

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

In the Matter of the Tariff Filing of Aquila, Inc.,)	
to Implement a General Rate Increase for)	<u>Case No. ER-2005-0436</u>
Retail Electric Service Provided to Customers)	Tariff No. YE-2005-1045
In its MPS and L&P Missouri Service Areas)	

DISSENTING OPINION OF COMMISSIONER STEVE GAW

I dissent from the Order in this request by Aquila, Inc. for increases in rates for its customers in both MPS and L&P service territories. This dissent and objection to the Nonunanimous Stipulation and Agreement approved by the majority is primarily due to four points: the allowance in base rates of phantom generation units which include the facility known as South Harper located in Cass County; the failure of the settlement to produce consequences for a fuel mix that relies too heavily on gas fired combustion turbines; the lack of any obvious consequences for the management decisions of Aquila that have resulted in Aquila's recent financial woes; and, the shifting of additional costs onto residential ratepayers at a time when the increasing costs of energy are already making it extremely difficult for many families to make ends meet.

Non-used and Non-existent Generation Units

This agreement places in rate base a gas-fired combustion turbine generating facility with around 500 MW of capacity. Approximately 300 MWs are based upon what Staff deems to be prudently incurred costs of the South Harper facility. An additional 200 MWs more or less represent what Staff believes would be the prudently incurred cost of adding an additional two combustion turbines to that same location.

Section 393.135 RSMo 2005 states:

Any charge made or demanded by an electrical corporation for service, or in connection therewith, which is based on the costs of construction in progress upon any existing or new facility of the electrical corporation, or any other cost associated with owning, operating, maintaining, or financing any property before it is fully operational and used for service, is unjust and unreasonable, and is prohibited.

This section was established by initiative petition in 1976. Also known as Proposition One, it was adopted at a time when many in the state were upset with increasing utility rates caused in part by construction costs of new plants being passed on to consumers prior to the plants being used and useful and without the scrutiny of the prudence of those costs that after the fact reviews bring.

In this case the South Harper facility does not appear to meet the requirements of §393.135. After months of litigation as to its siting and operation, the Cass County Circuit Court has ordered the plant shut down and has slated it for deconstruction. While it is possible that authority could be received from either Cass County or the Missouri Public Service Commission that would change the outcome of the future operation of this facility, it is clear that at the time of this decision the facility is not and cannot be used for service as required by law. Yet the parties to the Stipulation have attempted to create a new mechanism for accomplishing exactly the same result in rates and rate base as would occur if the facility were fully operational. Furthermore, the Stipulation adds two more units that do not exist and places them in rate base as well. Therefore, this Order provides for the inclusion of some facilities that are not used and useful and it includes others that do not exist at all.

This Order sets a precedent which in effect erases §393.135. As stated, the legal logic used places a phantom plant in Aquila's rate base to account for the South Harper facility which cannot be in rate base and includes additional fictional generation as well to replace an expiring contract for generation at the Calpine-owned Aires plant. Why can't this same logic be used in

any case before the Commission to place any surrogate plant in rate base that may be contemplated or under construction even though the actual facilities could not be in rate base under law? Some might argue that in light of Aquila's situation with the South Harper facility it is understandable that the parties would attempt to be inventive in assisting Aquila out of its self-made predicament. But, this Commission cannot ignore the law nor should it set such a precedent.

Aquila's Over-Dependence On Gas

It has been established that Aquila's fuel mix in the MPS territory relies too heavily on gas generation. This fuel mix of MPS comes as a result of Aquila's decisions not to invest in base load generation units for the past several years but instead to purchase power by contract or build additional gas fired peaking units. A significant portion of the increase in rates in this case is due to the increased cost of natural gas. Two major electric companies in this state have previously invested in baseload generation units that are currently serving native load and these investments have proven valuable in the long run to the customers and shareholders of these utilities. The decisions of these companies resulted in lower and more stable energy prices and have created opportunity for off-system sales that produce profits and opportunity for reductions in rates. Aquila, on the other hand, is saddled with its decisions to continue to use more gas-fired generation. Building these plants is much less expensive than coal-fired units gas prices. However, the fuel is more expensive, especially with the high and unstable price of gas. With access to a fuel adjustment mechanism pursuant to SB 179, which Aquila undoubtedly anticipates using in the very near future, the unstable fuel costs will be passed along rapidly to the consumer. Aquila's incentives to avoid higher fuel cost generation ownership and build baseload generation will diminish as a result. Aquila's only apparent ratemaking risk will be that it is prudent in the purchase of the fuel, its choice of units dispatched, and its decisions to purchase power from others. In this case the Commission does not give Aquila a cause for

