See attached affidavit of Ted Robertson.)

10. In the years prior to 2003, when Aquila did make contributions to its VEBA trust for OPEBs, it made three such contributions each year. (See attached affidavit of Ted Robertson.)

11. In failing to fund its OPEB obligations in 2003, 2004, and thus far in 2005, Aquila has violated Section 386.315 and the Commission orders in ER-97-394 and EM-2000-292.

12. Aquila's failure to fund its OPEB obligations since 2003 is a continuing violation of Section 386.315 and the Commission orders in ER-97-394 and EM-2000-292.

13. The total Aquila FAS 106 funding deficiency is $8,465,161. (See attached affidavit of Ted Robertson.)

Wherefore, Public Counsel prays that the Commission: A) find that Aquila has violated Section 386.315 and the Commission orders in ER-97-394 and EM-2000-292; B) find that this violation is a continuing one; C) direct its general counsel to seek the maximum penalty for each day's continuance of this violation since the beginning of 2003; D) direct its general counsel to seek criminal penalties pursuant to Section 286.580; E) order Aquila to immediately fund its deficiency of $8,465,161; and F) such other relief as the Commission deems proper.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Lewis R. Mills, Jr.

By: ________________________________

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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 14th day of October 2005:

Dana Joyce
General Counsel
Missouri Public Service Commission
PO Box 360
Jefferson City MO 65102

/s/ Lewis R. Mills, Jr.

Lewis R. Mills, Jr.