

January 21, 2005

Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
PO Box 30221
Lansing, MI 48909-7721

Re: Case No. U-13550-R
Aquila Initial Brief

Dear Ms. Kunkle:

Enclosed please find revised Initial Brief of Aquila Inc. d/b/a in the above-referenced matter.

If there are any questions, please do not hesitate to contact me.

Sincerely,

DYKEMA GOSSETT PLLC

Albert Ernst

AE:jmb

cc: Steve Jurek
Harry Ono
Chuck Hauska
Dave Tyler
Service List

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of AQUILA)
NETWORKS - MGU for a gas cost recovery)
reconciliation proceeding for the 12-month)
period ending December 31, 2003.)

Case No. U-13550-R

INITIAL BRIEF
OF
AQUILA INC. D/B/A AQUILA NETWORKS – MGU

In accordance with the schedule set by the Honorable Daniel E. Nickerson, Administrative Law Judge (“ALJ”),¹ Aquila Inc. d/b/a Aquila Networks-MGU (“Aquila” or “Company”) respectfully submits this initial brief. It is anticipated that initial briefs will also be filed by the Michigan Public Service Commission (“Commission”) Staff, Attorney General Michael A. Cox (“AG”) and the Residential Ratepayer Consortium (“RRC”). Aquila presently intends to file its reply brief on February 8, 2005.²

Introduction and Overview

On October 29, 2003, the Commission issued its order in Aquila’s 2003 GCR plan proceeding covering the 12-months ending December 31, 2003. Therein, the Commission (i)

¹ Tr 280, line 2. See, footnote 2, *infra*.

² At the request of the parties, on January 13, 2005, the ALJ extended filing dates so that initial and reply briefs are now due January 21, 2005 and February 8, 2005, respectively.

approved a \$6.17 per Mcf Gas Cost Recovery (“GCR”) factor,³ (ii) declined to deviate from the current roll-in methodology for reconciliation of over/under-recoveries,⁴ (iii) authorized implementation of a GCR ceiling price adjustment contingency mechanism to quarterly adjust Aquila’s GCR factor subject to an appropriate percentage of incremental change in NYMEX,⁵ and (iii) accepted Aquila’s prospective commitments to (a) increase its storage levels, (b) file a tariff amendment to limit transportation customer utilization of authorized tolerance levels (“ATLs”), (c) change its GCR calendar year to an April through March GCR year, (d) provide a more complete discussion of its Federal Energy Regulatory Commission (“FERC”) filings, (e) report ATLs separately in future GCR plan and reconciliation filings, (f) provide a description of pipeline rates used, (g) describe how fixed price supplies will be purchased, (g) reduce storage reserved for transportation customers, (h) implement a colder than normal (“CTN”) winter storage plan (i) reference dekatherms and Mcf consistently in future filings and (j) maintain a daily operational log.⁶ The Commission also required that future GCR plan filings use cost averaging of the NYMEX figures for the last three days of the month,⁷ rejected the RRC’s recommendation that Aquila implement a daily purchasing methodology⁸ and authorized adoption of Staff’s proposed quartile fixed-price purchasing methodology.⁹

³ October 29, 2003 order, p 11.

⁴ October 29, 2003 order, p 10.

⁵ October 29, 2003 order, p 12.

⁶ *Id.*

⁷ October 29, 2003 order p 13.

⁸ *Id.*

⁹ October 29, 2003 order, p 15.

On March 30, 2004, Aquila submitted its GCR *reconciliation* filing covering calendar year 2003. Therein, the Company represented that it experienced a net under-recovery of \$19,784,402 for calendar year 2003¹⁰ and that its cumulative under-recovered balance for 2003 was \$13,032,845 after netting out its \$6,751,557¹¹ 2002 calendar year net over recovered balance.

On September 24, 2004, the Commission Staff, the AG and the RRC filed their testimony through Susan J. Sims and Robert G. Ozar for the Commission Staff, Ralph E. Miller for the AG, and Frank J. Hollewa for the RRC. In their filings, only two disputed issues were raised – and these are referred to in this brief as (i) the “*last week in February/First week in March*” (“*LWF/FWM*”) *issue* and (ii) the “*BP issue*”. The two issues are summarized below:

- *LWF/FWM Issue* – At issue are Aquila decisions to (i) withdraw gas from ANR storage during CTN weather in January and February 2003, (ii) not arrange for above normal plan levels of first-of-month (“FOM”) purchases or daily spot market purchases in January and February 2003, and (iii) instead utilize spot market purchases during the LWF/FWM. This issue was raised by Messrs. Ozar, Miller and Hollewa. Their proposed adjustments are \$1,234,000,¹² \$775,812¹³ and \$1,560,791,¹⁴ respectively.

¹⁰ Tr 33, line 22.

¹¹ Tr 6, lines 1-3. Exhibit A-4, line 30, column (n) and line 21, column (b).

¹² Tr 264, line 6.

¹³ Tr 236, line 1.

¹⁴ Tr 203, line 5.

- BP Issue – At issue are ten Aquila payments to BP for daily spot purchases compared to the daily price published by the *Gas Daily* where the price paid exceeded the *Gas Daily* listing by \$0.15 to \$3.05 per Mcf. This issue was solely raised by Mr. Hollewa. His proposed adjustment is \$445,674.¹⁵ ¹⁶ Mr. Hollewa also recommended that a maximum \$0.01 to \$0.02 be placed on all future daily spot purchases when comparing actual price paid to the *Gas Daily* posting; and absent such restriction, that sole source purchases from BP be limited to one day and not three days without competitive bidding by telephone and documentation.¹⁷

While this brief will address the evidentiary record in general, its main focus will be on the above issues.

Three preliminary recitations are appropriate at this point: (i) the standard of review which has evolved in Commission proceedings, (ii) the requirement that the Commission’s order be based on the “competent, material and substantial evidence on the whole record” and (iii) unforeseen conditions during the LWF/FWM.

The Standard of Review – This is a *reconciliation* case. At issue is the prudence of Aquila’s 2003 gas supply decisions. Aquila submits that the other parties’ proposed disallowances are based on *hindsight*. Aquila further suggests that the Commission’s decision in this docket not be based on *hindsight* but should, instead, be based on the “*reasonableness*” standard which has evolved over the years. This standard was cogently enunciated by the

¹⁵ Tr 215, line 9.

¹⁶ It should be noted that all but \$7,700 of Mr. Hollewa’s proposed \$445,764 was also included in his \$1,560,791 disallowance on the LWF/FWM issue. Thus, even if the Commission finds merit in Mr. Hollewa’s BP adjustment, he has overstated the subject disallowance by \$437,974. (Tr 106, lines 19-23). This will be further discussed at page 55, *infra*.

¹⁷ Tr 71, line 22 through Tr 72, line 3.

Commission in its December 19, 1991 order in Consumers Power Company's 1991 GCR reconciliation docket:

The Commission agrees that when evaluating the reasonableness and prudence of contracting decisions, *it is not permissible to use hindsight* to either approve or disapprove the company's actions. *Reasonableness and prudence should be measured by the knowledge available or reasonably foreseeable as of the date the challenged decisions were made.* . . ." (emphases added; p 26).

This same principal has been enunciated in MGU/Aquila decisions, e.g., Case No. U-10444-R (1994 GCR Recon) and U-10982 (1996 GCR Plan).¹⁸ In Case No. U-10444-R, MGU gas purchasing decisions cost the Company an additional \$1.1 million but the decision was judged prudent because the Company had reason to believe it was securing a more balanced supply portfolio.

Aquila submits that Messrs. Ozar's, Miller's and Hollewa's recommended disallowances are based on *hindsight*. The effect of their testimony is that a penalty/disallowance should be imposed upon any company that does not accurately predict the future. This brief submits that their presentations reflect *hindsight*; and further, that Aquila's actions were *reasonable and prudent based on the knowledge available or reasonably foreseeable as of the date the challenged decisions were made*.

