

00386

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS
HEARING
February 26, 2004
Jefferson City, Missouri
Volume 9
Transcript of Proceedings

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

BEFORE: _____
KENNARD L. JONES,
REGULATORY LAW JUDGE.

REPORTED BY:
TRACY L. THORPE, CSR, CCR
ASSOCIATED COURT REPORTERS

00387

1 A P P E A R A N C E S

2 JAMES C. SWEARENGEN, Attorney at Law

PAUL A. BOUDREAU, Attorney at Law

3 DEAN L. COOPER, Attorney at Law

BRYDON, SWEARENGEN & ENGLAND

4 312 East Capitol Avenue

Jefferson City, Missouri 65102

5 573-635-7166

FOR: Aquila, Inc.

6

MARK W. COMLEY, Attorney at Law

7 NEWMAN, COMLEY & RUTH

601 Monroe, Suite 301

8 Jefferson City, Missouri 65102

573-634-2266

9 FOR: City of Kansas City

10 STUART W. CONRAD, Attorney at Law

FINNEGAN, CONRAD & PETERSON

11 3100 Broadway, Suite 1209

Kansas City, Missouri 64111

12 816-753-1122

FOR: Sedalia Industrial Energy Users' Assn. and

13 Ag Processing, Inc.

14 SHELLEY A. WOODS, Assistant Attorney General

P.O. Box 899

15 Jefferson City, Missouri 65102

573-751-8795

16 FOR: Missouri Department of Natural Resources

17 CRAIG PAULSON, Attorney at Law

139 Barnes Drive, Suite 1

18 Tyndall AFB, Florida 32403

850-283-6350

19 FOR: Federal Executive Agencies

20 JOHN COFFMAN, Acting Public Counsel

DOUGLAS E. MICHEEL, Senior Public Counsel

21 P.O. Box 2230

Jefferson City, Missouri 65102

22 573-751-5565

FOR: Office of Public Counsel and the Public

23

24

25

00388

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S (CONT'D)

DAN JOYCE, General Counsel
STEVEN DOTTHEIM, Chief Deputy General Counsel
THOMAS R. SCHWARZ, JR., Deputy General Counsel
DENNIS L. FREY, Senior Counsel
ROBERT FRANSON, Associate General Counsel
DAVID A. MEYER, Associate General Counsel
NATHAN WILLIAMS, Associate General Counsel
BRUCE H. BATES, Associate General Counsel
P.O. Box 360
Jefferson City, Missouri 65102
573-751-8702
FOR: Staff of the Missouri Public Service Commission

00389

1 JUDGE JONES: We are resuming the hearing in
2 Case No. ER-2004-0034. My name is Kennard Jones. I'm the
3 regulatory law judge presiding over this matter.

4 As you all know, a portion of the proceedings
5 has been stayed by the Circuit Court of Cole County and now
6 the Commission is figuring out ways how -- if and how to
7 proceed, I should say.

8 There are a couple of issues that concern the
9 Commission at this time. One being -- well, I should back
10 up and state that this tariff was filed as one single tariff
11 and -- I guess the electric portion of the case, I should
12 say. The Commission is wanting to know how it can split
13 that tariff apart, how does that not violate the prohibition
14 of single-issue rate-making.

15 There are a couple of cases that have come
16 down, UCCM case at 585 S.W. 2d 4, and the Jackson County
17 Case at 530 S.W. 2d 20, which regards the filing and suspend
18 requirements and the prohibition against single-issue
19 rate-making.

20 The courts in those cases ordered us to
21 consider all relevant factors. If we examine and approve
22 part of the tariff and ignore or reject other parts, then
23 doesn't that open up a situation where the Commission will
24 have line item veto in all future tariffs? We've never done
25 this before and it seems we'll now be establishing a

00390

1 precedent that we could pick and choose parts of tariffs
2 that we like instead of our traditional all or nothing
3 approach we've held in the past. Although some of you may
4 have, I should say that these questions are not adequately
5 addressed in the responses received to-date.

6 Now, as far as proceeding with this hearing, I
7 should say the parties are hereby ordered to -- we'll resume
8 the hearing on Monday at nine o'clock and by no later than
9 4:00 p.m. tomorrow the testimony in this case must be
10 refiled, perhaps redacted so that it contains no issues
11 concerning the service territories of St. Joe Light & Power.

