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January 13, 2003

FILED³

JAN 13 2003

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

**Missouri Public
Service Commission**

**Re: In the Matter of the Application of Aquila, Inc. for Authority to Sell and Transfer to MidAmerican Energy Company 23.3 Miles Of a 345,000 Volt Electric Transmission Line in a Portion of Atchison County, Missouri.
Case No. EM-2003-0091**

Dear Mr. Roberts:

On behalf of Aquila, Inc., I deliver herewith an original and eight (8) copies of a **Supplemental Report** for filing with the Commission in the referenced matter. I would appreciate it if you would see that the copies are distributed to the appropriate Commission personnel. Service copies have been mailed or hand-delivered this date.

I have also enclosed an extra copy of the document which I request that you stamp "Filed" and return to the person delivering it to you.

Thank you for your attention in this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:


Paul A. Boudreau

PAB/ccp

Enclosures

cc: Mr. Steven Dottheim
Mr. John B. Coffman

FILED³

JAN 13 2003

Missouri Public
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Aquila,)
Inc., for Authority to Sell and Transfer to)
MidAmerican Energy Company 23.3 Miles) Case No. EM-2003-0091
Of a 345,000 Volt Electric Transmission)
Line in a Portion of Atchison County,)
Missouri.)

SUPPLEMENTAL REPORT

COMES NOW Aquila, Inc. ("Aquila"), by and through counsel, and for its Supplemental Report to its Application for Authority to sell and transfer to MidAmerican Energy Company ("MidAmerican") 23.3 miles of a 345,000 KV electric transmission line located in Atchison County, Missouri (the "Line"), respectfully states as follows to the Missouri Public Service Commission ("Commission"):

Summary

1. This Supplemental Report confirms that the terms of a Transmission Line Agreement entered into on December 31, 1968 by and between St. Joseph Light & Power Company ("SJLP") and Iowa Power & Light Company ("IPL") (hereinafter, the "Construction Agreement") which includes a provision for the sale by SJLP of its interest in the Line to IPL after 33 years of service are not detrimental to the interests of Aquila's ratepayers.

Background

2. On September 4, 2002, Aquila filed its application in the captioned matter (the "Application") with the Commission. A copy of the Construction Agreement was filed as Appendix 3 to the Application.

3. Staff filed its analysis of the Application on December 19, 2002, recommending that the Commission issue an order authorizing the sale and transfer of the Line on the grounds that the sale would not be detrimental to the public interest.¹

4. On December 31, 2002, the Commission issued an Order Directing Filing requesting information related to section 5 of the Construction Agreement, which provides for the sale of the Line by SJLP (a constituent predecessor in interest of Aquila) to IPL (MidAmerican's predecessor in interest).

Application for Authority

5. Section 393.190.1, RSMo. 2000, requires Aquila to secure an order from the Commission authorizing the sale and transfer of the whole or any part of its franchise, works or system necessary or useful in the performance of its duties to the public. Aquila has filed the Application in this case for authority to sell the Line to MidAmerican.²

6. To the best of Aquila's knowledge, the Construction Agreement was not referenced in the Report and Order issued by the Commission in its Case No. 16,734.³ However, the Construction Agreement was specifically referenced in SJLP's application for a certificate of public convenience and necessity to construct, own, operate and maintain the Line in Case No.

¹ The Commission is obliged to approve the Application unless it can be demonstrated that the sale would cause a present and direct detriment to the public interest. See, *State ex rel. City of St. Louis v. Public Service Commission*, 73 S.W.2d 393, 400, (Mo. banc. 1934); *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466 (Mo. App. 1980); *Re Missouri-American Water Company*, __ Mo.P.S.C. 3d __ (2000) [Case No. WM-2000-222]. The Commission has found that this standard is met simply by showing that there would be no change in rates and no deterioration in quality of service. *Re Laclede Gas Company*, 16 Mo.P.S.C. (N.S.) 334 (1971).

² It is important to keep in mind the fact that the Line is not necessary or useful in the performance by Aquila of its duties to its customers served by the Aquila Networks-L&P division. As noted in paragraph 12 of the Application, no customers of Aquila are served by the Line. Rather, the Line carries power from the Cooper Power Station in Nebraska to customers in the Des Moines, Iowa area.

³ The microfilmed record of the Report and Order in Case No. 16,734 in the Commission's official files is missing the second page. After a search of their records, no interested party has found a complete version of the order. A copy of the Commission's Report and Order has been marked **Exhibit 1** and attached hereto.