Competent, Material and Substantial Evidence on the Whole Record – The evidentiary record in this docket consists of 281 transcript pages and 39 exhibits. At issue are *factual* disputes, i.e., *what was the knowledge available or reasonably foreseeable as of the date the challenged decisions were made?* Commission procedure and Michigan law require that the Commission's decision be based on the "competent, material and substantial evidence on the

¹⁸ Case No. U-10444-R Orders dated February 5, 1996 and May 10, 1996 (denying rehearing); Case No. U-10982, order dated September 12, 1996.

whole record”. Rule 339(3) of the Commission’s Rules of Practice and Procedure, R 460.17339(3) provides, in pertinent part, as follows:

Briefs containing factual allegations claimed to be established by the evidence *shall include a reference to the specific portions of the record where the evidence may be found.* . . . [emphasis added].

This brief is replete with transcript references to show where the evidentiary record supports the statements made. *Aquila assumes that other parties will be required to comply with Rule 339(3).*

The Administrative Procedures Act of 1969 (“APA”), 1969 PA 306, as amended, MCL 24.201 *et seq.* also requires that decisions be based on the “competent, material and substantial evidence on the whole record” in two places. First, APA §85 provides, in pertinent part, as follows:

A decision or order shall not be made except upon consideration of the record as a whole or a portion of the record as may be cited by any party to the proceeding and as *supported by and in accordance with the competent, material and substantial evidence.* [emphasis added].

Second, APA §106(1)(d) provides, in pertinent part, as follows:

Except when a statute or the constitution provides for a different scope of review, the court shall hold unlawful and set aside a decision or order of an agency if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:

. . .

(d) Not supported by *competent, material and substantial evidence on the whole record.* [emphasis added].

Finally, Michigan’s constitution requires that the decision in this docket be based on the “competent, material and substantial evidence on the whole record”. Const 1963, art 6, §28 provides, in pertinent part, as follows:

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, *whether the same are supported by competent, material and substantial evidence on the whole record.* [Emphasis added].

Unforeseen Conditions During the LWF/FWM – The Commission will have to determine whether Aquila’s actions were *reasonable and prudent based on the knowledge available or reasonably foreseeable as of the date the challenged decisions were made.* Thus, to the extent that the unexpected happened, a qualitative assessment is required. BP’s Mr. Lutz provided that perspective from an operational point of view.

Mr. Lutz testified that industry participants had finalized their March monthly plans and the first few days of the month started over a weekend. BP’s storage deliveries were fully committed (during March bid week at the end of February) for the first three days of March.¹⁹ The forecast was for slightly colder than normal weather on Saturday, March 1, turning very cold Saturday night through Monday. Early market prices quoted for Michigan, Chicago and Dawn were in the \$16 per Mcf to \$19 per Mcf range. Fixed price bid/ask spreads were \$5.00 wide. Industry participants were reluctant to enter into *Gas Daily* priced deals as the risk was too great in this price environment.²⁰

Gas prices in Michigan are influenced by demand experienced in the area within Michigan and the surrounding area (*i.e.*, Chicago, Eastern Canada (Dawn), and Consumers Energy’s City Gate); and there is typically a high correlation of prices at these points, due to

¹⁹ Tr 148, lines 15-20.

²⁰ Tr 148, line 22 through Tr 149, line 2.

pipeline connectivity and the ability to displace supplies and reroute gas into the high demand market area.²¹ Early on the morning of February 28, 2003, BP received calls from numerous utilities and local distribution companies (“LDCs”) advising that they would need large volumes of incremental daily gas. At the same time, operational problems and spiking regional demand impacted the availability and reliability of gas supplies. Great Lakes Gas Transmission declared a *force majeure* on firm transportation on February 28, 2003, due to a major compressor failure.²² Union Gas was limiting storage withdrawals in Ontario. Northern Natural Gas Pipeline was having critical days on February 25 and 26, their only critical days for the year.²³ Prices on those days surpassed \$20 per Mcf on the Northern Natural System, in Michigan and at Dawn, Ontario. There were continuing System Operational Limitations on Northern Natural throughout the weekend in question. Chicago prices were trading up to \$15 per Mcf. Chicago continued to move up, trading up to \$19 per Mcf. Dawn was offered at \$16 per Mcf. With Chicago trading at \$19 per Mcf, the incentive to flow gas east on Vector, ANR and Great Lakes to Michigan and Union was significantly reduced. All these events were extraordinary and limited the natural gas available in Michigan.²⁴ We know about them now because we have the benefit of *hindsight*.

BP storage gas was fully committed the first three days of March. In order to bring more flowing gas into Michigan on interstate pipelines, it had to be price competitive with Chicago and Dawn. BP bought gas at Dawn (since it was priced lower than Chicago). Prices eased off

21 Tr 149, lines

22 Tr 149, lines 18-23. Exhibit A-24 is a copy of the *force majeure* notice.

23 Tr 149, lines 24-26. Exhibit A-25 is a copy of the System Overrun Limitation and Critical Day Notice Summary.

24 Tr 150, lines 1-8.

toward the end of the day once trading volumes decreased. BP sold gas to all of its LDC customers in Michigan at comparable prices.²⁵

With respect to storage and purchasing activity, during bid-week for February baseload gas, total working gas inventories reported by EIA were only 8.3% below the 5 year average. *It was during February that inventory levels fell dramatically, reaching 39.49% below the 5 year average by March 7.* From a national perspective, storage levels did not seem to require an above normal purchasing strategy for February.²⁶

Aquila's actions, when placed in perspective for what was really happening, were not imprudent or unreasonable. When placed in perspective, Aquila's actions were *reasonable and prudent based on the knowledge available or reasonably foreseeable as of the date the challenged decisions were made.*

History of Proceedings

On March 30, 2004, Aquila filed its application, direct testimony and exhibits in support of its 2003 calendar year GCR reconciliation. The direct testimony was prefiled through (i) David J. Tyler, Aquila's Manager, Regulatory Services for the State of Michigan²⁷ and (ii) Harry F. Ono, Aquila's Director East Gas Supply Services.²⁸ On April 15, 2004, the Commission issued its Notice of Hearing scheduling a prehearing conference for May 13, 2004. On May 5, 2004, the Commission Staff filed its appearance. On May 6, 2004 and May 7, 2004, respectively, the RRC and AG filed petitions to intervene. On May 13, 2004, the prehearing

²⁵ Tr 150, lines 10-15.

²⁶ Tr 150, lines 22-26.

²⁷ Tr 29, lines 6, 7.

²⁸ Tr 50, line 10.

conference was held. Thereat, the intervention petitions of the AG and RRC were granted,²⁹ a schedule was established,³⁰ and standard procedural matters were addressed. On July 12, 2004, the RRC filed notice that the American Association of Retired Persons would no longer be participating in the docket. On August 19, 2004 and September 30, 2004, Aquila filed revisions to page 8 of Mr. Ono’s prefiled direct testimony. On September 24, 2004, Aquila filed revisions to its prefiled Exhibits A-4 and A-6. On September 23, 2004, the RRC filed testimony and exhibits of Mr. Hollewa. On September 24, 2004, the Staff filed testimony and exhibits of Mr. Ozar and Ms. Sims. On the same day, the AG filed testimony and exhibits of Mr. Miller. On November 10, 2004 Aquila filed rebuttal testimony of Mr. Ono and Christopher M. Lutz;³¹ and the RRC filed rebuttal testimony of Mr. Hollewa. On December 6, 2004, Aquila filed a motion to strike portions of Mr. Hollewa’s testimony. On December 7, 2004, BP Canada Energy Marketing Corp. (“BP”) filed its notice of appearance. On December 9, 2004, the RRC filed its response to Aquila’s December 6, 2004, motion to strike portions of Mr. Hollewa’s testimony. On December 13, 2004, evidentiary hearings were held and the evidentiary record was closed.³² During the evidentiary hearings, the ALJ granted in part – and denied in part – Aquila’s motion to strike portions of Mr. Hollewa’s testimony³³ and scheduled initial and reply briefs for January 14 and 28, 2005, respectively.³⁴

²⁹ Tr 4, lines 20, 21.

³⁰ Tr 5, lines 2-17.

³¹ BP’s Manager of Trading. Tr 145.

³² Tr 280, line 14.

³³ Tr 189-191.

