

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Aquila, Inc. d/b/a Aquila Networks-)	
MPS and Aquila Networks-L&P, for authority to file)	<u>Case No. ER-2005-0436</u>
tariffs increasing electric rates for the service)	
provided to customers in the Aquila Networks-MPS)	
and Aquila Networks-L&P' area.)	

Concurring Opinion of Commissioner Clayton

This Commissioner concurs in the result of the majority Report and Order involving a rate increase for Aquila's electricity services. However, because this rate increase results in an increase of 6.26% for St. Joseph residential customers and of 8.82% for Missouri Public Service residential customers and because of the on-going media coverage of various controversies involving Aquila, additional discussion is warranted on how this case was resolved.

A Stipulation and Agreement has been presented to the Commission with signatures of all parties except the Office of Public Counsel and AARP. No party has filed any objection. As such, the Commission can treat the Stipulation and Agreement as a unanimous agreement. In fact, the only two parties to decline signing onto the Stipulation, agreed with the calculations supporting the rate increase and adjustments to the rate design. Because of this lack of objection, this Commission has no choice but to approve the agreement and anticipate the filing of another rate case after July 1, 2006, as well as to fully adjudicate several other pending matters involving the South Harper generating facility. Those cases will include additional findings as to the prudence of construction decisions as well as evaluations of Aquila's cost of providing service.

Firstly, it should be noted that the two parties who professed to represent residential customers declined to sign the Agreement. The Intervenor who signed the Stipulation either represented business or commercial customers of Aquila, achieving significant reductions in the allocations of the class cost of service or, in the case of Kansas City or the Missouri Department of Natural Resources, represented governmental agencies seeking funding for various low-income programs. The Public Counsel has the statutory responsibility to represent the public or the residential customer while AARP, although a private association, represents the interests of older Missourians within the Aquila service territory.

During the Stipulation hearing, counsel for these two parties described their desire to not sign the Agreement, although they could not oppose the adoption of the Agreement. Both Public Counsel and AARP admitted that the revenue requirement calculations were supported by sufficient evidence which included a significant rise in fuel costs. While parties to a negotiation and compromise are faced with "give and take" of issues, this Commissioner is concerned that the very groups tasked with advocating on behalf of residential consumers refused to take a position on the Stipulation. They refuse to agree or to object, which sends an unclear message to the Commission and to the public.

The testimony at the Stipulation hearing highlights this Commissioner's concern that the parties do not have the necessary resources to effectively advocate their positions. Public Counsel refused to sign the agreement because of the early July 1, 2006, moratorium date, which will permit a rate case filing within four months. Public Counsel admitted that if Aquila agreed to not file another case in one year that he would have signed the Stipulation and agreed to the rate increase (Tr. 177, 179). He further argued that despite being "short-staffed," his team "had a

high degree of confidence in the numbers.” (Tr. 180). AARP proclaimed similar concerns and described the benefits of a longer moratorium period. Even Staff referenced the importance of having “a three to four-month window to handle [their] other assignments.” (Tr. 164). During the next twelve months, this Commission will be faced with rate cases from Empire, Aquila, Atmos, KCP&L and Missouri-American Water, not to mention the multitude of smaller utilities that visit the Commissioner regularly. Although all the parties indicated their support of the calculations and the data associated with this rate increase, Public Counsel and Staff must have the resources to complete their analysis in all of the tasks assigned to them. Recent proposals to address this issue inadequately deal with the problem as the two independent agencies will be pitted against one another in competition for funding. These proposals fail to produce a viable solution as each agency needs its own independent and adequate funding source.

Secondly, this Commissioner had concerns with the references to a hypothetical generation facility that has financial characteristics similar to the South Harper Plant located in Cass County, Missouri. The parties agree the hypothetical generation plant is not included in the revenue requirement identified in this case nor is the plant added to rate base for future cases. This case results in a rate increase based on a "black box" settlement which is an agreement with a total figure in calculating rates with no declarations as to amounts set aside for operating expenses, capital expenditures, legal costs or any other expense used to properly calculate rates. The references to South Harper are for bookkeeping or accounting purposes only.

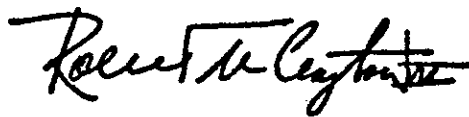
In addition, the Commission has been advised that when Staff arrived at its calculations, its numbers did not include any legal expense or other expense associated with the litigation in Cass County. Further, the revenue requirement results excluded any amount for executive

bonuses or excessive executive compensation. This Commissioner is satisfied that these costs have been properly excluded from the customers' rates. When an agreement such as this is silent as to allocations of cost and declarations of prudence for certain actions, the public is left without a complete explanation of how their increasing rates have been set.

Lastly, this case represents another example of why utilities should not be reliant on natural gas for power generation for significant amounts of its portfolio. The bulk of this increase comes from the rising costs of natural gas which seems to affect everyone, but for many customers, it affects them for both their heating and their electrical needs.

For the foregoing reasons, this Commissioner concurs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert M. Clayton III", written over a horizontal line.

Robert M. Clayton III
Commissioner

Dated at Jefferson City, Missouri,
on this 24th day of February, 2006.