

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

The Office of the Public Counsel,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	Case No. EC-2006-0171
Aquila, Inc., d/b/a Aquila Networks-MPS	)	
and Aquila Networks-L&P,	)	
	)	
Respondent.	)	

**STAFF'S RESPONSE TO AQUILA'S ANSWER AND NOTICE OF SATISFACTION**

Comes now the Staff of the Missouri Public Service Commission (Staff) and respectfully submits Staff's Response to Aquila's Answer and Notice of Satisfaction:

1. On October 14, 2005, the Office of the Public Counsel (Public Counsel) filed its Complaint against Aquila, Inc., d/b/a Aquila Networks-MPS and Aquila Networks-L&P (Aquila).

2. In this Complaint, Public Counsel alleges Aquila failed to fund its Other Post Employment Benefits (OPEB) obligations in 2003, 2004 and 2005 and thereby has violated Section 386.315<sup>1</sup> and Missouri Public Service Commission (Commission) Orders in Case Nos. ER-97-394 and EM-200-292 (Public Counsel Complaint at 2-3). Public Counsel further alleges that Aquila's failure to fund OPEB obligations since 2003 is a continuing violation of Section 386.315 and applicable Commission Orders (Public Counsel Complaint at 4). Public Counsel states that the total Aquila funding deficiency is \$8,465,161 (Public Counsel Complaint at 4).

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<sup>1</sup> All statutory citations are to RSMo 2000, unless otherwise noted.

3. On October 14, 2005, Staff Witness Steve M. Traxler, prefiled testimony in Aquila's two pending rate cases, ER-2005-0436 (electric) and HR-2005-0450 (steam). In his sworn testimony in both cases, Mr. Traxler discussed the issue of Aquila's 2003 decision to discontinue funding for its Missouri FAS 106 obligation and steps already taken by Staff in those cases including adjustments in Staff's audit. In the Executive Summaries found in the direct testimonies he prefiled in each case, as to this matter, Mr. Traxler stated

In response to Staff Data Request No. 263, Aquila admitted that a decision was made in 2003 to discontinue funding for its Missouri FAS 106 obligation. Aquila's explanation to the Staff is that this decision was made based upon an incorrect internal communication. Section 386.315, RSMo, requires funding for FAS 106 post-retirement benefit costs collected in rates. Aquila has committed verbally to correcting the \$7 million funding deficiency by year-end 2005.

Aquila's book FAS 106 cost for the test year 2004 was adjusted to reflect the 2005 level and remove the impact of the funding deficiency explained above.

(Direct Testimony of Steve M. Traxler, Case No. ER-2005-0436 at p. 4 and Direct Testimony of Steve M. Traxler, Case No. HR-2005-0450 at p. 4). Mr. Traxler's analyzes the issue later in his direct testimonies (Direct Testimony of Steve M. Traxler, Case No. ER-2005-0436 at p. 7-14 and Direct Testimony of Steve M. Traxler, Case No. HR-2005-0450 at p. 7-13).

4. On November 15, 2005, Aquila filed its Answer and Notice of Satisfaction (Answer) to OPC's complaint.

5. On November 17, 2005, the Commission issued its Order directing Staff and Public Counsel to respond to Aquila's Answer by December 2, 2005.

6. Attached hereto and incorporated by reference as Attachment A is the Verified Statement of Steve M. Traxler. Mr. Traxler is uniquely qualified to present a historical and accounting perspective that clearly documents the inherent contradictions of Aquila's position in

this case. This perspective is currently missing from the pleadings. Furthermore, Staff disagrees with Aquila's contradictory statements.

7. Mr. Traxler states:

Q. Provide a brief explanation of FAS 106.

A. Financial Accounting Standard (FAS) 106 is the accrual accounting method required in financial reporting for post-retirement benefit costs other than pensions. FAS 106 costs generally include the estimated future cost for providing health, dental and vision benefits to retirees. Like FAS 87 for pension cost, FAS 106 requires a qualified actuary to calculate the expected future cost of providing post-retirement benefits for existing employees after retirement. The total projected cost is then charged against earnings (expensed) over the remaining service life of employees which is usually about 15 years.