³⁴ Tr 280, line 2. The ALJ has since extended these dates to January 21, 2005 and February 8, 2005, respectively.

Listed below are the witnesses who testified in this docket and record citations to their prefiled presentations:

<u>Witness</u>	<u>Transcript Reference</u>
<u>For Aquila</u>	
David J. Tyler – Direct	Tr 28 – 40
Harry F. Ono – Direct	Tr 48 – 68
Harry F. Ono – Rebuttal	Tr 69 – 107
Christopher M. Lutz - Rebuttal	Tr 143 – 152
<u>For RRC</u>	
Frank J. Hollewa - Direct	Tr 199 – 216
Frank J. Hollewa - Rebuttal	Tr 217 – 223
<u>For AG</u>	
Ralph E. Miller - Direct	Tr 229 – 256
<u>For Staff</u>	
Robert G. Ozar – Direct	Tr 261 – 271
Susan J. Sims – Direct	Tr 275 – 278

At the December 13, 2004 evidentiary hearing, all parties' testimony was bound into the record and the prefiled exhibits were received into evidence. The evidentiary record consists of 280 transcript pages and 39 exhibits.

Aquila's Evidentiary Presentation

Since there are only two disputed issues, this brief will address Aquila's evidentiary presentation on an overview, rather than detailed, basis. If other parties' initial briefs warrant, further detail will be provided in reply brief.

Aquila sponsored testimony of three witnesses – direct testimony of Mr. Tyler,³⁵ direct and rebuttal testimony of Mr. Ono³⁶ and rebuttal testimony of Mr. Lutz.³⁷

³⁵ Mr. Tyler graduated from Wayne State University in 1976 with a BS Degree in Business Administration, majoring in Accounting. His prior work experience includes positions of increasing responsibility at ANR Pipeline Company and SEMCO Energy Gas Company. In his current position at Aquila, Mr. Tyler is responsible for regulatory activities within the state, including compliance with Commission orders, acting as a liaison with the Staff and interveners, and providing support to business unit leaders throughout the organization. In addition, he is responsible for preparing analyses related to the Company's GCR factors, the monthly 45-Day report filing, GCR plan and reconciliation case filings. Mr. Tyler has testified before the Commission and FERC in several dockets. Tr 29-31.

³⁶ Mr. Ono graduated from the University of Nebraska - Omaha in 1984 with a Bachelor of Science Degree in Business Administration, Marketing Major. He has attended numerous industry related seminars throughout his 23-years in the natural gas industry. His prior work experience includes positions of increasing responsibility at Northern Natural Gas. He joined Aquila in 1989, where he has been in several supply and trading related positions including buyer for supplies for Aquila GSS and Director of the East Region responsible for planning and operations. In his present position as Director - East Gas Supply Services, he is responsible for the portfolio planning and daily supply operations for Aquila's natural gas operations in Michigan. Mr. Ono has testified before the Commission and represented the Company in several dockets and technical and settlement conferences. Tr 49-51.

³⁷ Mr. Lutz's educational background includes a Bachelor of Science Degree from the University of Colorado with a Mineral Land Management and Finance concentration (1986) and a Master of Business Administration Degree from the University of Michigan with a concentration in Finance and Accounting (Honors – 1991). Following graduation from the University of Colorado, he accepted a position with Michigan Oil & Gas Brokerage Service as Petroleum Landman (1987 to 1990) where he negotiated oil and gas exploration rights and prepared title history in Michigan and Ohio; and analyzed financial feasibility in reserve acquisition and exploratory projects. Following graduation from the University of Michigan, he joined WestCoast Gas Services as Risk Manager (1992 to 1996) where he managed natural gas price, basis and spread risk on market, supply, and transportation; and advised and implemented customized portfolio management strategies for producers and end-users. He then accepted a position with Howard Energy Marketing as Vice President of Trading (1996 to 1999) where he traded and managed natural gas in Michigan, Illinois and Ontario; designed and built integrated proprietary software for risk management, gas control, accounting and contract administration; and focused on storage and transportation spreads and converted option value of assets into products for producers, distributors and consumers. He was then employed by MCN Energy Marketing as Director of Marketing (1999 and 2000) where he focused on the integration of company wide physical and financial risks, managed the pricing desk, product development and risk for retail markets and coordinated the transition of data, risk and accounting information before and after sale of the retail business from Howard Energy Marketing to MCN Energy Marketing. He joined BP in June 2000 as Manager of Trading. In his current position, he is responsible for management and optimization of exposure on over 1 Bcf per day of interstate natural gas transportation originating in the Gulf, Mid-Continent, and Alberta supply

Mr. Tyler's Direct Presentation

Mr. Tyler's direct testimony detailed derivation of Aquila's 2003 under-recovery, volumes recorded by Gas Supply Services' Accounting Department and reconciliation of those volumes.³⁸ He detailed Aquila's FERC activity during 2003,³⁹ provided an annual summary of Aquila's 2003 GCR actual activity compared to plan,⁴⁰ provided monthly summaries comparing the Company's actual supply mix to the approved 2003 GCR plan,⁴¹ enumerated per unit commodity costs for 2003 actual and plan volumes,⁴² provided the GCR Reconciliation Report filed monthly with the Commission, *i.e.* the 45-Day Report, for the 12 months ended December 31, 2003,⁴³ included monthly supply volumes at pipeline pressure,⁴⁴ set forth the computation of lost-and-unaccounted-for volumes,⁴⁵ displayed the total GCR over/(under)-recovery for each month of the GCR year, calculation of monthly interest using the cash flow cost of gas method,⁴⁶ detailed transition costs paid to ANR Pipeline during 2003 collected through imposition of a

basins. He originates, manages and optimizes 22 Bcf of storage capacity in Michigan with 375,000 MMBtu of deliverability; and he is the book leader for all physical and financial exposures on assets and markets in the Michigan area, including delivered markets on Great Lakes, Panhandle, Vector, ANR, and Trunkline pipelines. Tr 144, 145.

- 38 Tr 31, lines 17-19.
- 39 Tr 32
- 40 Tr 32, lines 15, 16; Exhibit A-3, p 1.
- 41 Tr 32, lines 16, 17; Exhibit A-3, pp 2-13.
- 42 Tr 32, lines 17, 18.
- 43 Tr 32, lines 20-22. Exhibit A-4, pp 1-4.
- 44 Tr 33, line 1; Exhibit A-4.
- 45 Tr 33, lines 1, 2; Exhibit A-4, p 5.
- 46 Tr 33, lines 7, 8; Exhibit A-6.

FERC approved surcharge authorized to recover Above Market Dakota Gasification costs,⁴⁷ detailed cashout, overrun charges and scheduling fees that interstate pipeline suppliers assessed the Company during 2003⁴⁸ and summarized monthly activity relative to transportation customer ATLS for 2003.⁴⁹ He also explained the methodology to price injections into/withdrawals from storage⁵⁰ and the methodology to record the monthly cost of gas.⁵¹

Mr. Tyler did not submit rebuttal testimony. None of the other parties' testimony addressed his evidentiary presentation. Nor were there any questions when Mr. Tyler was tendered for cross-examination.⁵² All of Mr. Tyler's exhibits were received into evidence without objection.⁵³ Thus, it does not appear necessary to further discuss Mr. Tyler's evidentiary presentation.

Mr. Ono's Direct Presentation

Mr. Ono focused on the reasonableness and prudence of Aquila's 2003 GCR expenditures and⁵⁴ the consistency of Aquila's actual 2003 results compared to that included in the 2003 GCR Plan.⁵⁵ He addressed significant events and purchasing activity, as well as items

⁴⁷ Tr 33, lines 10-12; Exhibit A-9.

⁴⁸ Tr 33, lines 14, 15; Exhibit A-10.

⁴⁹ Tr 33, lines 17, 18; Exhibit A-11.

⁵⁰ Tr 34, lines 15-21.

⁵¹ Tr 35, lines 1-13.

⁵² Tr 41.

⁵³ Tr 41, lines 18, 19.

⁵⁴ Tr 51, lines 11, 12, 16, 17.

