

Exhibit No.:
Issues: Background
Witness: Jon R. Empson
Sponsoring Party: Aquila Networks-MPS
Case No.: EA-

Before the Public Service Commission
of the State of Missouri

FILED³

MAY 11 2006

Missouri Public
Service Commission

Direct Testimony

of

Jon R. Empson

Exhibit No. 1
Case No(s). EA 2006-0309
Date 4-26-06 Rptr KF

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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI
DIRECT TESTIMONY OF JON R. EMPSON
ON BEHALF OF AQUILA, INC.
D/B/A AQUILA NETWORKS-MPS
CASE NO. EA-_____**

1 Q. Please state your name and business address.

2 A. My name is Jon R. Empson and my business address is 1815 Capitol
3 Avenue, Omaha, Nebraska, 68102.

4 Q. By whom are you employed and in what capacity?

5 A. I am employed by Aquila, Inc. ("Aquila" or "Company") in the position of Senior
6 Vice President of Regulated Operations.

7 Q. What are your responsibilities within Aquila?

8 A. I have overall responsibility for the state utility operations in Aquila's seven
9 state service territory as well as the regulatory, legislative and central services
10 functions.

11 Q. Please describe your previous work experience with Aquila.

12 A. Since 1986, I have held several officer positions in Aquila, responsible for
13 many different functions including regulatory, legislative, legal, engineering,
14 gas supply, human resources, accounting, measurement, and data
15 processing. I also had a seven-year career at Northern Natural Gas/Enron in
16 three different subsidiaries and an eight-year career at the Omaha Chamber
17 of Commerce primarily dealing with economic development. I assumed my
18 current responsibilities in January 2004.

19 Executive Summary

1 Q. What is the purpose of your testimony and the application that is the subject of
2 this proceeding?

3 A. This application seeks Commission permission, approval and a certificate of
4 public convenience and necessity authorizing Aquila to acquire construct,
5 install, own, operate, maintain, and otherwise control and manage electrical
6 production and related facilities located on two discrete tracts of property near
7 the City of Peculiar in Cass County, Missouri all as more specifically described
8 in the application. My testimony will describe Aquila and its qualifications and
9 will provide background of the circumstances that led to this filing.

10 Q. Please describe Aquila.

11 A. Aquila is a Delaware Corporation with its principal office and place of business
12 at 20 W. 9th Street, Kansas City, Missouri 64105-1711. The Company is
13 authorized to conduct business in Missouri through its Aquila Networks-MPS
14 and Aquila Networks-L&P operating divisions. Aquila now provides electrical,
15 natural gas and industrial steam utility service in those areas of the state
16 certificated to it by the Missouri Public Service Commission ("Commission").

17 **Site Location and Facility**

18 Q. Please describe the involved facilities and their location.

19 A. The tracts on which the involved facilities are located are situated within the
20 geographic service area previously certificated to Aquila's predecessors-in-
21 interest pursuant to the Commission's prior decisions and orders in various
22 cases, including Commission Case Nos. 1,074, 1,449, 3,171, 5,109, 9,470,
23 and 11,892. More specifically, they are located on a tract of land in an

1 unincorporated area in Cass County, Missouri, near the City of Peculiar at
2 East 243rd Street and South Harper Road.

3 Q. Have the involved electrical production and related facilities been
4 constructed?

5 A. Yes, at a cost to Aquila of approximately \$155 million. In fact, the facilities
6 have operated to meet the requirements of the Company's customers.

7 Q. Please generally describe the facilities that have been constructed.

8 A. There is a peaking power production facility comprising three (3) natural gas-
9 fired combustion turbines ("CTs") and an associated electric transmission
10 substation (the "South Harper Facility") on approximately thirty-eight (38)
11 acres of a seventy-four (74) acre tract of land. There is also a related
12 electrical transmission substation on approximately ten (10) acres of a fifty-
13 five (55) acre tract of land. The second tract is located one-half mile west of
14 71 Highway and one-half mile south of the intersection of 203rd Street and
15 Knight Road, approximately 2 miles northwest of Peculiar adjacent to the
16 intersection of an existing 345 kV electrical transmission line and an existing
17 69 kV electrical transmission line, each of which is owned by Aquila (the
18 "Peculiar Substation"). Construction of the South Harper Facility and the
19 Peculiar Substation was completed during the summer of 2005 and both were
20 placed into commercial operation and began serving Aquila's customers
21 during late June and early July of that year.

22 Q. Why were these facilities constructed?

23 A. The South Harper Facility and Peculiar Substation were constructed to

1 replace the Company's power purchase agreement ("PPA") that expired May
2 31, 2005 and to meet customer demand. This will be discussed in greater
3 detail in the testimony of Aquila witness Jerry G. Boehm.

