

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

In the Matter of the Application of Aquila, Inc.)	
d/b/a Aquila Networks – MPS and Aquila)	
Networks – L&P for Authority to Transfer)	Case No. EO-2008-0046
Operational Control of Certain Transmission)	
Assets to Midwest Independent Transmission)	
System Operator, Inc.)	

STAFF’S POSITION STATEMENTS

COMES NOW the Staff of the Missouri Public Service Commission and makes the following statements of position to the list of issues in this case:

STAFF’S POSITION STATEMENTS TO LIST OF ISSUES

1. Is “not detrimental to the public interest” the appropriate standard for the Commission to use in making its determinations in this case?

Staff Response: Yes. While section 393.190, RSMo 2000 contains no express standard for the Commission’s determination of whether to approve a request to “sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, . . .,” the Commission has expressly used the standard of “not detrimental to the public interest” in determining whether to approve these types of transactions. *In the Matter of the Application of Aquila, Inc. for Authority to Assign, Transfer, Mortgage or Encumber its Utility Franchise, works or System in Order to Secure Revised Bank Financing Arrangements*, 12 Mo. P.S.C. 3d 375, 378 (Case No. EF-2003-0465, *Report and Order* issued February 24, 2004). In that same *Report and Order*, the Commission explains the “not detrimental to the public interest” standard as follows:

The Commission concludes a detriment to the public interest includes a risk of harm to ratepayers. In reviewing a recent merger case involving the same parties, the Supreme Court of Missouri ruled that . . . “(w)hile (the Commission) may be unable to speculate about future merger-related rate increases, it can determine whether the acquisition premium was

reasonable, and it should have considered (the premium) . . . when evaluating whether the proposed merger was detrimental to the public.”¹

In other words, the Commission could not have known whether the acquisition premium would result in rate increases. But it should have looked at the premium’s reasonableness. Likewise, the Commission cannot know whether the encumbrances will result in rate increases. But the Commission should look at the reasonableness of the risk of the increases. This analysis conforms to the concept that . . . “(n)o one can lawfully do that which has a **tendency** to be injurious to the public welfare.”² (Emphasis in original, footnotes renumbered).

Thus, consideration of the future impacts of proposed present actions are to be considered in determining whether proposed present actions are “not detrimental to the public interest.”

2. Should the Commission determine that Aquila’s application to join MISO is not detrimental to the public interest? What considerations should the Commission take into account in making its determination?

Staff Response: No, the Commission should not determine that Aquila’s application to join MISO is not detrimental to the public interest. The record does not demonstrate that the net benefits from Aquila joining MISO exceed the net benefits from Aquila joining the SPP. Specifically, the record indicates the following (greater details on each of these points in provided in Staff’s response to issue 5):

A. The CRA cost-benefit analyses show that Aquila in SPP has a greater level of adjusted production cost savings.

B. These cost-benefit analyses also show that Aquila in MISO results in a higher level of congestion for the Aquila control area than Aquila in SPP.

1) In the original CRA cost-benefit analysis submitted by Aquila, this increased level of congestion is demonstrated by the inability for Aquila to commit generation

¹ *State ex rel. AG Processing Inc., v. Public Service Commission*, 120 S.W.3d 732, 736 (Mo.banc 2003).

² *State ex rel. City of St. Louis v. Public Service Commission*, 73 S.W.2d 393, 399-400 (Mo.banc 1934)(emphasis supplied).

from the MISO pool to meet its load when its own base-load generation is scheduled out of service for maintenance.

- 2) In the supplemental CRA cost-benefit analysis submitted by MISO, this increased level of congestion is demonstrated by the higher level of congestion costs associated with generation from Aquila's participating base-load generation units to Aquila's load..

C. The primary factor contributing to this higher level of congestion for Aquila's control area is the lower level of interconnections between Aquila and MISO.

3. If the Commission approves Aquila's application to join MISO, should the Commission make its approval subject to certain conditions? If so, what are the conditions?

Staff Response: Yes. While it is the Staff's position that it would be detrimental to the public interest for the Commission to approve Aquila's application to join MISO, if the Commission determines otherwise, the Staff recommends the Commission impose the conditions summarized below, subject to a negotiation period of two months for the parties to negotiate the specific terms of these proposed conditions and present them to the Commission in the form of a settlement agreement for approval by the Commission:

- 1) Interim approval by the Commission for the Aquila joining MISO for a period of seven (7) years;
- 2) An agreement by Aquila to perform a follow-up cost-benefit study to be submitted in an Interim Report as evidence regarding continuing RTO participation prior to the end of the interim approval period;
- 3) A cap placed on MISO administrative costs over the interim period, that if exceeded, triggers a filing by the utility with the Commission;
- 4) Full consideration being given to Aquila joining MISO on the same basis as other MAPP utilities that are not now members of MISO, without Aquila incurring any MISO exit fees;
- 5) A service agreement between Aquila and MISO that prevents the transfer of transmission rate setting for existing facilities from the Commission to the FERC, with the Commission's approval contingent on FERC approval of this service agreement;
- 6) Seams agreements involving all Missouri utilities, but specifically between MISO and AECI; and

7) Provisions related to Aquila withdrawal from MISO for fundamental changes in the utilities participation in MISO, including:

- a) Twelve months to effectuate a withdrawal from MISO;
- b) Recognition of exit fees related to withdrawal from MISO; and
- c) Aquila agrees to seek the Commission's approval to withdraw from MISO or take other actions that fundamentally change Aquila's participation in MISO; e.g., participation in MISO through an Independent Transmission Company.

4. In making its determination whether to grant Aquila's application to join MISO, should the Commission compare Aquila's membership in MISO to other alternatives?

If so, what are the alternatives and what do the comparisons of the alternatives show?

Staff Response: Yes. The Staff's position is that for Aquila not to choose the best alternative, whether it be joining an RTO or not, is detrimental to the public interest.

- A. In the original CRA cost-benefit analysis submitted by Aquila, the alternative of Aquila as a standalone transmission provider resulted in the highest present value of costs for Aquila ratepayers over a ten-year period (2008 – 2017). The alternative of Aquila as a member of MISO resulted in the next highest present value of costs. The alternative of Aquila as a member of SPP resulted in the lowest present value of cost.
- B. In the supplemental CRA cost-benefit analysis submitted by MISO, the alternative of Aquila as a member of MISO resulted in the highest costs for Aquila ratepayers over a one-year period (2008). The alternative of Aquila as a standalone transmission provider resulted in the next highest costs. The alternative of Aquila as a member of SPP resulted in the lowest cost to Aquila ratepayers.
- C. To some extent, the results of MISO having the highest costs for Aquila ratepayers for 2008 might be mitigated by:
 - 1) The analysis being biased in favor of Aquila as a standalone transmission provider. This bias was introduced by the assumption that unit commitment could be performed on a system-wide, rather than pool-wide basis. This resulted in a low estimate of costs for the standalone scenario.

- 2) The incremental reliability benefits from being in an RTO. However, only an approximate level of these benefits has been measured for Aquila.
- 5. To what extent should the Commission take into account the following in its determination of whether or not to approve Aquila's application to join MISO?**

a. The CRA International, Inc. cost-benefit study sponsored by Aquila;

Staff Position: The Commission should take into account the fact that, while this study is not perfect, it provides reliable evidence of the higher level of congestion that results were Aquila to join MISO rather than SPP.

- 1) The imperfections in this study occur when Aquila's base-load generating units are scheduled out for maintenance and in order to commit sufficient generation to meet its load, Aquila commits the Dogwood (formerly, Aries) plant. However, once committed, the Dogwood plant is run at a specified minimum running level and energy is purchased from the market. The record indicates that it would have been cheaper for Aquila to commit combustion turbines and purchase the energy from the market, but the unit commitment logic of the GE MAPS model used in this analysis compares the costs of running generation that is committed.
- 2) This imperfection can be corrected by allowing for bilateral purchases of energy during the periods when Aquila's base-load generating units are out of service.
- 3) Even without making this correction, the Commission should ask the question: with Aquila assumed to be in MISO why wasn't the MISO dispatch able to commit sufficient generation to meet Aquila's load when Aquila's base-load generation was scheduled out for maintenance? Moreover, this was not an issue for the SPP dispatch when Aquila was assumed to be in SPP.
- 4) The inability of the MISO dispatch to commit sufficient generation to meet Aquila's load when Aquila's base-load generation is scheduled to out of service for maintenance occurs because of insufficient interconnection capacity between MISO and Aquila.

b. Cost-benefit analyses sponsored by parties other than Aquila

Staff Position: The only other cost-benefit analysis presented was supplemental runs requested of CRA by MISO.