⁵⁵ Tr 51, lines 12-14; Tr 53 *et seq.*

not anticipated in the Company's 2003 GCR Plan.⁵⁶ He discussed transportation contracts,⁵⁷ the impact of customer choice⁵⁸ and peak day sendout information.⁵⁹ Finally, he noted that fixed price purchases were consistent with the Company's 2003 GCR plan⁶⁰ and that such purchases were reflective of market at the time.⁶¹

Mr. Ono's direct presentation addressed the CTN weather during the GCR year. He compared October 2002 through March 2003 normal weather to actual weather from a corrected degree-day deficiency ("CDDD") perspective as follows:⁶²

<u>Month</u>	<u>Plan CDDDs</u>	<u>Actual CDDDs</u>	<u>Percentage Colder</u>
October 2002	435	539	23.9%
November 2002	746	826	10.7%
December 2002	1,112	1,125	1.2%
January 2003	1,268	1,382	9.0%
February 2003	1,080	1,208	11.9%
March 2003	899	937	4.2%

The CTN weather significantly impacted 2003 natural gas prices and storage inventory levels – in Michigan and across the nation.⁶³ Prices were higher than anticipated and storage

⁵⁶ Tr 51, lines 14-16.

⁵⁷ Tr 66, line 2 though Tr 67, line 3; Exhibit A-2.

⁵⁸ Tr 67, lines 5-10.

⁵⁹ Tr 67, lines 12-22; Exhibit A-8.

⁶⁰ Tr 54, line 6-13.

⁶¹ Tr 54, lines 15-17.

⁶² Tr 55, lines 1-10.

⁶³ Tr 55, line 13 through Tr 56, line 6. Tr 57, lines 20, 21.

levels reached historic low levels.⁶⁴ Thus, Aquila inventory levels were in step with national inventory levels and were in step with how the general market place operated during the winter of November 2002 through March 2003.⁶⁵

The lowered storage inventory levels impacted daily deliverability, *e.g.*, once inventory levels hit a specified level (ratchet in the case of the ANR storage contracts), amounts that could be daily withdrawn were reduced. The same is true of the Company-owned storage facility, *i.e.*, the lower the inventory, the lower the daily withdrawal amount. This took away the Company's flexibility in covering its load requirements.⁶⁶ The low storage inventory levels *nationally* caused upward pressure on prices as cold weather persisted through the winter. This upward pressure was more pronounced in the late winter -- specifically in March 2003. During this time, the East Coast had record low temperatures as well as record setting snowfall.⁶⁷

The low storage inventory situation and reduced deliverability affected Aquila's daily and FOM purchases in March 2003. The Company had to make FOM purchases that were above plan levels at historically high prices, *but at prices that were representative of market at the time.* In addition, Aquila had to make daily supply purchases for the first week of March to cover GCR requirements and to protect deliverability.⁶⁸ Aquila both forecasted *and experienced* CTN weather for the first 10 days of March. Normal total CDDD for the first ten days of March

⁶⁴ Tr 57, lines 20, 21.

⁶⁵ Tr 57, line 21 through Tr 58, line 2.

⁶⁶ Tr 58, lines 6-11.

⁶⁷ Tr 58, lines 13-19.

⁶⁸ Tr 59, lines 1-7.

totaled 338 CDDD. The Company experienced 431 corrected degree-days during that time period.⁶⁹

At the same time that weather and storage levels were taking unexpected turns (both for Aquila and nationally), the *operating status of regional pipelines and storage operators took unexpected turns*. While these are discussed in more detail at pages 7 through 9, *supra*, on the first of March, Great Lakes Transmission Company experienced a compressor problem that resulted in curtailing 10% of its deliveries. Union also curtailed deliveries from its Dawn storage facility, and Ni Gas reported deliverability deficits from its storage facilities. All this magnified concerns about deliverability in the regions being sustained.⁷⁰

Taking into account the CTN and operating problems, Mr. Ono testified that the Company's actions were consistent with its approved 2003 GCR plan. As noted in past cases, the plan is based on normal weather; and when weather significantly deviates from normal, either colder or warmer than plan, the Company is required to make decisions, *e.g.*, with respect to operation of storage and daily purchases. In other words, on the spot and on-time decisions need to be made without the benefit of months of *hindsight* and analysis.⁷¹

Mr. Ono noted that in December 2002, Aquila received an initial billing adjustment from Consumers Energy for the billed transportation rate resulting in a \$187,511.14 refund – *all of which was credited to GCR customers*. In addition, a volumetric adjustment for fuel was made resulting in 467,224 Mcf added to Aquila's balancing contract with Consumers Energy. The

⁶⁹ Tr 59, lines 1-15.

⁷⁰ Tr 59, line 17 through Tr 60, line 5.

⁷¹ Tr 60, lines 7-13.

CTN caused the Company to utilize the adjustment balances at higher levels in January and February.⁷²

Mr. Ono addressed the Company's spot market purchases for 2003. He explained the process for procuring spot purchases⁷³ and how such purchases were affected by the gas supply agreement with BP.⁷⁴ The Company made spot market purchases in 2003⁷⁵ to meet planned load requirements and CTN weather requirements, to follow storage injection levels, to recognize when "daily" purchases were priced below the weighted average cost of gas in both Company and ANR storage, or when daily prices were below forward month prices. In other words, there were times when it was prudent to buy on the "spot" market instead of consuming existing higher priced natural gas in storage or not adding to storage inventory levels.⁷⁶

Mr. Ono's and Mr. Lutz's Rebuttal Presentation

Mr. Ono's rebuttal testimony responded to direct testimony filed by Staff's Mr. Ozar, the AG's Mr. Miller and the RRC's Mr. Hollewa. Mr. Lutz's rebuttal testimony responded to Mr. Hollewa's testimony on the BP issue. For the sake of efficiency, this brief will detail Messrs. Ono's and Lutz's rebuttal testimonies in the Arguments section responding to the other parties' presentations.⁷⁷

⁷² Tr 61, lines 1-13.

⁷³ Tr 62, lines 6 through Tr 63, line 10.

⁷⁴ Tr 63, lines 12-17. BP Agreement is Exhibit A-23.

⁷⁵ Shown on Exhibit A-7.

⁷⁶ Tr 61, line 15 through Tr 62, line 4.

⁷⁷ Starting at page 19 of this brief.

The Other Parties' Presentations

The Staff, the AG and the RRC raised two issues which the Commission will need to address – (i) the *LWF/FWM issue* and (ii) the *BP issue* addressed in the Arguments section below.

Arguments

Generic Overview of Other Parties' Presentations on LWF/FWM Issue – To varying degrees, Staff's Mr. Ozar, the AG's Mr. Miller and the RRC's Mr. Hollewa suggest that Aquila acted imprudently by withdrawing gas from ANR storage to meet January and February 2003 needs – forcing the Company to meet gas supply needs during the LWF/FWM through high cost spot market purchases. It should be noted that, in *hindsight*, each of the other parties favor *different approaches* for what Aquila *should have* done –Staff suggests that more contract storage was necessary,⁷⁸ the AG suggests that Aquila base load storage⁷⁹ and the RRC's *hindsight* tells it that Aquila *should have* engaged in more FOM purchases.⁸⁰

Thus, even now, more *than a year after the period under review*, Staff, the AG and the RRC disagree amongst themselves as to what Aquila “*should have*” done – *even with the benefit of hindsight*. There was even rebuttal testimony by Mr. Hollewa attacking Mr. Ozar's “*should have*” recommendation.⁸¹ Yet, the parties retroactively attack the Company's decision making.

The Commission is urged to keep in mind the applicable standard:

The Commission agrees that when evaluating the reasonableness and prudence of contracting decisions, *it is not permissible to use*

⁷⁸ Tr 264, lines 22 *et seq.*, Tr 265, lines 4 *et seq.*, Tr 270, lines 23 *et seq.*

⁷⁹ Tr 94, lines 16, 17.

⁸⁰ Tr 103, lines 19, 20, Tr 208, lines 10 *et seq.* Tr 212, lines 17, 18.