Q. Prior to the requirement, under Section 386.315 RSMo, to adopt FAS 106 for ratemaking purposes, how were a utility's cost of providing post-retirement benefit costs addressed for ratemaking purposes?

A. Post-retirement benefit costs were included in cost of service based upon the actual cash required for providing current benefits to existing retirees. This method was commonly referred to as the Pay as You Go method.

The use of FAS 106 for setting rates results in recovery, today, for the estimated future cost of providing post-retirement benefit cost to current employees after retirement. Based upon an average remaining service life of 15 years, the utility will not have to make cash payments for FAS 106 benefit costs for 15 years, on average. The funding requirement under Section 386.315 RSMo is intended to ensure that the monies collected today will be available in 15 years when actual benefits are provided to current employees at retirement.

(Attachment A at p. 3, line 18 through p. 4, line 14).

8. Mr. Traxler clearly states (Attachment A at p. 4, lines 15-19), and there can be no credible denial that Aquila is currently collecting post-retirement benefits in rates.

9. Staff submits (Attachment A at p. 5, lines 3-7) that Aquila made an erroneous unilateral decision in 2003 to discontinue funding its annual FAS 106 cost. Mr. Traxler made this statement in prefiled Direct Testimony in Case Nos. ER-2005-0436 and HR-2005-0450, and Aquila has not challenged it in Rebuttal Testimony. Furthermore, Mr. Traxler noted that Aquila had agreed to make an immediate contribution of \$4.8 million and has agreed to make up the rest of the annual funding requirement by the end of 2005 (Direct Testimony of Steve M. Traxler,

Case No. ER-2005-0436, p. 7, line 19 through p. 11, line 13, Direct Testimony of Steve M. Traxler, Case No. HR-2005-0450, p. 7, line 21 through p. 13, line 19).

10. Aquila's Answer here is further proof of these admissions.

Aquila states:

To fully fund its FAS 106 obligations by the end of 2005, however, Aquila submits that a contribution in the amount of \$7,017,530 is required. (The \$1,447,631 difference represents 2001 curtailment expense for the St. Joseph Light & Power operating division, an amount which will be funded over 10 years by annual contributions in the amount of \$144,763.10 to match rate recovery anticipated to be allowed.

It makes no sense for Aquila to need to fully fund its FAS 106 obligations in the amount of \$7,017,530 if it has not violated the law addressing funding requirements. Aquila's own Answer confesses its statutory violation.

11. Aquila's insinuation that the statute does not require annual funding is equally wrong. The assertion that the legislature would create a requirement for an "external funding mechanism" (Section 386.315.2) without requiring annual funding is inconsistent with regulatory history as explained in Attachment A at p. 6, lines 1-5. Aquila's interpretation leads to an absurd result which is not consistent with the law. Such an interpretation leads to the absurd result of allowing Aquila to collect money from ratepayers to fund its OPEB obligations and then not dedicating that money for those obligations until some undermined date up to several years in the future. The cardinal rule of statutory construction is that the intention of the legislature in enacting the statute must be determined and the statute as a whole should be looked to in construing any part of it. *McKnight Place Extended Care, L.L.C v. Missouri Health Facilities Review Committee*, 142 S.W.3d 228, 232 (Mo. App. 2004). Words are to be given their plain and ordinary meaning wherever possible. *Id.* at 232. Each word or phrase in a statute must be given meaning if possible. *Id.* at 232. If the plain language of statute creates an ambiguity, the

statute will be construed to avoid unreasonable or absurd results. *Id.* at 232. Aquila's interpretation would allow Aquila to use money collected from ratepayers to fund OPEB obligations for any purpose it chose and not fund those OPEB obligations until Aquila chooses to do so, an absurd result. (Attachment A at p. 8, line 16 through p. 9 line 7). Furthermore, it is unlikely that a cash-strapped utility would volunteer to pay \$7 million to fund something for which there is no obligation. (Attachment A at p. 7, lines 17-21).

**WHEREFORE**, Staff respectfully requests that the Commission promptly order the Parties to submit a Procedural Schedule in this case to include two rounds of prefiled testimony and an evidentiary hearing.