4 Q. Did Aquila seek a certificate from the Commission prior to construction of the
5 facilities?

6 A. No. The Company concluded that a new certificate was unnecessary, an
7 understanding that was consistent with the Commission's long-standing policy
8 summarized in a letter dated November 5, 2004, to Mrs. Nanette L. Trout and
9 signed by the Executive Director of the Commission. A copy of said letter is
10 attached as Schedule JRE-1 to my testimony.

11 **Litigation**

12 Q. Has there been litigation in connection with the South Harper Facility and
13 Peculiar Substation?

14 A. Yes. Shortly after the commencement of site preparation and improvements
15 at the South Harper Facility, separate petitions for injunctive relief were filed in
16 the Circuit Court of Cass County by Cass County, Missouri and an
17 unincorporated association of individuals. The lawsuits challenged the right of
18 Aquila to construct the South Harper Facility and the Peculiar Substation.

19 Q. What happened?

20 A. On January 6, 2005, the Cass County Circuit Court issued a permanent
21 injunction enjoining Aquila from constructing and operating the South Harper
22 Facility and the Peculiar Substation, and ordered that Aquila remove all
23 improvements and equipment inconsistent with the property's agricultural

1 zoning classification by Cass County. The Circuit Court's Judgment, however,
2 also provided for the injunction to be suspended pending the posting by Aquila
3 of a cash or surety bond during the pendency of appeal. Aquila posted a
4 surety bond, which was accepted on January 11, 2005 by the Circuit Court.
5 On January 12, 2005, Aquila filed a Notice of Appeal of the Judgment in the
6 Missouri Court of Appeals, Western District, Case No. WD64985.

7 Q. Did Aquila thereafter seek relief from the Commission?

8 A. Yes. Based on language contained in the Judgment of the Circuit Court,
9 Aquila, on January 28, 2005, filed with the Commission an application for
10 specific confirmation of the Commission's permission, approval and authority,
11 or in the alternative, a grant of a new site-specific certificate of public
12 convenience and necessity, to construct, own, operate, control and manage
13 the South Harper Facility and the Peculiar Substation at the described
14 locations in Cass County, Missouri. Aquila's application was docketed as
15 Case No. EA-2005-0248. Thereafter, on April 7, 2005, the Commission, in a
16 4-1 vote, issued its Order Clarifying Prior Certificates of Convenience and
17 Necessity whereby the Commission confirmed that Aquila's existing certificates
18 authorized Aquila to build the South Harper Facility and the Peculiar Substation at the
19 locations where they were being constructed.

20 Q. Is this decision on appeal?

21 A. Yes. Cass County sued the Commission in the Circuit Court of Cass County
22 alleging that the Commission acted illegally, without due process, and lacks
23 the authority to interpret its prior orders or permit the construction of utility

1 infrastructure unless the county has previously. That litigation was docketed
2 as case CV105 558CC and continues to be pending.

3 Q. Has the Court of Appeals ruled in Case No. WD64985?

4 A. Yes. On December 20, 2005, the Missouri Court of Appeals, Western District,
5 handed down its Opinion in Case No. WD64985. It is my understanding that
6 the court found that Aquila's existing certificates of public convenience and
7 necessity did not provide specific Commission authority for the Company to
8 construct and operate the South Harper Facility and the Peculiar Substation.
9 The Court also concluded that the Commission's Clarification Order issued in
10 Commission Case No. EA-2005-0248 did not provide specific authority for
11 Aquila to construct and operate the South Harper Facility and the Peculiar
12 Substation within the meaning of the regulatory preemption contemplated by §
13 64.235 RSMo. Nevertheless, the Court said that its decision should have only
14 prospective effect and stated:

15 [W]e do not intend to suggest that Aquila is precluded
16 from attempting at this late date to secure the
17 necessary authority that would allow the plant and
18 substation, which have already been built, to continue
19 operating, albeit with whatever conditions are
20 deemed appropriate.

21
22 That necessary authority, according to the Court of Appeals, is approval from
23 Cass County or the Commission.

24 **Local Approval**

25 Q. Has Aquila sought local land use approval for the facilities from Cass County?

26 A. Yes. Attempts by Aquila to secure local land use approval from Cass County
27 have been met with a refusal by Cass County officials to consider the

1 application. Most recently, on January 20, 2006, Aquila attempted to file with
2 the appropriate Cass County officials a special use permit application, but said
3 officials refused to accept the application citing their requirement for the entry
4 of a court judgment against the Commission in the writ of review proceeding
5 pending in the Circuit Court of Cass County docketed as Case No. CV 105
6 558CC and involving judicial review of the Clarification Order issued by the
7 Commission in Case No. EA-2005-0248. As a consequence, Aquila has
8 brought this application to the Commission.