⁸¹ Tr 222, lines 6-9.

hindsight to either approve or disapprove the company's actions. *Reasonableness and prudence should be measured by the knowledge available or reasonably foreseeable as of the date the challenged decisions were made. . . .*"⁸²

While other parties' presentations will be separately addressed, it is helpful to list **10 generic points** which apply to their proposed adjustments:

Point No. 1. GCR Plan Testimony/Order Came Too Late To React – Both Messrs. Ozar and Hollewa referenced their respective testimony in the GCR plan docket – in effect saying, “if the Company had listened to me, things would have been fine”. However, timing has to be understood. The disputed period centers on actions taken/not taken by January/February 2003. Case No. U-13550 GCR plan testimonies referenced by Messrs. Ozar and Hollewa were not filed until February 7, 2003; were not bound into the evidentiary record until May 27 and 28, 2003; and the Commission’s order was not issued until October 29, 2003.⁸³ This timeline raises obvious *hindsight* concerns. It is *unreasonable* to expect Aquila to adjust its gas supply purchases for January/February 2003 based on testimony that was not filed/bound into the record/Commission order not issued until months *after the period in dispute*.

Point No. 2. Comparisons to Rejected GCR Plans Unreasonable -- Mr. Hollewa’s focus on his ASA – as opposed to the GCR plan adopted by the Commission in Case No. U-13550 – places an *unreasonable* burden on the Company. The GCR process anticipates that the Commission adopt a GCR plan and the reconciliation then compares prudently incurred costs to the Commission’s plan – *not to GCR plan presentations rejected/not*

⁸² Case addressed at page 5, *supra*.

⁸³ Tr 74, lines 17-21.

adopted by the Commission. If a company were required to compare actual costs to the many GCR plans rejected/not adopted by the Commission, reconciliation cases would become unduly burdensome. In fact, forcing a utility to address comparisons with rejected/not adopted GCR plans undermines the whole purpose for having an approved plan in the first place.

Point No. 3. Necessary Lag Time to Arrange for Additional Storage -- Acquiring additional ANR storage requires more than a quick phone call. Even if Aquila had anticipated Staff's February 7, 2003 additional ANR storage recommendation, additional storage was not timely available. Storage contracts would had to have been in place prior to April 2002 for the Company to inject supplies into storage during the April to October 2002 period – to facilitate withdrawals during November 2002 through March 2003. It should be noted that following the filing of Mr. Ozar's testimony, Aquila increased its storage by 1.6 Bcf for the next winter heating season.⁸⁴

Point No. 4. Additional Costs With Additional Storage – Additional ANR storage adds costs to the process, *e.g.*, demand charges and transportation costs – and the other parties ignored these costs. For example, if Aquila had arranged for an additional 262,020 Dth,⁸⁵ incremental storage costs would have been in the range of \$367,482.60 to \$489,976.80⁸⁶ solely for demand charges and transportation costs. This does *not* include

⁸⁴ Case No. U-13990 Tr 86, line 4, Case No. U-13550-R Tr 75, lines 14-23.

⁸⁵ As recommended by Mr. Ozar; Tr 271, line 11.

⁸⁶ More specifically, incremental storage costs would have been in the range of \$367,482.60 to \$489,976.80 for a Maximum Storage Quantity of 300,000 to 400,000 Dth to adequately cover the additional storage

the cost of the additional gas associated with the additional storage. If the cost of such additional gas is included, additional costs are \$1,224,000.⁸⁷ Thus, including the additional gas costs would increase the cost of additional storage in the range of \$1,591,482.60 to \$1,713,976.80.⁸⁸ These cost savings were ignored by the other parties. Recognizing these cost savings would reduce or eliminate the proposed disallowances.

Point No. 5. Lower Costs Incurred in January/February By Use of Storage – If Aquila had arranged for spot market or FOM purchases in January/February 2003 – to save ANR storage gas for the LWF/FWM – gas costs in January/February 2003 would have been significantly higher. In fact, for MGU storage, Aquila saved consumers \$297,087.30 and \$244,021.49 as compared to replacement daily or FOM purchases, respectively; and for ANR storage, Aquila saved consumers \$2,556,372.45 and \$1,341,994.53 as compared to replacement daily or FOM purchases.⁸⁹ These savings are summarized in the following table:

recommended. Exhibit A-13 It should be noted that the daily deliverability would be limited to between 6,000 and 8,000 Dth per day which would not have been sufficient to fully cover the daily requirements during the LWF/FWM. Tr 76, lines 1-8.

⁸⁷ Assuming a weighted cost of gas of \$4.08 per Mcf. 300,000 Dth X \$4.08 per Dth = \$1,224,000. Tr 76, lines 11, 12.

⁸⁸ Tr 76, lines 12-15. \$367,482.60 + \$1,224,000 = \$1,591,482.60. \$489,976.80 + \$1,224,000 = \$1,713,976.80.

⁸⁹ Exhibit A-14. Tr 76, lines 17-24.

MGU gas storage costs compared to replacement daily purchases	\$ 297,087.30
MGU gas storage costs compared to replacement FOM purchases	\$ 244,021.49
ANR gas storage costs compared to replacement daily purchases	\$2,556,372.45
ANR gas storage costs compared to replacement FOM purchases	\$1,391,994.53

Any disallowance should be reduced by lower gas costs from the challenged storage withdrawals in January/February 2003. The other parties should not be able to have it both ways, *i.e.*, include the benefit of lower cost gas for January/February (resulting from storage withdrawals) and then propose disallowances for not having that same storage in the LWF/FWM. Reflecting these savings would reduce or eliminate all proposed disallowances.

Point No. 6. LWF/FWM Futures At or Below January – At the time Aquila made gas supply decisions in January/February 2003, NYMEX futures projections had LWF/FWM costs *at or below* January/February 2003 levels. At the time gas supply decisions were being made, futures prices indicated that Aquila’s January/February withdrawals from ANR storage prior to the LWF/FWM would result in *lower* GCR costs.⁹⁰ It is pure *hindsight* to suggest that Aquila should have known that LWF/FWM costs would be higher than January/February costs when futures prices were just the opposite at the time that decisions had to be made. Stated in the alternative, at the time Aquila made its gas

⁹⁰ Tr 77, lines 6-11. Exhibit A-15 shows *Gas Daily* listings for each day during the period January 2, 2003 through February 27, 2003.

supply decisions, *based on the knowledge available*, it was *not reasonably foreseeable* that LWF/FWM costs would be higher than January/February costs when futures prices at the time decisions had to be made were just the opposite.

Point No. 7. FOM Purchases Require Timely Prior Month Lock-In -- With respect to the RRC's suggestions that additional FOM purchases should have been procured in January through March 2003, the requisite FOM timelines must be understood, *i.e.*, additional FOM purchases must be arranged prior to the end of the previous month.⁹¹ More specifically, for January through March 2003, the deadlines were as follows:⁹²

- For additional January 2003 FOM purchases, arrangements would had to have been in place by December 23, 2002 (holidays taken into account).
- For additional February 2003 FOM purchases, arrangements would had to have been in place by January 24, 2003.
- For additional March 2003 FOM purchases, arrangements would had to have been in place by February 21, 2003.

To accommodate the RFP process addressed in Case No. U-13550,⁹³ Aquila requires an extra day or so to assure that market based prices are procured. Mr. Hollewa ignored this timeline in suggesting that Aquila should wait until the 28th of the month to place FOM purchases.⁹⁴ *If Aquila were to wait that long, it would risk not being able to procure gas*

91 Tr 77, lines 19-23.

92 Tr 78, lines 1-7.

93 Case No. U-13550 Tr 84, line 3. Case No. U-13550-R Tr 9, 10.

94 Tr 78, lines 10, 11. Tr 212, line 11.

supply – since the vast majority of suppliers would have their supply placed/sold by that date⁹⁵. Stated alternatively, the bid cycle would have concluded, particularly during February which has only has 28 days.⁹⁶

The LWF/FWM price spike began on February 24, 2003, *a full month after the deadline for arranging for FOM purchases for the LWF; and days after the deadline for FOM purchases for the FWM.*⁹⁷ It is pure *hindsight* to suggest that Aquila should have known on December 23, 2002 (for January FOM purchases), on January 24, 2003 (for February FOM purchases) or February 21, 2003 (for March FOM purchases) that gas prices would spike for a two-week period beginning February 24, 2003. Stated in the alternative, at the time Aquila made its gas supply decisions, *based on the knowledge available*, it was *not reasonably foreseeable* that gas prices would spike for a two-week period beginning on February 24, 2003, *i.e.*, after FOM deadlines had passed.

