

Exhibit No.:
Issues: C.W. Mining
Witness: Abby F. Herl
Sponsoring Party: Aquila Networks-MPS
& L&P
Case No.: ER-2007-0004

Before the Public Service Commission
of the State of Missouri

Rebuttal Testimony

of

Abby F. Herl

****Denotes Highly Confidential Information****

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REBUTTAL TESTIMONY OF ABBY F. HERL
ON BEHALF OF AQUILA, INC.
D/B/A AQUILA NETWORKS-MPS AND AQUILA NETWORKS-L&P
CASE NO. ER-2007-0004**

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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI
REBUTTAL TESTIMONY OF ABBY F. HERL
ON BEHALF OF AQUILA, INC.
D/B/A AQUILA NETWORKS-MPS AND AQUILA NETWORKS-L&P
CASE NO. ER-2007-0004**

1 Q. Please state your name and address.

2 A. My name is Abby Herl. My business address is 20 West 9th Street, Kansas City, MO
3 64105.

4 Q. By whom are you employed and in what capacity?

5 A. I am employed by Aquila, Inc. (“Aquila” or “Company”) as Director, Coal Procurement.

6 Q. Please describe your responsibilities in that position.

7 A. As the Director of Coal Procurement, I am responsible for managing all aspects of
8 Aquila’s coal supply including coal procurement, the transportation of coal to its
9 respective facility, and maintaining the Company’s railcar fleet. Additional
10 responsibilities include bulk diesel fuel purchases and completing SO2 allowance
11 transactions initiated by the Environmental department.

12 Q. What are your educational qualifications, training, and experience?

13 A. I graduated from the University of Missouri – Columbia. I received a Bachelor of
14 Science degree in Mechanical Engineering (1991). I graduated from Colorado State
15 University with a Masters in Business Administration in 2005. I joined Aquila in 1991 as
16 a Staff Engineer of Operations at Sibley Generating Station. I switched to the
17 maintenance department holding several positions until I became head of the department
18 as Maintenance Engineer. In 2000, I became Plant Manager of Arthur Mullergren (Great

Bend, KS) and Clifton (Clifton, KS) Generating Stations, both part of Aquila's WestPlains Energy division. In July 2005, I became Manager, Coal Procurement and subsequently Director.

Q. Have you previously filed testimony before any state or federal agency?

A. No.

Q. What is the purpose of your rebuttal testimony?

A. The purpose of this rebuttal is to support Aquila's position in this case regarding the exclusion of existing coal contract prices from inclusion in base rates. Specifically, I will respond to the testimony of Messrs. Cary Featherstone, Charles Hyneman, and Graham Vesely as it relates to C.W. Mining.

C. W. MINING

Q. What is the source of Aquila's supply of high-Btu bituminous coal?

A. For Aquila's Networks-MPS ("MPS) and Networks-L&P ("L&P") operating divisions, the majority of high-Btu bituminous coal is under contract from Consol Energy's Consolidation Coal Company ("Consol") which operates the Emery mine in Utah.

Q. What are the quantities and price per ton being purchased from this supplier?

A. Aquila's contract with Consol has a term of **
. The agreement provides that Consol will provide ** tons by the end of
**_
**_.

Q. Do these figures correspond to those used by the Staff?

A. No. Although Staff has the aforementioned numbers, it is recommending that the C.W. Mining contract price be used to determine recovery. The 2006 price under the C.W.

1 Mining contract was **

2 **.

3 Q. Is Aquila currently receiving any coal from C.W. Mining?

4 A. Aquila has not received any coal from C.W. Mining since April of 2005.

5 Q. Can you explain why?

6 A. In April 2005, C.W. Mining notified Aquila that C.W. Mining was terminating the
7 contract due to a claimed force majeure, specifically citing on-going labor issues.

8 Q. Has Aquila taken legal action with respect to C.W. Mining's unilateral termination of the
9 contract?

10 A. Yes. Aquila sued C.W. Mining on July 5, 2005, in the United States District of Utah
11 Central Division, captioned as *Aquila, Inc. v. C.W. Mining*, case number 2:05CV00555,
12 for breach of contract.

13 Q. What is the current status of that litigation?

14 A. The Court held a three-day bench trial from February 12-14, 2007. Following the
15 presentation of the case, the Court instructed the parties to file simultaneous post-hearing
16 briefs within 45 days of the Court's production of the trial transcripts (which is expected
17 to take 30 days).

18 Q. Can you explain the basis of Aquila's lawsuit against C.W. Mining?

19 A. C.W. Mining failed to deliver the coal quantities specified in the contract. Specifically,
20 C.W. Mining failed to deliver **

21 **. Further, Aquila had a unilateral right to

22 extend the contract for **

1 **. As a result, Aquila was forced to incur significant additional
2 costs to cover the coal that C.W. Mining was supposed to provide.

3 Q. What recovery is Aquila seeking in the lawsuit?

4 A. According to the Compliant filed in the case, Aquila is seeking damages for the
5 difference between the negotiated price of coal in the agreement and the cost of cover
6 coal purchased by Aquila over the duration of the contract including the two year
7 extension, as well as all incidental and consequential damages incurred by Aquila related
8 thereto.

9 Q. Can you be more specific on how Aquila is determining the damages for the difference
10 between the negotiated price of coal in the agreement and the cost of cover coal
11 purchased by Aquila?