Respectfully submitted,

DANA K. JOYCE  
General Counsel

/s/ Robert V. Franson  
Robert V. Franson  
Senior Counsel  
Missouri Bar No. 34643

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 2<sup>nd</sup> day of December 2005.

/s/ Robert V. Franson

*Exhibit No.*  
*Issue:* FAS 106 Funding  
Deficiency  
*Witness:* Steve M. Traxler  
*Sponsoring Party:* MoPSC Staff  
*Type of Exhibit:* Verified Statement  
*Case No.:* EC-2006-0171  
*Date Prepared:* December 2, 2005

**MISSOURI PUBLIC SERVICE COMMISSION**

**UTILITY SERVICES DIVISION**

**VERIFIED STATEMENT**

**OF**

**STEVE M. TRAXLER**

**AQUILA, INC.**  
**d/b/a AQUILA NETWORKS-MPS**  
**and d/b/a AQUILA NETWORKS-L&P**

**CASE NO. EC-2006-0171**

**Jefferson City, Missouri**  
*December 2005*

**Attachment A**

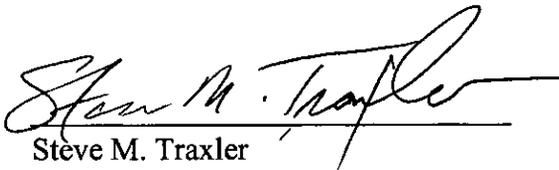
**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF MISSOURI**

The Office of Public Counsel,	)	
Complainant,	)	
	)	
v.	)	Case No. EC-2006-0171
	)	
Aquila, Inc., d/b/a Aquila Networks – MPS	)	
and Aquila Networks – L&P	)	

AFFIDAVIT OF STEVE M. TRAXLER

STATE OF MISSOURI	)	
	)	ss.
COUNTY OF COLE	)	

Steve M. Traxler, being of lawful age, on his oath states: that he has participated in the preparation of the following Verified Statement in question and answer form, consisting of 11 pages to be presented in the above case; that the answers in the following Verified Statement were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.

  
Steve M. Traxler

Subscribed and sworn to before me this 2nd day of December 2005.

  
Notary



TONI M. CHARLTON  
Notary Public - State of Missouri  
My Commission Expires December 28, 2008  
Cole County  
Commission #04474301

1 **VERIFIED STATEMENT**

2 **OF**

3 **STEVE M. TRAXLER**

4 **AQUILA, INC.**

5 **CASE NO. EC-2006-0171**

6  
7 Q. Please state your name and business address.

8 A. Steve M. Traxler, Fletcher Daniels State Office Building, Room G 8, 615 East  
9 13th Street, Kansas City, Missouri 64106.

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

11 A. I am a Regulatory Auditor for the Missouri Public Service Commission  
12 (Commission).

13 Q. Please describe your educational background.

14 A. I graduated from Missouri Valley College at Marshall, Missouri, in 1974 with  
15 a Bachelor of Science degree in Business Administration with a major in Accounting.

16 Q. Please describe your employment history.

17 A. I was employed as an accountant with Rival Manufacturing Company in  
18 Kansas City from June 1974 to May 1977. I was employed as a Regulatory Auditor with the  
19 Missouri Public Service Commission from June 1977 to January 1983. I was employed by  
20 United Telephone Company as a Regulatory Accountant from February 1983 to May 1986.  
21 In June 1986, I began my employment with Dittmer, Brosch & Associates (DBA) in Lee's  
22 Summit, Missouri, as a regulatory consultant. I left DBA in April 1988. I was self-employed

Verified Statement of  
Steve M. Traxler

1 from May 1988 to December 1989. I came back to the Commission in December 1989. My  
2 current position is a Regulatory Auditor V with the Commission's Auditing Department.

3 Q. What is the nature of your current duties at the Commission?

4 A. I am responsible for assisting in the audits and examinations of the books and  
5 records of utility companies operating within the state of Missouri.

6 Q. Have you previously testified before this Commission?

7 A. Yes, I have.

8 Q. Have you filed testimony in rate proceedings involving a regulated utility  
9 company in any jurisdictions besides Missouri?