Point No. 8. Daily Requirements For Entire Month on FOM Purchases -- Even if Aquila had purchased FOM to meet additional gas supply needs for the FWM, the price for such purchases would have been approximately \$9.65 per Mcf,⁹⁸ depending on supply

⁹⁵ On cross-examination, RRC’s counsel tried to show that there were instances that FOM purchases were made after the above deadline dates. However, these were relatively unusual and it would be imprudent to conduct last minute purchases as a matter of standard practice.

⁹⁶ Tr 78, lines 11-15.

⁹⁷ Pages 37 and 38 of Exhibit A-15 show, for example, that for Friday, February 21, 2003, the price for March was \$6.06 per Dth; while on the very next day’s comparable page, for Monday, February 24, 2003, the price for March had increased to \$9.137 per Dth, a 38.31% increase *in a single day*. Exhibit A-16 is the March 3, 2003 edition of *Gas Daily* which contains an article entitled “Weekend cash prices tick up again” – detailing the price spike. Tr 78, line 17 through Tr 79, line 2.

⁹⁸ Tr 79, line 14. Exhibit A-17, p 2 shows the \$9.65 per Mcf. Exhibit A-17 is a copy of relevant

locations. FOM daily requirements mandate that the FOM purchase price apply *for the entire month*.⁹⁹ Thus, even if Aquila’s crystal ball advised that gas prices would spike in the FWM, FOM purchases for March would have to be at approximately \$9.65 per Mcf *for the entire month* – including the three weeks in March when weather was warmer than normal – thus potentially costing GCR consumers an additional \$2,991,500 to \$5,983,000.¹⁰⁰ This was ignored by Messrs. Ozar, Miller and Hollewa.

Point No. 9. Extreme Weather Conditions – There was no dispute that the winter heating season at issue was much colder than anticipated.¹⁰¹ As noted in Aquila’s Case No. U-13550 GCR plan testimony, the Company’s objective was to have adequate supplies for the most extreme weather period, *i.e.*, January 2003:

“The objective is to have adequate supplies for the most extreme from a weather perspective, which would be the month of January.”¹⁰²

Nowhere in Case No. U-13550 or any other docket has there been a hint that the coldest weather and related price spikes should be anticipated during the LWF/FWM. It is an industry standard that January 15th is typically considered the coldest day of the year.¹⁰³ It is pure *hindsight* to suggest that Aquila should have known on December 23, 2002 or

pages from *Inside FERC Gas Market Index Reports*.

⁹⁹ Tr 79, lines 16, 17.

¹⁰⁰ Tr 79, lines 17-21. Exhibit A-18.

¹⁰¹ Mr. Ozar acknowledged the extreme weather conditions at Tr 267, lines 5 et seq., Tr 268, lines 5 et seq. and lines 14 et seq. Tr 89, line 19 through Tr 90, line 2. Mr. Miller acknowledged and adjusted for the extreme weather conditions, at least to some extent. Tr 246, line 11.

¹⁰² Case No. U-13550 Tr 79, lines 10, 11. Case No. U-13550-R Tr 3-5.

¹⁰³ Tr 80, lines 7-10.

thereafter that the LWF/FWM would be so cold and that gas prices would spike for a two-week period beginning on February 24, 2003. Stated in the alternative, at the time Aquila made its gas supply decisions, *based on the knowledge available*, it was *not reasonably foreseeable* that LWF/FWM would be so cold and that gas prices would spike for a two-week period beginning February 24, 2003. Only Mr. Miller's presentation reflected any recognition of the extreme weather conditions.¹⁰⁴

Point No. 10. Cost Risk Factors for Over-Abundance of Storage -- Notwithstanding criticisms for having insufficient ANR storage for the LWF/FWM, there are cost risk factors that have to be considered for an over-abundance of storage. In Aquila's 2001 GCR reconciliation, the same parties claiming that storage was insufficient in this docket were claiming that the Company should be disallowed cost recovery for not fully utilizing storage during January/February of 2001.¹⁰⁵ This is addressed in more detail in analysis of Mr. Hollewa's presentation.¹⁰⁶

In summary, for other parties to prevail, they will have to convince the Commission that Aquila was imprudent in meeting January/February gas supply needs by use of storage where (i) from a timing perspective, all of the cited GCR plan testimony and related Commission order were issued well after the period in dispute,¹⁰⁷ (ii) from a timing perspective, additional ANR

¹⁰⁴ Tr 246, lines 11-13.

¹⁰⁵ Tr 80, lines 17-22.

¹⁰⁶ Page 52, *infra*.

¹⁰⁷ Fact based on the competent, material, substantial evidence on the whole record.

storage would have to have been acquired at least eight months earlier (even assuming that Aquila had known in January 2003 that the coldest weather would be in the LWF/FWM),¹⁰⁸ (iii) January/February 2003 were significantly colder than normal,¹⁰⁹ (iv) NYMEX future prices for the LWF/FWM were at or below January/February levels,¹¹⁰ (v) the coldest part of the winter was anticipated in January,¹¹¹ (vi) FOM purchases could not timely be arranged,¹¹² (vii) spot market prices were well above the weighted average cost of gas in storage in January/February¹¹³ and (viii) Aquila had just incurred a disallowance in a GCR reconciliation case for not fully utilizing its storage capacity during January and February.¹¹⁴ In addition, all cost savings attributable to using storage in January/February would have to be ignored.¹¹⁵

This brief will now separately address the presentations of Messrs Ozar, Miller and Hollewa citing the above 10 points where appropriate.

Mr. Ozar’s Presentation

Mr. Ozar recommended a \$1,234,000 disallowance for allegedly unreasonable and imprudent gas supply expense¹¹⁶ claiming that Aquila failed to adequately plan for the CTN

108 *Id.*

109 *Id.*

110 *Id.*

111 *Id.*

112 *Id.*

113 *Id.*

114 *Id.*

115 Point Nos. 4 and 5.

116 Tr 264, line 6. Mr. Ozar’s Exhibit S-1 calculates the disallowance based on 262,020 Dth of daily spot market supplies during the LWF/FWM. Tr 264, line 12 *et seq.*

weather so that it was unable to avoid daily purchases of high cost spot-market supplies during the LWF/FWM.

Much of Mr. Ozar’s *substantive testimony* supported Aquila’s presentation – especially with respect to Points Nos. 1, 3, 5, 6, 7 and 9. Thus, for example, Mr. Ozar recognized Point Nos. 1 and 3, *i.e.*, that additional storage was simply not available on a timely basis by “recognizing that resolution of that issue [acquiring more storage] would take time”.¹¹⁷ He also acknowledged that acquiring additional supplies was “the only realistic option”.¹¹⁸ Finally, Mr. Ozar cogently recited why it could be deemed prudent to “defer the conservation of ANR storage inventory”:

“An additional factor bearing on a decision to defer the conservation of ANR storage is that the summer/winter price differential was large, making it economically advantageous to withdraw storage as much as possible during the winter price run-up. *Thus, at the time a decision to go forward with purchasing supplemental monthly supply should have been made, the confluence of market data available could be viewed as taking on a risk that the market may yield a lower price by waiting.*”¹¹⁹ (emphasis added).

Thus, Mr. Ozar acknowledged that there were good and valid reasons for “defer[ring] the conservation of ANR storage inventory”; and that “the confluence of market data available could be viewed as taking on a risk that the market may yield a lower price by waiting”.

Hindsight now tells us that additional storage may have been helpful in stemming higher gas costs but *based on the knowledge available or reasonably foreseeable as of the date the challenged decisions were made*, it was reasonable and prudent to conclude that meeting

¹¹⁷ Tr 266, line 8.

¹¹⁸ Tr 266, lines 12, 13.

