

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

In the Matter of Aquila, Inc., d/b/a Aquila Networks - L&P and Aquila Networks - MPS to Implement a General Rate Increase in Electricity)	Case No. ER-2004-0034 (Consolidated)
In the Matter of the Request of Aquila, Inc. d/b/a Aquila Networks - L&P to Implement a General Rate Increase in Steam Rates)	Case No. HR-2004-0024

MOTION TO COMPEL

Comes now Aquila, Inc., d/b/a Aquila Networks - L&P and Aquila Networks - MPS (“Aquila” or “Company”), in accordance with Missouri Public Service Commission (“Commission”) Rule 4 CSR 240-2.090, and, for its Motion To Compel the Public Counsel to respond to Aquila Data Request ILA-1007, respectfully states as follows to the Commission:

1. On December 11, 2003, Aquila sent Data Request ILA-1007 to the Office of the Public Counsel (“Public Counsel”) (See Appendix A). Data Request ILA-1007 requested that the Public Counsel provide:

a copy of Utilitech’s lease or rental agreement for office space at 740 NW Blue Parkway in Lee’s Summit, Missouri. Also, please identify any other location used by Utilitech or its employees as office space for conducting Utilitech business.

2. This data request was issued in response to the Direct Testimony of Mr. James R. Dittmer, a Senior Regulatory Consultant with Utilitech, Inc. Mr. Dittmer alleged in his Direct Testimony, on behalf of the Public Counsel, that certain Aquila operating costs related to its offices at 20 West 9th should be eliminated or disallowed. This recommendation was based on Mr.

Dittmer's opinion that certain office space represents "'excess' capacity" because of the number of Aquila employees now using this space (Dittmer Direct, p. 20-22).

3. The Public Counsel objected to the subject data request by letter dated December 19, 2003 (Appendix B). The Public Counsel alleged that the "requested information is irrelevant and not even reasonably calculated to lead to the discovery of admissible evidence in this rate case." The Public Counsel further stated that "the terms and conditions of a rental agreement between Mr. Dittmer's firm and a property owner cannot be relevant to developing new electric rates for Aquila's customers" and that Public Counsel also objected on "the grounds that Utilitech's rental agreement for office space is subject to a confidentiality clause."

4. Aquila provided a response by letter dated January 14, 2004 (Appendix C), wherein it modified its request to seek square footage and the amount of rent paid, rather than the "rental agreement" itself. It is Aquila's belief that this should eliminate the confidentiality concerns related to a release of Utilitech's actual lease. To the extent that there remains confidentiality concerns related to the square footage and rent amounts, Aquila asserts that there is a protective order in place that should be sufficient to provide protection for this information.

5. Commission Rule 4 CSR 240-2.090(1) provides that discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court.

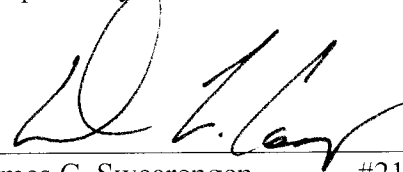
6. Aquila is entitled to utilize information in its cross-examination of Mr. Dittmer that explores the basis for his opinion and to question him in regard to information that may be inconsistent with his opinion. The Western District Court of Appeals has stated that "[t]here is no apparent reason that credibility issues must be off limits to discovery." *State ex rel. Creighton v. Jackson*, 879 S.W.2d 639, 642 (Mo.App. W.D. 1994). Mr. Dittmer's consulting firm, Utilitech, has

been retained by the Public Counsel to provide testimony in regard to Aquila's corporate overheads (Dittmer Direct, p. 1-2). The amount of office space utilized by Utilitech is an appropriate subject for cross-examination in that it may provide evidence of what amount of office space Mr. Dittmer's own corporation believes is reasonable for the conduct of its business and, in turn, impact credibility. As such, the information requested is within the permissible scope of discovery.

7. In addition to the referenced correspondence, counsel for Aquila has discussed the subject data request with the Public Counsel, and on February 13, 2004, a discovery conference with the assigned Regulatory Law Judge occurred, wherein this data request was again discussed. Therefore, compliance with the requirements of 4 CSR 240-2.090(8)(A)(B) has taken place prior to the filing of this Motion.

WHEREFORE, Aquila prays for an order compelling the Office of the Public Counsel to respond to Aquila's data request ILA-1007.

Respectfully submitted,

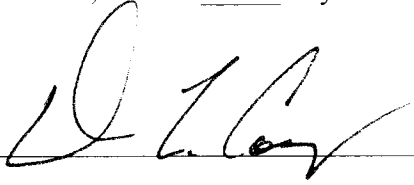


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Attorneys for Aquila, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, by electronic mail or hand-delivered, on this 17th day of February, 2004, to all parties of record.



A handwritten signature in black ink is written over a horizontal line. The signature is stylized and appears to be 'D. L. Gray'.