12 A. **
13 _____
14 _____
15 _____
16 _____

17 **. Component
18 three assumes that, because the contract price was more favorable than the market price,
19 Aquila would have purchased all coal allowed under the agreement and either resold it on
20 the market or stockpiled it for future use.

21 Q. Have emissions been included as part of the damage claim?

22 A. Yes. Aquila has included the additional cost of emissions in the valuation.

1 Q. Will Aquila be seeking damages for any additional freight costs incurred as a result of the
2 breach of contract?

3 A. No. C.W. Mining and Consol load out coal at facilities located next door to one another
4 in Price, Utah. Other suppliers in Colorado and Southern Wyoming would have lower
5 freight rates than movements out of Utah.

6 Q. Will Aquila be seeking recovery for legal, litigation and court costs associated with the
7 lawsuit?

8 A. The prayer for relief in Aquila's Complaint requests damages suffered by Aquila plus its
9 attorney fees and costs. Aquila is seeking all damages to which it is entitled under all
10 applicable state and federal laws as well as any damages available under the agreement
11 between Aquila and C.W. Mining.

12 Q. Do you know how much in damages Aquila is requesting in the pending litigation?

13 A. Aquila is seeking nearly \$54 million in damages.

14 Q. In reviewing Mr. Featherstone's direct testimony, Aquila's due diligence of C.W.
15 Mining's labor practices seems to be questioned. Is it a general business practice to
16 review the labor relations and practices of its suppliers?

17 A. No. In fact I am not aware of any policy, requirement, or expectation that would prompt
18 even a cursory review of labor relations/practices for a supplier. Any company registered
19 in the United States would be expected to follow State and Federal labor laws as required
20 and as enforced by their respective agencies.

21 Q. What is a reasonable standard of review when determining the suitability of a supplier?

22 A. There are two primary criterion used when determining the suitability of a coal supplier.

23 The first is determining the credit worthiness/financial stability of the supplier. Each

1 potential supplier is subject to a financial credit review. This evaluation is performed by
2 Aquila's Credit Risk Management group. The second criterion relates to the availability
3 of the product being purchased, in this case, coal. Aquila evaluates, to the best of its
4 ability, the existence of suitable coal reserves, mining capacity to remove it from the
5 ground, and the ability to transport/loadout the coal.

6 Q. Was Aquila the only company taking coal from C.W. Mining during the term of the
7 agreement?

8 A. During the request for proposal process, the only indication of other users of C.W.
9 Mining coal was **

10 **_. Based on
11 records publicly available from the Federal Energy Regulatory Commission ("FERC"),
12 C.W. Mining coal supplied coal to TVA, PacifiCorp, Northern Indiana Public Service
13 Company (NIPSCO), Nevada Power, and Portland Gas and Electric in 2001. In 2002,
14 TVA, PacifiCorp, and NIPSCO received C.W Mining coal. TVA and PacifiCorp
15 continued to receive coal from C.W. Mining in 2003.

16 Q. Do the historical records available through FERC give any indication that C.W. Mining
17 would have difficulty meeting Aquila's contracted quantities?

18 A. No. Given that the C.W. Mining agreement was dually executed in September 2003, the
19 full year data available at the time reflects production levels from C.W. Mining in 2001 at
20 1,100,000 tons and 850,000 tons in 2002. This production level far exceeded the
21 required deliveries under Aquila's contract with C.W. Mining.

22 Q. In Mr. Featherstone's testimony, he questioned why Aquila did not withdraw from the
23 agreement with C.W. Mining in December 2003 when it was first notified that C.W.

1 Mining was experiencing labor problems. Can you explain why Aquila did not withdraw
2 from the agreement at that time?

3 A. Yes. While the term of the coal contract between C.W. Mining and Aquila did not begin
4 until January 1, 2004, the parties executed the agreement on September 16, 2003.
5 Therefore, had Aquila terminated the agreement in December 2003, it would have
6 materially breached the agreement subjecting Aquila to all applicable legal damages.

7 **
8 _____ days.

9 Q. Did Aquila obtain other coal suppliers in December 2003 to supplement the coal supply
10 that C.W. Mining was supposed to deliver in January to March?

11 A. No, because **
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____.

18 Q. Does this conclude your testimony?

19 A. Yes it does.

**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 tariffs increasing electric
rates for the service provided to customers in
the Aquila Networks-MPS and Aquila
Networks-L&P area

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Case No. ER-2007-0004

County of Jackson)
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State of Missouri)

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AFFIDAVIT OF ABBY F. HERL

Abby F. Herl, being first duly sworn, deposes and says that she is the witness who sponsors the accompanying testimony entitled "Rebuttal Testimony of Abby F. Herl;" that said testimony was prepared by her and under her direction and supervision; that if inquiries were made as to the facts in said testimony and schedules, she would respond as therein set forth; and that the aforesaid testimony and schedules are true and correct to the best of her knowledge, information, and belief.

Abby F. Herl

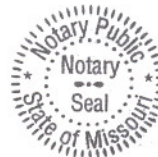
Abby F. Herl

Subscribed and sworn to before me this 20th day of February, 2007.

Terry D. Lutes
Notary Public
Terry D. Lutes

My Commission expires:

8-20-2008



TERRY D. LUTES
Jackson County
My Commission Expires
August 20, 2008