¹¹⁹ Tr 270, lines 1 *et seq.*

traditional mid-January peak needs (Point No. 9) was the key goal and that prices in the LWF/FWM would return to their traditionally lower cost base (Point No. 6). Finally, as noted in Point No. 10, in the past, Aquila had been criticized for an over-abundance of storage. Only *hindsight* tells us when and whether storage should have been used, saved or purchased.

Mr. Ozar's prefiled *substantive testimony* also describes factors which should lead the Commission to conclude that *based on the knowledge available*, it was *not reasonably foreseeable* that gas prices would spike for a two week period beginning on February 24, 2003, *i.e.*, after all FOM deadlines had passed:

“Q. Could the level and movement of gas prices prior to and during this critical two-week period influence a decision to buy additional monthly supply?

A. Yes, it could have led Aquila to make the wrong decision.

Q. Why is that?

A. During the month of January, daily settlement prices for February and March futures contracts traded at nearly identical levels (in a range between \$5.00 and \$5.70 per MMBtu), with *March contract prices trailing February prices* marginally during the last week of January 2003. Thus, on the basis of relative price levels, *i.e.*, *the March contract had been consistently trading lower than the February contract*, one could make a case for deferring the purchase of additional monthly purchases until the March contract month, and thus buy some time to see what develops. *This strategy would appear more compelling*, although not without risk, recognizing that during January 2003, both cash and future prices were significantly higher on a sustained basis, than they had been during 2002, and that a market correction, if it occurred, could restore prices to historical levels.”¹²⁰ (emphasis added).

Mr. Ozar's above-excerpted testimony could be read as follows: (i) his reference to the “wrong decision” is qualitative based on *hindsight* and (ii) he cogently states Aquila's case that,

¹²⁰ Tr 269, lines 7 *et seq.*

based on the knowledge available, it was not reasonably foreseeable that the markets would act contrary to historical levels.

Notwithstanding the understanding exhibited in his *substantive testimony*, Mr. Ozar recommends a disallowance. In so recommending, Mr. Ozar relied on five basic arguments:

- Mr. Ozar's "I Told You So" Argument -- He pointed out that in the 2003 GCR plan Case No. U-13550, the Commission Staff was critical of Aquila's January through March 2003 operational plan noting that Aquila needs to conserve ANR storage.¹²¹ Mr. Ozar quoted at length from his testimony in Case U-13550 to the effect that it was Staff's position that Aquila was deficient in storage.¹²²
- Mr. Ozar's "Commission Agreed with Staff" Argument -- He noted that the Commission adopted Staff's recommendation, *i.e.*, the Commission adopted Staff's storage arguments in its October 29, 2003 Case No. U-13550 GCR plan order.¹²³
- Mr. Ozar's "If Only They Had Listened" Argument -- He pointed out that if Aquila had acquired additional storage, it could have delayed hitting daily withdrawal ratchets related to inventory depletion and had greater flexibility to withdraw gas during fluctuating colder-than-normal weather and thus manage the timing of supplemental spot purchases.¹²⁴

¹²¹ Tr 264, lines 22 *et seq.*

¹²² Tr 265, lines 4 *et seq.* Tr 270, lines 23 *et seq.*

¹²³ Tr 265, line 23. Tr 271, lines 3 *et seq.*

¹²⁴ Tr 266, lines 3 *et seq.*

- Mr. Ozar’s “Too Late to Get Storage/But Should Have Bought More FOM Gas” Argument – While recognizing that the storage deficiency could not be remedied for the 2003 GCR year,¹²⁵ Mr. Ozar suggested that an alternative was to buy additional supplies, either on a FOM basis or daily basis.¹²⁶ He also claimed that during a critical decision period/the final two weeks of January 2003, Aquila should have arranged for FOM February supplemental gas supply to protect against adverse ANR withdrawal ratchets.¹²⁷

- Mr. Ozar’s “Cold Weather Not an Excuse” Argument – Mr. Ozar noted that Aquila’s MGU storage was substantially in conformance with plan target levels¹²⁸ and that ANR storage was essentially at target levels as late as January 1, 2003 – so that Aquila’s operations and the weather prior to January 1, 2003 have no relevance to the issue at hand.¹²⁹

With respect to Mr. Ozar’s “I Told You So” Argument, as noted in Point No. 1, Mr. Ozar’s testimony was filed/admitted into the evidentiary record well after Aquila could have reacted to the suggestions. In fact, as noted at Point No. 3, for Mr. Ozar’s advice to have been timely, it had to have been provided prior to April 2002, at least eight months before the period in dispute. Thus, while Mr. Ozar’s comments are appreciated, for purposes of this reconciliation docket, they constitute *hindsight*.

¹²⁵ Tr 266, line 8.

¹²⁶ Tr 266, lines 12 *et seq.*

¹²⁷ Tr 268, lines 1 *et seq.* Tr 270, lines 20 *et seq.*

¹²⁸ Tr 267, line 12.

¹²⁹ Tr 267, lines 10 *et seq.*

Aquila has the highest personal and professional respect for Mr. Ozar – and his recommendations are taken seriously. That is why, following his testimony in Case No. U-13550, the Company followed through as follows:

- Arranged for Additional Storage -- Per Mr. Ozar’s recommendation, Aquila expeditiously arranged for 1.6 Bcf of additional storage for the next winter period.¹³⁰
- Tariff Amendment to Limit Transportation Customer Utilization of ATLS -- Per Mr. Ozar’s recommendation, Aquila expeditiously filed for approval of a tariff amendment to establish limits for Transportation customer utilization of Authorized Tolerance Level. The application was filed July 21, 2003 in Case No. U-13840; a settlement agreement including Aquila, Staff, Cornerstone Energy Inc., and the AG was executed in October 2003; and the Commission’s approval order was issued November 4, 2003.¹³¹
- OFO Tariff Revisions -- Per Staff’s recommendation, Aquila filed for approval of Operational Flow Order (“OFO”) tariff revisions in Case No. U-13978. The application was filed December 8, 2003; a settlement agreement including Staff, the AG and RRC was executed on January 15, 2004; and the Commission’s approval order was issued February 12, 2004. This limits GCR customer exposure to peak day prices due to Transportation customer activity.¹³²

¹³⁰ Case No. U-13990 Exhibit A-7, p 1, line 17; Tr 86, line 4. Case No. U-13550-R Tr 84, lines 4, 5.

¹³¹ Tr 84, lines 6-11.

¹³² Tr 84, lines 12-17.

- Daily Nominations For Transportation Customers -- Per Mr. Ozar's recommendation, Aquila filed a tariff amendment to tighten up daily nominating procedures for Transportation customers in Case No. U-13976. The application was filed April 13, 2004; and the Commission's approval order was issued June 29, 2004.¹³³

The revisions/filings have been made to improve Aquila's operations management. Upon being notified of Staff recommendations, Aquila reacted as quickly as it could but timing considerations need to be kept in mind

With respect to Mr. Ozar's "Commission Agreed with Staff" Argument, this again relates to Point No. 1. The Commission's order was issued on October 29, 2003, months after Aquila could have responded to the suggestions. To claim that Aquila should have been prescient in April 2002 (Point No. 3) to anticipate what the Commission would say in October 2003 constitutes *hindsight*.

With respect to Mr. Ozar's "If Only They Had Listened" Argument, Mr. Ozar's presentation again constitutes *hindsight*. First, as noted at Point No. 3, his suggestions came well after additional storage could be timely arranged. Second, as noted at Point No. 4, Mr. Ozar's presentation ignores costs associated with additional storage. If Aquila had arranged for additional storage, there would have been added costs to consider, *e.g.*, demand charges and transportation charges. When Aquila decided to meet what historically has been the peak period (mid-January; Point No. 9), there were relatively reasonable gas costs out of storage and futures costs for the LWF/FWM to be at or below those prices (Point No. 6). *Hindsight* tells us the

¹³³ Tr 84, lines 18-21.

market unexpectedly turned. However, *based on knowledge available* during what Mr. Ozar describes as the “critical decision period”, *i.e.*, the final two weeks of January, it was *reasonably foreseeable based on futures prices at the time* that market prices during the LWF/FWM would be at or below mid-January prices.