**AQUILA, INC.
CASE NO. ER-2004-0034
DATA REQUEST NO. ILA-1007
TO THE OFFICE OF THE PUBLIC COUNSEL**

DATE OF REQUEST: December 11, 2003

REQUESTOR: Bev Agut

BRIEF DESCRIPTION: Lease Agreement

QUESTION: Please provide a copy of Utilitech's lease or rental agreement for office space at 740 NW Blue Parkway in Lee's Summit, Missouri. Also, please identify any other location used by Utilitech or its employees as office space for conducting Utilitech business.

RESPONSE:

ATTACHMENT:

ANSWERED BY:

SIGNATURE OF RESPONDENT

APPENDIX A

LAW OFFICES
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February 11, 2004

HAND DELIVERED

Judge Kennard Jones
Regulatory Law Judge
Missouri Public Service Commission
Governor State Office Building, 9th Floor
Jefferson City, Missouri 65101

Re: Case No. ER-2004-0034 – Aquila Data Request ILA-1007

Dear Judge Jones:

This is to confirm that, in accordance with Commission Rule 4 CSR 240-2.085(8)(B), John Coffman and I plan to discuss with you at 11:00 a.m. on Friday, February 13, 2004, Aquila's Data Request ILA-1007 to the Office of the Public Counsel. If it is acceptable to you, I can connect the three of us by telephone at the appointed time.

Enclosed please find the following materials concerning this issue:

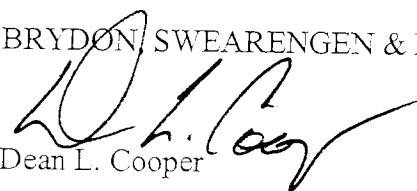
- Aquila Data Request ILA-1007;
- Mr. Coffman's letter of objection dated December 19, 2003;
- My letter of January 14, 2004, responding to Mr. Coffman and proposing a modification to ILA-1007; and,
- That portion of OPC witness James Dittmer's Direct Testimony referenced by my correspondence.

If you have any questions or need any further information, please do not hesitate to contact me.

Sincerely yours,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:


Dean L. Cooper

DLC/jar
Enclosures
cc: John Coffman

APPENDIX
B

LAW OFFICES
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RICHARD T. CIOTTONI

January 14, 2004

VIA ELECTRONIC MAIL
AND HAND DELIVERED

Mr. John Coffman
Public Counsel
Office of the Public Counsel
200 Madison, Suite 650
Jefferson City, Missouri 65101

Re: Case No. ER-2004-0034/ Data Request No. ILA-1007

Dear John:

I am in receipt of your letter dated December 19, 2003, objecting to Aquila's Data Request No. ILA-1007 (Data Request attached). The Office of the Public Counsel's objection alleges that the data request is irrelevant and that the "terms and conditions of a rental agreement between Mr. Dittmer's firm and a property owner cannot be relevant to developing new electric rates for Aquila's customers."

In response, I would first propose a modification of Aquila's data request as a potential settlement of this discovery dispute. Rather than requesting a copy of Utilitech's rental agreement, Aquila would modify this data request to instead request that the following information be provided:

- 1) The square footage of office space leased by Utilitech at 740 NW Blue Parkway in Lee's Summit and for any other location used by Utilitech or its employees as office space for conducting Utilitech business;
- 2) The amount of rent paid for office space leased by Utilitech at 740 NW Blue Parkway in Lee's Summit and for any other location used by Utilitech or its employees as office space for conducting Utilitech business on an annual basis; and,
- 3) The number of Utilitech employees or principals that utilize the office space

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C

Mr. John Coffman
January 14, 2004
page 2

leased by Utilitech at 740 NW Blue Parkway in Lee's Summit and for any other location used by Utilitech or its employees as office space for conducting Utilitech business.

Aquila believes this information is relevant to the issues raised in Case No. ER-2004-0034. As you are aware, Mr. James R. Dittmer, a Senior Regulatory Consultant with Utilitech, Inc., has alleged, on behalf of the Office of the Public Counsel, that certain Aquila operating costs related to its offices at 20 West 9th be eliminated or disallowed. This is based on Mr. Dittmer's opinion that certain office space represents "'excess' capacity" (Dittmer Direct, p. 20-22).

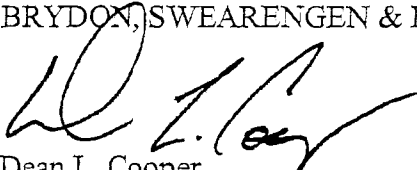
Aquila is entitled to utilize information in its cross-examination of Mr. Dittmer that explores the basis for his opinion and to question him in regard to information that may be inconsistent with his opinion. The amount of office space utilized by Utilitech is an appropriate subject for cross-examination in that it may provide evidence of what amount of office space Mr. Dittmer's own corporation believes is reasonable for the conduct of its business. As such, the information requested is reasonably calculated to lead to the discovery of admissible evidence.

After you have had a chance to review this response, please let me know the Office of the Public Counsel's position on this issue so that we can proceed in some manner.

Sincerely yours,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:


Dean L. Cooper

DLC/jar
Enclosure