12 A new witness list will have to be provided
13 outlining who will testify on what issues on each day and a
14 new reconciliation of issues will have to be filed. Does
15 everyone understand those requirements? Well, someone can
16 say yes. Staff?

17 MR. WILLIAMS: Yes and no.

18 MR. CONRAD: That's a fair answer.

19 MR. WILLIAMS: Yes, we understand that you're
20 wanting L&P stripped out. We're not quite sure how to
21 accomplish that and in what sense you mean stripped out. As
22 if the merger had not occurred or given the current
23 circumstances of Aquila providing service both in MPS and
24 L&P territories?

25 JUDGE JONES: Well, that's the problem that we

00391

1 have, which is why the Commission is reluctant to proceed
2 with the matter. Given that reluctance, we'll leave it to
3 the parties to tell us which issues are MPS exclusive. If
4 you all are, of course, unable to do that, then, of course,
5 the Commission can't proceed.

6 MR. WILLIAMS: Well, the Staff can certainly
7 make allocations between MPS and L&P for purposes of going
8 forward on MPS, but that's quite different than if it's
9 treated as if the merger had not occurred.

10 JUDGE JONES: If it's necessary for you to
11 proceed in this matter as if the merger had not occurred in
12 order for you to be able to separate those issues, then
13 perhaps that's how you should look at it.

14 MR. WILLIAMS: I'm also not sure that we can
15 accomplish that by 4:00 p.m. on Monday -- or tomorrow.

16 JUDGE JONES: Those are the instructions I
17 have. And I realize that you will be hard pressed to do
18 these things, but that same pressure is on the Commission to
19 try to get this case done before the operation of law date.

20 MR. COOPER: Your Honor, may I ask a question?
21 You started by, I guess, going into a bit of a discussion
22 about whether the tariffs were a single tariff, citing some
23 case law, the all relevant factors language. I would say
24 that the Company does not agree with everything you said in
25 that -- in those statements. Are you asking, are you

00392

1 inviting pleadings to discuss those issues that were raised
2 or what was the purpose of that recitation?

3 JUDGE JONES: That was the purpose to -- that
4 is our understanding at this point. If you can shed light
5 on that understanding, please do so through pleadings.

6 MR. WILLIAMS: Judge, if I may address that to
7 a degree. What you have is an order from the circuit court
8 not to proceed with L&P. I think being concerned with
9 issues of single-issue rate-making at this point in time
10 perhaps puts the cart before the horse. I mean, there's
11 nothing that prevents the Commission going forward with MPS
12 on taking evidence. The concern might be -- if it arises,
13 because we don't know what's going to happen with the writ
14 at this point -- would be at the time a decision would be
15 rendered.

16 JUDGE JONES: Is that a question or a
17 statement?

18 MR. WILLIAMS: Statement.

19 JUDGE JONES: Okay.

20 MR. COOPER: Your Honor, would the Commission
21 consider -- let me back up.

22 If the parties were to come to some sort of
23 joint recommendation in terms of a procedural schedule that
24 perhaps differed somewhat from a testimony filing by
25 4:00 p.m. tomorrow, would the Commission be willing to

00393

1 consider that sort of request?

2 JUDGE JONES: The reason that the 4:00 p.m.
3 time I should say tomorrow is set, because we'd like to
4 continue next week with the hearing. Those dates have been
5 reserved on our calendar and those dates are open.

6 I suppose if you filed -- if you file
7 testimony tomorrow that has to do with witnesses that will
8 take the stand on Monday, Tuesday and Wednesday and then do
9 the same Monday for witnesses that take the stand Thursday
10 and Friday, you might suggest that to the Commission in the
11 pleadings, but I'm not in a position to say whether I want
12 to alter the order as it stands.

13 MR. WILLIAMS: Judge, I'd also like to say
14 that Staff believes that the issues it listed in the filing
15 that it made this morning do not involve L&P in any respect
16 and I don't -- I mean, you can ask the other parties, but
17 from their filings I don't think they would disagree with
18 those characterizations, and to those issues we probably
19 could go forward perhaps even before Monday depending on
20 witness availabilities.

21 JUDGE JONES: Well, in light of the fact
22 that -- you said that there's not enough time to do what
23 I've already ordered, but then you want to have a hearing
24 tomorrow.

25 MR. WILLIAMS: I'm saying I don't know that

00394

1 there's a need to redact at least as to these particular
2 issues.