10 A. Yes, I have also filed testimony in Kansas, Minnesota, Arizona, Indiana, Iowa  
11 and Mississippi.

12 Q. To which of the Aquila, Inc. (Aquila) operations are you directing your  
13 verified statement?

14 A. This verified statement addresses the electric and steam operations of Aquila  
15 in Missouri.

16 Q. What is the purpose of your verified statement?

17 A. On November 15, 2005, Aquila filed a response, Answer and Notice of  
18 Satisfaction, to the complaint filed by the Office of Public Counsel (OPC) docketed as Case  
19 No. EC-2006-0171. My verified statement will respond to specific statements included in  
20 Aquila's Answer and Statement of Satisfaction (Answer)

21 Q. Please provide a brief explanation of your understanding of the complaint  
22 filed by OPC in this Case No. EC-2006-0171.

1           A.     OPC's complaint alleges that Aquila has failed to fund its post retirement  
2 benefits obligation (FAS 106 obligation) since 2003 in violation of Section 386.315, RSMo.  
3 OPC's recommended remedy is for Aquila to make up the funding deficiency and for the  
4 Commission to authorize its General Counsel to pursue penalties in Circuit Court for  
5 Aquila's failure to comply with Section 386.315, RSMo.

6           Q.     What is your experience in addressing issues related to FAS 106?

7           A.     I have either filed testimony and/or supervised the filing of testimony in rate  
8 cases involving most of the major utility companies in Missouri since 1994, the year the  
9 Missouri legislature passed Section 386.315 RSMo requiring the adoption of FAS 106 for  
10 ratemaking purposes. My experience on this issue includes rate cases filed by Aquila, the  
11 former St. Joseph Light & Power Company, Southwestern Bell Telephone Company, Empire  
12 District Electric Company, Missouri Gas Energy Company and Laclede Gas Company.

13          Q.     Were you directly involved in the rate cases for Aquila's MPS and L&P  
14 divisions in which the FAS 106 was initially adopted for ratemaking purposes?

15          A.     Yes. I was assigned to Case No. ER-97-394 for Aquila's MPS division and to  
16 Case No. ER-94-163 for the former St. Joseph Light & Power Company which was acquired  
17 by Aquila in January of 2001 and is now Aquila's L&P division.

18          Q.     Provide a brief explanation of FAS 106.

19          A.     Financial Accounting Standard (FAS) 106 is the accrual accounting method  
20 required in financial reporting for post-retirement benefit costs other than pensions. FAS 106  
21 costs generally include the estimated future cost for providing health, dental and vision  
22 benefits to retirees. Like FAS 87 for pension cost, FAS 106 requires a qualified actuary to  
23 calculate the expected future cost of providing post-retirement benefits for existing

1 employees after retirement. The total projected cost is then charged against earnings  
2 (expensed) over the remaining service life of employees which is usually about 15 years.

3 Q. Prior to the requirement, under Section 386.315 RSMo, to adopt FAS 106 for  
4 ratemaking purposes, how were a utility's cost of providing post-retirement benefit costs  
5 addressed for ratemaking purposes?

6 A. Post-retirement benefit costs were included in cost of service based upon the  
7 actual cash required for providing current benefits to existing retirees. This method was  
8 commonly referred to as the Pay as You Go method.

9 The use of FAS 106 for setting rates results in recovery, today, for the estimated  
10 future cost of providing post-retirement benefit cost to current employees after retirement.  
11 Based upon an average remaining service life of 15 years, the utility will not have to make  
12 cash payments for FAS 106 benefit costs for 15 years, on average. The funding requirement  
13 under Section 386.315 RSMo is intended to ensure that the monies collected today will be  
14 available in 15 years when actual benefits are provided to current employees at retirement.

15 Q. In each of the rate cases filed by Aquila since the effective date of Section  
16 386.315 RSMo, has FAS 106 been used for recognizing post-retirement benefit costs in cost  
17 of service?

18 A. Yes. Aquila has been recovering post-retirement benefit costs under FAS 106  
19 since March of 1998 for the MPS division and since January of 2001 for the L&P division.

20 Q. Does the Staff agree with OPC that Aquila has failed to comply with the  
21 funding requirements under Section 386.315, RSMo?