concern in the prudence of the choice of types of units it owns. Neither the Stipulation nor the Order conveys a message to Aquila that it will be adversely impacted by its decisions on owned unit fuel mix relying heavily on natural gas or that Aquila's MPS customers will be sheltered from the consequences of those decisions. This Commission should convey both in the determination of rates.

Management Adjustments

The Stipulation further does not address the other decisions made by Aquila's management that have adversely impacted Aquila. Aquila has been struggling to recover from those past management decisions that placed heavy emphasis on opportunities and investments outside the regulated business. Those decisions turned out to be disastrous for the Company and have had an adverse impact on the cost of financing projects important to the customers of Aquila. It is not clear in this Stipulation that ratepayers are insulated from the additional cost of debt Aquila must incur in doing business. Such protection should be clear. It also does not appear that any reduction in return was given to the Company as a result of management decisions that have resulted in harm and additional risk to shareholders and ratepayers alike. It is clear that despite the negative impact of these decisions, management has been rewarded with bonuses. Yet this Commission in its Order does not give consequences for the management's performance or for the company's attitude about rewarding management under these circumstances. Merely conveying words of dismay from the Commission has already proven to have no obvious impact.

Class Cost of Service

Finally, this Commissioner wishes to express concern about the consequences of this decision for residential consumers. This decision results in a significant increase in revenues to Aquila with the strong possibility of additional proposals for requests for greater increases as early as July of this year. Residential consumers are not only bearing the impact of this increase,

they are also picking up additional costs that are being shifted from the largest industrial customers. The results are as follows:

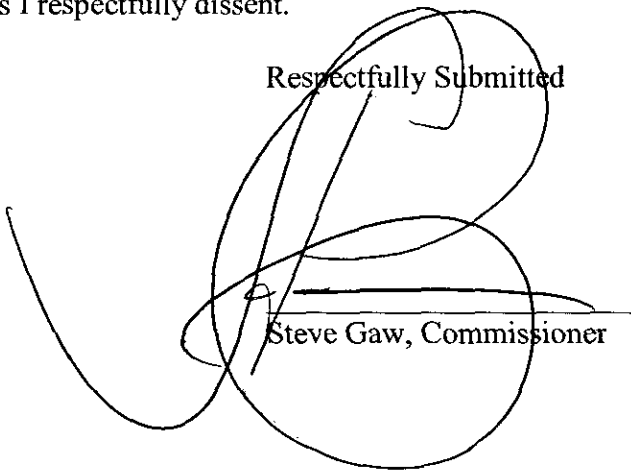
<u>Aquila Networks-L&P</u>	<u>Total % Increase to Permanent Rates</u>	<u>Total Increase from Current Bill</u>
Residential	8.72%	6.26%
Small General Service	6.35%	3.91%
Large General Service	6.35%	2.64%
Large Power Service	2.10%	-0.59%
Lighting & Other	6.35%	4.58%

<u>Aquila Networks-MPS</u>	<u>Total % Increase to Permanent Rates</u>	<u>Total Increase from Current Bill</u>
Residential	13.49%	8.82%
Small General Service	11.27%	5.97%
Large General Service	7.85%	1.46%
Large Power Service	6.82%	0.52%
Lighting & Other	11.27%	7.57%

The class cost of service studies can provide justification for shifting costs from such companies, but the Commission is not bound by these studies. The decision to follow them is discretionary with the Commission. Furthermore, class cost of service studies are full of assumptions that may easily be challenged. With the large increases that have occurred in the cost of energy and fuel already burdening consumers, this Commissioner believes that now is not the time to add even more to that burden.

For these reasons I respectfully dissent.

Respectfully Submitted



Steve Gaw, Commissioner

Dated at Jefferson City, Missouri,
on this 14th day of March, 2006.