3 MR. COOPER: I don't know that from the
4 Company's perspective we're prepared to do both tomorrow,
5 both work towards the testimony filing at 4:00 p.m. and
6 continue this hearing tomorrow. I think that would be
7 difficult to do.

8 MR. MICHEEL: I've got a question respecting
9 an issue, your Honor. I guess some time late last night the
10 Company filed a pleading in this case indicating that it is
11 withdrawing the issue of merger and synergy savings. And so
12 are we, based on that filing, to assume that that issue is
13 no longer alive in this case?

14 JUDGE JONES: I don't want to make that ruling
15 now. If they don't want that, then that's something you all
16 can work out and settle and agree on.

17 MR. MICHEEL: Well, maybe I can get Mr. Cooper
18 to, on the record, confirm that right now.

19 MR. COOPER: Well, I would suggest that our
20 pleading is on the record and states our position. And I
21 don't know if it -- it would probably be helpful for me to
22 talk to Mr. Micheel off the record first so I know exactly
23 what it is he's looking for here.

24 But certainly the Company has made a pleading
25 that states exactly what Mr. Micheel has suggested and that

00395

1 it is not pursuing those adjustments in this case, so I --
2 and I suppose, Mr. Micheel, we can talk about I guess what
3 else it is you're looking for in that regard.

4 MR. WILLIAMS: Judge, with respect to the
5 testimony filing by tomorrow and beginning the hearings on
6 Monday with a new witness list and new reconciliation and so
7 forth, are you seeking any response from the parties on
8 those here today? And if so, I'd suggest we take a brief
9 recess and let the parties discuss and respond to you, or
10 are you just saying that's the way it is and we need to go
11 forward?

12 JUDGE JONES: Exactly. Pleadings on those
13 issues should be filed.

14 MR. MICHEEL: One other question, your Honor.
15 Does the Commission -- I take it from the Commission's
16 action that it believes that the merger between St. Joe
17 Light & Power and Aquila is effective. Is that your
18 understanding?

19 JUDGE JONES: No. I don't have any comments
20 on EM-2000-292. What I can say is that the Commission wants
21 to be certain that if it proceeds in this matter, those
22 issues touching on MPS will be the only issues discussed and
23 that no issues concerning St. Joe Power & Light territories
24 will be discussed.

25 MR. MICHEEL: Okay.

00396

1 MR. CONRAD: And if I might inquire further
2 just to get clarification, when you refer to redacted
3 testimony, are you expecting to have a physical refiling of
4 the existing testimony with material blacked out or are you
5 expecting to have that testimony redone and that material
6 disappears, or are you expecting to have a list of pages and
7 lines that should be redacted in the official record?
8 Because that's already been filed. It hasn't been yet
9 admitted into the record, but it is already filed.

10 JUDGE JONES: I understand

11 MR. CONRAD: So I've got three --

12 JUDGE JONES: Well, if you want to -- redact
13 to me means either it's blacked out to where it can't be
14 read or taken into evidence or it's not there. Both have
15 the same effect. And that's what I mean when I say refile
16 the testimony.

17 MR. WILLIAMS: Judge, if I may.

18 JUDGE JONES: Yes, Mr. Williams.

19 MR. WILLIAMS: Staff's indicated to me that if
20 it is put in the position of needing to go back and treat it
21 as if the merger had not occurred, it would not be able
22 probably to comply with the Commission's directive. If it
23 means just redacting the testimony that we've currently
24 filed, we may be able to comply with what the Commission's
25 directed.

00397

1 JUDGE JONES: Okay. Well, as far as how you
2 look at being able to do what has to be done is up to you.
3 Some of the testimony -- or some of the witnesses, I should
4 say, testify about things that have to do with MPS and L&P.
5 Those portions of their testimony that has to do with L&P
6 should be redacted.

7 Are there any other comments or statements for
8 the record? Because I assume you all probably need as much
9 time as you can have. Mr. Conrad?

10 MR. CONRAD: Well, I guess this -- and I'm
11 presuming that this could be filed through EFIS, or are you
12 expecting at this point to be confronted with physical
13 paper?

14 JUDGE JONES: Well, in light of the time, the
15 turnaround, whichever is most convenient for you.

16 Is there anything else from anyone? Seeing
17 nothing, then we will conclude the hearing.

18 WHEREUPON, the hearing was adjourned.

19
20
21
22
23
24
25