22 A. Yes. My direct testimonies, prefiled in Case Nos. ER-2005-0436 and  
23 HR-2005-0450, address this issue in detail and were attached to the Staff's Initial Response

1 to Complaint and Motion for Expedited Treatment filed on October 19, 2005 in this Case No.  
2 EC-2006-0171.

3 Aquila admitted, in response to Staff Data Request No. 263.1 issued in Case No.  
4 ER-2005-0436, to making a decision in 2003 to discontinue funding its annual FAS 106 cost:

5 4. The change in funding policy was due to our understanding per our  
6 regulatory department that there was no requirement to fund the FAS  
7 106 expense.

8 In Staff's view, this decision resulted in a violation of Section 386.315, RSMo and  
9 has resulted in funding deficiencies of \$2,982,099 for Aquila's MPS division and \$4,035,431  
10 its L&P division through year-end 2005. The funding deficiency applicable to years prior to  
11 2005, \$4,016,080, represents a violation of the funding requirement under Section 386.315  
12 RSMo in the Staff's view. This assumes that the funding required for 2005, \$3,001,450 is  
13 contributed to Aquila's VEBA trust by year-end 2005.

14 Q. In paragraph 6 on page 2 of Aquila's Answer and Notice of Satisfaction,  
15 Aquila provides the following interpretation of Section 386.315, RSMo:

16 That in this regard Section 386.315 RSMo 2000, does not address the  
17 contribution of funds to an independent external funding mechanism,  
18 but rather addresses the disbursement of funds from the funding  
19 mechanism.

20 Does Staff agree with this interpretation of Section 386.315 RSMo?

21 A. No. The Staff's interpretation of Section 386.315, RSMo and the one utilized  
22 in all Commission cases that Staff is aware of, is that Section 386.315, RSMo addresses both  
23 the funding of FAS 106 costs collected in rates and the disbursement of funds from the  
24 funding mechanism. The recognition of FAS 106 costs in cost of service for ratemaking  
25 purposes has been based upon an expectation of "annual" funding of an "annual" FAS 106  
26 cost recovered in rates. Accordingly, Staff does not agree with Aquila's assertion.

1 Q. Please discuss Paragraph 2 of Section 386.315 RSMo.

2 A. Paragraph 2 of Section 386.315, RSMo, includes the following language:

3 A public utility which uses Financial Accounting Standard 106 shall  
4 be required to use an independent external funding mechanism that  
5 restricts disbursements only for qualified retiree benefits.

6 The requirement to use an external **funding** mechanism presupposes that FAS 106  
7 costs recovered in rates are required to be **funded**.

8 Q. What is the purpose of paragraph 3 in Section 386.315, RSMo?

9 A. Paragraph 3 of Section 386.315, RSMo, allowed a utility to modify its tariffs  
10 to reflect impact of adopting FAS 106 for rates without having to file a general rate case.

11 Q. Please discuss paragraph 3 of Section 386.315.

12 A. The first sentence of paragraph 3 in Section 386.315, RSMo, provides:

13 A public utility which was the subject of a rate proceeding resulting in  
14 the issuance of a report and order subsequent to January 1, 1993, and  
15 prior to August 28, 1994, directing or permitting the establishment of  
16 new rates by such utility, may file one set of tariffs modifying its rates  
17 to reflect the revenue requirement associated with the utility's  
18 expenses for postretirement employee benefits other than pensions, as  
19 determined by Financial Accounting Standard 106, including the  
20 utility's transition benefit obligation regardless of whether the deferral  
21 or immediate expense recognition method was used, if such utility is  
22 **funding** the full extent of its Financial Accounting Standard 106  
23 obligation at the time such tariffs are filed. (emphasis added)

24 This language makes it clear that Section 386. 315, RSMo, includes, both, a  
25 requirement for funding FAS 106 recovered in rates and a requirement that limits the use of  
26 the funded amounts to paying benefits to retirees.

27 Q. In paragraph 6 of Aquila's Answer and Notice of Satisfaction, Aquila makes  
28 the following assertion:

29 Aquila has also funded same to the extent that contributions have been  
30 included in rates, has not made any unlawful disbursements from said

1 trust fund and in all other respects has fully complied with Section  
2 386.315 RSMo 2000.