16,734 (the “1969 Application”). In fact, the Construction Agreement was made an exhibit to the 1969 Application. A copy of the 1969 Application of SJLP is marked **Exhibit 2** and attached hereto.

7. The Construction Agreement was also discussed at some length during the evidentiary hearing held by the Commission on May 1, 1969 in Case No. 16,734. A copy of the transcript of the hearing in that case is marked **Exhibit 3** and attached hereto. Specifically, the clause in the Construction Agreement containing the terms of the eventual sale of the Line⁴ was referenced and discussed on two occasions during the hearing; first during the presentation of SJLP’s direct evidence and again during cross-examination by the Commission’s then-Assistant General Counsel.⁵ In 1969, the Commission was made aware of the fact that the Line would eventually be sold to IPL by receiving the Construction Agreement into evidence and, also, by the subsequent discussion of its provisions by the SJLP’s witness during the evidentiary hearing. The Commission’s Report and Order in Case No. 16,734 states that the Commission “considered all of the competent and substantial evidence upon the whole record” when issuing its authorization, thereby implicitly approving the terms of the Construction Agreement, including the subsequent sale of the Line.

Adequate Compensation

8. In finding that the public convenience and necessity would be promoted by the construction of the Line and by granting a certificate to SJLP to construct the Line in its Report and Order of June 2, 1969, it is reasonable to conclude that the Commission found the provision in the Construction Agreement for the subsequent sale of the Line to IPL was fair to SJLP and

⁴ Page 3, section 5 of the Construction Agreement.

⁵ The terms of sale are discussed in the hearing transcript during Applicant’s direct evidence on pages 9 and 10 of Exhibit 3. The terms of sale are also discussed in the hearing transcript during cross-examination of Applicant’s witness on pages 21-23.

would not be detrimental to the ratepayers of SJLP. In the Applicant's direct evidence portion of the hearing, the financial impact of the sale on SJLP was addressed and determined "economically beneficial" to SJLP. SJLP witness Runquist testified that the estimated \$1.3 million cost to construct the Line would be covered by IPL's agreement to pay SJLP annual fixed charges of fifteen percent (15%). Under cross-examination, he observed that the Line should be fully depreciated after 33 years of service. *See*, fnnt. #4, *supra*.

9. The Construction Agreement provides for the sale of the Line at net book value. The Line is not being sold by Aquila at a discount to MidAmerican. The value is calculated as the original cost less depreciation at 3% per annum for 33 years, totaling \$183,274 subject to an adjustment for property taxes paid by Aquila for 2002.⁶

10. Staff's December 19, 2002 recommendation regarding the Application, concludes there is no detriment to the public interest; as no material impact on tax revenues will occur, there will be no change in service providers because no Aquila customers receive service directly from the transmission line, and the interchange of electric energy between Aquila and MidAmerican through the transmission line will continue. Moreover, the sale will not affect the transmission line's original purpose of maintaining adequate reserve capacity to serve growing load requirements on the system it serves.

11. The terms of the Construction Agreement were arrived at after arms-length negotiations between SJLP and IPL in 1968. Consequently the terms of that agreement are presumptively reasonable and mutually beneficial to both parties. Aquila believes the terms of

⁶ Even if the Line were to be sold at a much higher price substantially in excess of net book value, Aquila's ratepayers likely would not benefit from the gain derived from the sale. The Commission has generally recognized that a gain on the sale of utility assets should be booked below-the-line for rate making purposes. *See, Re Missouri Cities Water Company*, 29 Mo.P.S.C. (N.S.) 178 (1987); *Re Kansas City Power & Light Company*, 21 Mo.P.S.C. (N.S.) 543 (1977); *Re Missouri Cities Water Company*, 26 Mo.P.S.C. (N.S.) 1 (1983); *Re Associated Natural Gas Company*, 26 Mo.P.S.C. (N.S.) 237 (1983).

the sale were reasonable when originally agreed to (as evidenced by the Commission's approval thereof) and current circumstances would not cause anyone to reach a contrary conclusion. Aquila stands ready to perform in accordance with its contractual obligations to MidAmerican.

WHEREFORE, Aquila reiterates its request for the Commission's authorization as more specifically set for the Application filed on September 4, 2002.

Respectfully submitted,



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Attorneys for Aquila, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail or by hand delivery, on this 13th day of January 2003 to the following:

Mr. Steven Dottheim, Deputy General Counsel
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P.O. Box 360
Jefferson City, MO 65102-0360

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