9 Q. What other topics will be discussed by Aquila witnesses in direct testimony?

10 A. As indicated, Aquila witness Jerry G. Boehm will discuss Aquila's reasons for
11 adding generation capacity. He will explain the analysis methods used in
12 Aquila's resource planning and will discuss the adoption of a "preferred plan"
13 over a "least cost plan." Aquila witness Terry S. Hedrick will address issues
14 relating to the approach Aquila utilized in the site selection process for the
15 South Harper Facility. Aquila witness Carl A. Huslig will address the
16 transmission facilities that were necessary to interconnect the South Harper
17 Facility to Aquila's existing transmission system. He will also detail the
18 transmission analysis that was performed comparing options. Aquila witness
19 Chris R. Rogers will discuss the site selection process. Aquila witness
20 Norma F. Dunn will describe the efforts of the Company to work with local
21 agencies and citizens to resolve problems resulting from those impacted by
22 the physical presence of the South Harper Facility. Finally, Beth A. Armstrong
23 will sponsor certain financial information concerning Aquila.

Direct Testimony:
Jon R. Empson

1 Q. Does this conclude your direct testimony?

2 A. Yes.

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

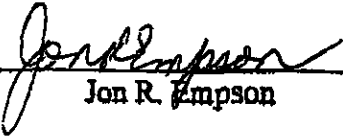
In the matter of the Application of Aquila,)
 Inc. for Permission and Approval and a)
 Certificate of Public Convenience and)
 Necessity authorizing it to acquire, construct,)
 Install, own, operate, maintain, and otherwise)
 Control and manage electrical production and)
 Related facilities in unincorporated areas of Cass)
 County, Missouri near the town of Peculiar.)

Case No. EA-_____

County of Jackson)
) ss
 State of Missouri)

AFFIDAVIT OF JON R. EMPSON

Jon R. Empson, being first duly sworn, deposes and says that he is the witness who sponsors the accompanying testimony entitled "Direct Testimony of Jon R. Empson;" that said testimony was prepared by him and under his direction and supervision; that if inquiries were made as to the facts in said testimony and schedules, he would respond as therein set forth; and that the aforesaid testimony and schedules are true and correct to the best of his knowledge, information, and belief.



 Jon R. Empson

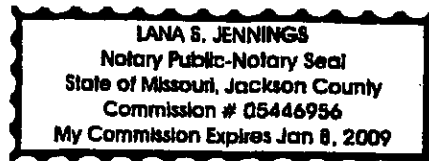
Subscribed and sworn to before me this 24th day of January, 2006.



 Notary Public

My Commission expires:

January 8, 2009





Commissioners
STEVE GAW
Chair
CONNIE MURRAY
ROBERT M. CLAYTON III
JEFF DAVIS
LINWARD "LIN" APPLING

Missouri Public Service Commission

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ROBERT J. QUINN, JR.
Executive Director
WESS A. HENDERSON
Director, Utility Operations
ROBERT SCHALLENGER
Director, Utility Services
DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge
DANA K. JOYCE
General Counsel

November 5, 2004

Nanette L. Trout
10710 E. 233rd Street
Peculiar, MO 64078

Dear Ms. Trout:

The Missouri State Auditor's office forwarded your letter to me and asked that I review it and provide assistance if possible. Thank you for taking the time to write and express your concerns. If you have additional questions after reviewing the information below, please don't hesitate to call one of the phone numbers at the end of this letter or send me an e-mail.

The Missouri Public Service Commission (MoPSC) is aware of Aquila's plans to construct additional natural gas fired generation in their service territory and in this particular case, near Peculiar, MO. However, since the planned plant, associated transmission, and substation facilities are being built within Aquila's service territory, current state statutes do not require Aquila to receive MoPSC approval for the construction of these facilities. This limitation in our authority was further confirmed by a court case in the 1960s where it was clearly noted that utilities constructing facilities within their service territory do not require further authorization from the MoPSC after they have been granted a certificate of public convenience and necessity in a particular region. Such certification was provided to Aquila when the service territory surrounding the region in question in this case was granted to Aquila.


The MoPSC is involved in the resource planning of Aquila and in review of its generation addition plans and timing but this authority does not extend to an ability to order that a utility not construct a generation facility in a particular location within their service territory unless they voluntarily agree to such a limitation. MoPSC authority in this generation facility's size, fuel type, timing and location will be of particular interest when Aquila request that this plant be included in its rates - which will typically happen after a plant is constructed and operating.

Ms. Nanette Trout
November 5, 2004
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The Missouri Department of Natural Resources (DNR) has the responsibility for assuring that any plant operated in Missouri has a minimal impact on the environment as determined by compliance with associated regulations. Air quality permits and possibly land and water disturbance permits will be required from DNR before Aquila can construct and operate this plant.

If you have any questions on this matter, please don't hesitate to call me at (573) 751-3048 or our Energy Department Manager, Warren Wood, at (573) 751-2978.

Sincerely,



Robert J. Quinn, Jr.
Executive Director
MO Public Service Commission

cc: The Honorable Claire C. McCaskill, Missouri State Auditor
John Bjattel, Audit Manager