3 Does the Staff agree with this assertion?

4 A. No. If Aquila had "fully complied with Section 386.315 RSMo 2000" it would  
5 not be necessary for Aquila to make a commitment in paragraph 8 of its, Answer and Notice  
6 of Satisfaction, to make a \$7,017,530 contribution to its VEBA trust to "fully fund its FAS  
7 106 obligations by the end of 2005.....". Aquila has been collecting FAS 106 costs in rates  
8 since March of 1998 for its MPS division, and since January of 2001 for its L&P division.  
9 By its own admission, Aquila discontinued funding of its FAS 106 obligation in 2003 which  
10 means that monies collected in rates for FAS 106 since 2003 clearly have not been funded by  
11 Aquila. For the L&P division, the funding deficiency goes back to 2001.

12 Q. Please comment on Aquila's assertions in paragraph 8 of its Notice of  
13 Satisfaction, that "To fully fund its FAS 106 obligations by the end of 2005, however, Aquila  
14 submits that a contribution in the amount of \$7,017,530 is required" and in the same  
15 paragraph state that "Aquila denies that a funding "deficiency" in that amount, or in any  
16 amount, exists."

17 A. These two statements contradict one another. Given Aquila's significant cash  
18 flow problems resulting from failed non-regulated ventures, it would be imprudent for Aquila  
19 to make a \$7 million contribution to its VEBA trust unless obligated to do so to address a  
20 funding deficiency resulting from the failure to comply with the funding requirements of  
21 Section 386.315, RSMo.

22 The \$7,017,530 contribution represents the amount required to fund Aquila's  
23 FAS 106 obligation, as defined under Section 386.315, RSMo, by year end 2005. It includes  
24 \$2,982,099 for the MPS division and \$4,035,431 for the L&P division. The Staff and Aquila

1 are in agreement with the amount required to meet the funding requirements under Section  
2 386.315, RSMo through year-end 2005.

3 Q. What would be the impact of allowing Aquila to defer funding its annual FAS 106  
4 costs?

5 A. Allowing a utility to delay funding for its annual FAS 106 costs would result  
6 in higher FAS 106 costs recovered from ratepayers in subsequent years. The annual  
7 investment returns earned on investing the funded assets is used as an offset to the FAS 106  
8 cost calculation. Deferring the annual funding lowers the level of funds available for  
9 investment which increases the annual FAS 106 cost to be recovered in rates.

10 The Staff made adjustments in Aquila's current rate cases, Case Nos. ER-2005-0436  
11 and HR-2005-0450 to eliminate the detrimental impact resulting from the under funded status  
12 of Aquila's VEBA trust, which resulted from its decision to discontinue the "annual" funding  
13 of its FAS 106 obligation.

14 Q. Would Aquila's interpretation of the funding requirement under Section  
15 386.315 RSMo have a detrimental impact on ratepayers throughout the state?

16 A. Yes. Aquila's position that it is not in violation of Section 386.315 RSMo is  
17 premised, in my view, on an interpretation that although funding is required under the statute,  
18 the **timing** of the contributions to the external funding mechanism is not addressed by the  
19 statute and therefore left to the discretion of the utility. Allowing all Mo. utilities to delay  
20 funding will result in higher FAS 106 costs to be recovered in rates from customers across  
21 the state.

22 Recognition of post-retirement benefit costs under FAS 106 represents recovery today  
23 of the estimated future cost of providing these benefits to employees after they retire. The

1 funding requirement of Section 386.315 RSMo is intended to ensure that monies collected  
2 today in rates be available in the future when the funds are required for the actual payment of  
3 medical and dental benefits to retirees. Allowing a utility like Aquila to defer funding for  
4 three or more years after collecting FAS 106 costs in rates is contradictory to the intended  
5 purpose of safeguarding these funds. This concern is especially relevant to Aquila, given  
6 their significant cash flow problems, in recent years, resulting from failed non-regulated  
7 ventures.

8 Q. How much of the \$7,017,530 required contribution can be fairly characterized  
9 as funding deficiency which represents a violation of the funding requirement under Section  
10 386.315, RSMo?