- 1) This analysis was biased in favor of Aquila as a standalone provider of transmission service. This bias occurred through allowing Aquila to commit generation to meet load on a system-wide, rather than pool-wide, basis. In effect, this assumption gives Aquila, assumed not to be an RTO, the benefits of being able to commit generation to meet its own load from generation units that are in other pools. This gives Aquila as a standalone transmission provider much of the advantage of being in an RTO.
- 2) This analysis was also biased in favor of Aquila in MISO. This bias also occurred through allowing Aquila to commit generation to meet load on a system-wide, rather than pool-wide, basis. Moreover, this assumption allowed Aquila to take advantage of its interconnection with SPP to overcome the lack of interconnections with MISO that showed up in the original CRA cost-benefit study.
- 3) Even with the major flaw that using a system-wide unit commitment introduced, this study still indicates that Aquila in SPP provides greater net benefits to Aquila ratepayers than Aquila in MISO. This is because of the higher level of congestion that occurs for Aquila load when it is in MISO compared to when it is in SPP.

c. Costs and/or benefits not included in the CRA International cost-benefit study sponsored by Aquila or cost-benefit analyses sponsored by parties other than Aquila;

Staff Position: Benefits attributed to being in an RTO were introduced by MISO and the City of Independence challenged the assumption that SPP cost would be the same as MISO's were it to offer the same markets as MISO.

A Benefits attributed to being in an RTO not covered by the CRA cost-benefit study were from increased reliability and reduced planning reserve margins.

- 1) The Staff agrees that RTOs do provide increased reliability to the electric power grid, but finds that these benefits are attributable to all RTOs, including both MISO and SPP.
- 2) The Staff does not agree that Aquila will benefit from reduced planning reserve margins from joining MISO, primarily because of the low level of interconnection between MISO and Aquila.

B The City of Independence offered a fixed-cost theory for why the costs in SPP should be higher than MISO, but provided no evidence to support its theory. The Staff rebutted the fixed-cost theory, and the Commission should disregard it.

d. Aquila's current relationships with MISO and SPP;

Staff Position: The services Aquila receives from MISO and SPP were not considered as a part of the Aquila standalone case in the CRA cost-benefit studies.

e. Differences in the development of electricity markets between MISO and SPP;

Staff Position: The Commission should put little if any weight on the difference in the development of electricity markets between MISO and SPP. SPP is in the process of having a cost-benefit study performed to determine whether or not it is cost-beneficial for it to offer a day-ahead energy market, financial transmission rights and markets for regulation and operating reserves. If the cost-benefit analyses support adding these markets, then the CRA cost-benefit study submitted by Aquila in this case measures the net benefits from those markets. However, if the cost-benefit analyses do not support the implementation of one or more of these markets, the CRA cost-benefit study submitted by Aquila in this case underestimates the net benefits, by including net negative benefits for markets that SPP should not implement.

f. The proposed acquisition of Aquila by Great Plains Energy that is the subject of Case No. EM-2007-0374;

Staff Position: This should only be taken into account were the Commission considering approval of Aquila joining MISO. In this instance, the Commission should condition its approval of Aquila joining MISO on Aquila not being acquired by Great Plains Energy.

g. Union Electric Company's continuing membership in MISO;

Staff Position: This should only be taken into account were the Commission considering approval of Aquila joining MISO. In this instance, the Commission should condition its approval of Aquila joining MISO on Union Electric Company's continuing membership in MISO.

h. Aquila's obligation to MISO made in FERC Docket No. ER02-871 to file and support Aquila's application to join MISO;

Staff Position: Aquila has met that obligation. However, the Commission should not make its decision in this case based on an obligation to file and support an application to join MISO. Instead, the Commission should make its decision based on what is not detrimental to the public interest.

- 6. If the Commission authorizes Aquila to join MISO, should the Commission determine now whether all future FERC-approved administrative fees Aquila is assessed by MISO and all future costs Aquila incurs from MISO in making prudent purchases of capacity and/or energy to serve its bundled retail load should be considered to be prudently incurred expenses for purposes of including them in Aquila's cost of service in Aquila's next general electric rate case before this Commission?**

Staff Position: No.

A. MISO assesses MISO administrative fees to Aquila. These fees are subject to FERC approval and which fees are applicable should be subject to a FERC approved Service Agreement between Aquila and MISO.

1) Prudent purchases of capacity and energy from MISO by Aquila:

- a. MISO currently does not have a capacity market, and the Commission should not commit to purchases from a market that does not currently exist and for which the market structure is no known.
- b. MISO does have energy markets, but in rate cases before the Commission, production costs included in rates are determined on a normalized, not actual basis. Thus, it makes little sense to include actual purchases, whether prudently incurred or not, as prudently incurred expense to be included in Aquila's rate.

WHEREFORE, as ordered by the Commission in its October 30, 2007 Order Adopting Procedural Schedule as modified by its January 23, 2008 Order Modifying Procedural Schedule, the Staff files its position statements in this case.

Respectfully submitted,

/s/ Nathan Williams

Nathan Williams
Deputy General Counsel
Missouri Bar No. 35512

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8702 (Telephone)
(573) 751-9285 (Fax)
nathan.williams@psc.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 18th day of March, 2008.

/s/ Nathan Williams