11 A. The Staff's interpretation of the funding requirement under Section 386.315,  
12 RSMo, has been that the **annual** FAS 106 cost, recognized in the financial statements,  
13 represents the amount which must be funded annually under Section 386.315, RSMo. This  
14 interpretation has not been challenged by any Missouri utility, including Aquila, prior to the  
15 filing of its Answer and Notice of Satisfaction in this Case No. EC-2006-0171.

16 Under this interpretation, any unfunded amounts which apply to years prior to 2005  
17 represent a funding deficiency which, in the Staff's view, is a violation of the funding  
18 requirement under Section 386.315 RSMo. The total unfunded FAS 106 obligation for years  
19 prior to 2005 is \$4,016,080. The unfunded amount related to 2005, \$3,001,450 does not  
20 represent a violation of the funding requirement under Section 386.315, RSMo, assuming it  
21 is funded prior to year end 2005.

22 Aquila's decision to make what it has characterized now as a voluntary \$7 million  
23 contribution, contradicts the premise supporting their decision in 2003 to discontinue annual

1 funding of its FAS 106 obligation. Aquila's Human Resources department was informed in  
2 2003 that mandatory contributions were not required in Missouri to fund its FAS 106  
3 obligation. Therefore, Aquila decided in 2003, to discontinue making annual contributions to  
4 their VEBA trust. In response to Staff Data Request No. 263.1, Aquila provided the  
5 following justification for its decision to discontinue funding in 2003:

6 4. The change in funding policy was due to our understanding per our  
7 regulatory department that there was no requirement to fund the FAS  
8 106 expense.

9 Q. Please summarize your comments contained in this verified statement.

10 A. Aquila's Answer and Notice of Satisfaction attempts to argue that Aquila has  
11 not violated Section 386.315, RSMo. The Staff concurs with OPC that a violation of Section  
12 386.315 has occurred. The Staff disagrees with the following assertions contained in the  
13 Answer and Notice of Satisfaction filed by Aquila on November 15, 2005:

14 1) Aquila asserts in paragraph 6 that Section 386.315 RSMo does not address the  
15 contribution of funds to an independent external funding mechanism. The funding  
16 requirement is addressed specifically in paragraphs 2 and 3 of Section 386.315, RSMo. The  
17 funding requirement is satisfied by making annual contributions to the funding mechanism –  
18 a VEBA trust in the case of Aquila. In addition, the intent of the funding requirement under  
19 Section 386.315 RSMo is to safeguard the monies collected in rates today which will be used  
20 in the future to pay benefits to employees after retirement. The Staff has interpreted the  
21 statute to require **annual** funding of the FAS 106 obligation. Funding the annual FAS 106  
22 cost recorded in their financial statements has been agreed to by the Staff and Missouri utility  
23 companies for compliance with Section 386.315 RSMo.

24 2) Aquila admits in paragraph 8 of its Answer and Notice of Satisfaction that a  
25 \$7,017,530 contribution is required to "fully fund its FAS 106 obligation" and in the same

Verified Statement of  
Steve M. Traxler

1 paragraph, denies that any funding deficiency exists. The clear intent of Section 386.315  
2 RSMo is to safeguard the monies collected today for future benefit payments to retirees.  
3 Accepting Aquila's interpretation would lead to an abrogation of the aforementioned  
4 statutory intent. In addition as explained on pages 8 and 9 of this verified statement,  
5 allowing a utility to defer its contributions to the funding mechanism is detrimental to  
6 ratepayers because it results in higher FAS 106 costs to be recovered in rates in subsequent  
7 years.

8 3) Annual funding has been interpreted by the Staff as necessary to meet the  
9 funding requirements of Section 386.315, RSMo. Aquila is in clear violation of the Section  
10 386.315, RSMo for its failure to fund annual FAS 106 costs of \$4,016,080 related to years  
11 prior to 2005. An additional contribution of \$3,001,450 is required by year-end 2005 to be in  
12 compliance for the year 2005.

13 Aquila's Answer and Notice of Satisfaction can be fairly characterized as an attempt  
14 to avoid responsibility for violating the funding requirements of Section 386.315, RSMo.

15 Q. Does this conclude your verified statement?

16 A. Yes it does.