With respect to Mr. Ozar’s “Too Late to Get Storage/But Should Have Bought More FOM Gas” Argument, after recognizing that acquisition of additional storage may not have been a “realistic option”,¹³⁴ Mr. Ozar suggested that Aquila’s “secondary action”¹³⁵ should have been purchasing “additional supplies, either on a FOM basis, or if economic, on a daily basis”.¹³⁶ Mr. Ozar’s presentation failed to acknowledge timing factors relating to FOM purchases, *i.e.*, the need to arrange for such purchases by the 24th of the previous month.¹³⁷ As noted in Point No. 7, these deadline dates are in accordance with Aquila’s RFP process, considering holidays, weekends, and 28-day months.

It is pure *hindsight* to suggest that Aquila should have known in advance that gas prices would spike for a two-week period beginning on February 24, 2003. Stated in the alternative, at the time Aquila made its gas supply decisions, *based on the knowledge available*, it was *not reasonably foreseeable* that gas prices would spike for a two-week period beginning on February 24, 2003, *i.e.*, after FOM deadlines had passed.

Also, as noted in Point No. 8, Mr. Ozar’s analysis did not reflect daily requirements associated with FOM purchases, *i.e.*, if Aquila had purchased FOM to meet additional gas supply

¹³⁴ Tr 266, line 12.

¹³⁵ Tr 266, line 9.

¹³⁶ Tr 266, lines 13 *et seq.*

¹³⁷ See discussion at page 24, *supra*, Point No. 7, relative to monthly FOM deadlines.

needs for the FWM, the price for such purchases would have been approximately \$9.65 per Mcf depending on supply location; and FOM daily requirements mandate that the purchase price apply for the entire month of March – including the three weeks when weather was warmer than normal – thus conceivably costing GCR consumers an additional \$2,991,500 to \$5,983,000 for all 28 days of the month.

With respect to Mr. Ozar’s “Cold Weather Not an Excuse” Argument, Aquila is not really claiming that the cold weather was an excuse. Instead, the harsh winter was one of the factors that *hindsight* tells us happened. Even Mr. Ozar’s presentation acknowledged the “exceptionally cold weather that occurred during the early months of winter”;¹³⁸ that weather during January and February 2003 was “approximately 10 percent colder-than-normal, corresponding to severe design conditions”;¹³⁹ and that the “three-month period, November through December 2002, was greater than 8 percent colder-than normal.”¹⁴⁰

The point to be made is that on the heels of such a sustained cold spell, the Company’s concerns focused on meeting the traditional January winter peak (Point No. 9). Having successfully met that peak, after such a sustained cold spell, only *hindsight* tells us that the LWF/FWM would yield such high prices. From a practical standpoint, the Company cannot set up for both 10% colder and 10% warmer at the beginning of the month. Once FOM supplies are purchased, the Company is committed to purchase those supplies at that price for the entire

138 Tr 267, lines 5 *et seq.*

139 Tr 267, lines 5 *et seq.*

140 Tr 268, lines 5 *et seq.* and lines 14 *et seq.*

month (Point No. 8). Aquila had to set up for normal weather, trying to strike a balance, and adjust from there.¹⁴¹

Mr. Ozar’s proposed disallowance should be rejected. However, if the Commission finds a disallowance is required, the following *offsets or reductions* are suggested:¹⁴²

- Higher costs attributable to preservation of storage -- As noted in Point No. 5, Mr. Ozar’s calculations did not reflect higher gas costs which would have resulted in January and February if Aquila had, in fact, preserved its ANR storage. In other words, if a disallowance is required to reflect the lower costs resulting from deferral of ANR storage until the LWF/FWM, then such disallowance should be reduced to reflect the other end of the spectrum, *i.e.*, the higher costs which would have resulted by purchasing additional flowing gas supplies in January and February had the Company not utilized gas from ANR storage.
- Additional costs of additional storage -- As noted in Point No. 4, Mr. Ozar’s calculations did not reflect additional costs attributable to obtaining additional storage, *e.g.*, demand charges and transportation costs – not to mention the cost of the additional gas.
- Mr. Miller’s recommended “reasonable deviations” -- Mr. Ozar’s calculations did not reflect Mr. Miller’s two recommended “reasonable deviations” from Aquila’s approved GCR plan. These “reasonable deviations” are (i) Aquila making additional withdrawals of 150,000 Mcf per month from its Consumers Energy

¹⁴¹ Tr 90, lines 3-10.

¹⁴² The dollar reductions or offsets are addressed in discussion of each of the points, *supra*, as appropriate.

Company storage in January, February and March, and to reduce its purchases accordingly and (ii) increases in storage withdrawals where the weather was colder than normal and GCR requirements exceeded planned normal weather loads.¹⁴³

- Transportation customer activity related to ATL provisions -- Mr. Ozar's calculations did not take into account Transportation customer activity related to ATL provisions during the month of February 2003.¹⁴⁴ Transportation customer tariffs allow such customers to build a positive imbalance on Aquila's system. This imbalance is similar to storage – and Aquila utilizes storage to provide this service to Transportation customers. When a Transportation customer has a positive balance, it can access that imbalance any time other than periods when OFOs are in place. During February 2003, there were no OFO periods and Transportation customers utilized approximately 215,114 of storage. If Mr. Ozar had taken this into account, his disallowance would have been reduced by \$565,749.82.¹⁴⁵ Mr. Miller reflected this adjustment which accounted for a large part of the difference between his proposed disallowance and the Staff's/RRC's.

The following table summarizes some of these cost savings, offsets or reductions that should be considered in adjusting Mr. Ozar's proposed disallowance. They are also applicable, for the most part, to the presentations of Messrs. Miller and Hollewa:

143 Tr 246, lines 11 *et seq.* Exhibit A-14.

144 Tr 244.

145 Tr 92, lines 1-10. Exhibit A-19.

<u>Issue</u>	<u>Description</u>	<u>Dollar Impact</u>
Point No. 4 addressed at pages 21, 22 of this brief	Additional <i>Demand and Transportation</i> Costs With Additional Storage --	\$367,482 to \$489,976
Point No. 4 addressed at pages 21, 22 of this brief	Additional <i>Gas</i> Costs With Additional Storage --	\$1,224,000
Point No. 5 addressed at pages 22, 23 of this brief	Lower Costs Incurred in January/February By Use of Storage – <i>MGU</i> Storage	\$297,087 compared to replacement daily \$244,021 compared to FOM purchases
Point No. 5 addressed at pages 22, 23 of this brief	Lower Costs Incurred in January/February By Use of Storage – <i>ANR</i> Storage	\$2,556,372 compared to replacement daily \$1,341,994 compared to FOM purchases
Point No. 8 addressed at pages 25, 26 of this brief	Daily Requirements For Entire Month on FOM Purchases	\$2,991,500 to \$5,983,000
Transportation Customer Activity Related to ATL Provisions addressed at page 40 of this brief	Right of Transportation Customers to Build Positive Imbalance on Aquila’s System Which Uses Storage	\$566,163

Mr. Miller’s Presentation

Mr. Miller solely focused on Aquila’s management of commodity gas cost purchases and related gas storage activity during January through March 2003.¹⁴⁶ Like Mr. Ozar, Mr. Miller suggested that Aquila deviated from its approved 2003 GCR plan by purchasing too little gas in January and February 2003 and, instead, withdrawing too much gas from storage. Mr. Miller posited that the larger than planned storage withdrawals in January and February forced the Company to purchase inordinately large quantities of flowing gas supplies in March 2003.¹⁴⁷ Mr. Miller suggested that additional purchases in January and February could have saved needed

¹⁴⁶ Tr 234, lines 7 *et seq.*

¹⁴⁷ Tr 234, lines 16 *et seq.*

storage capacity for the LWF/FWM and minimized GCR costs “because gas prices in January and February had not yet risen to the level of the high prices that Aquila actually paid in March”.¹⁴⁸ Mr. Miller recommended a \$775,812 disallowance.¹⁴⁹

Mr. Miller’s recommended disallowance should be rejected for two reasons – (i) his presentation is based on *hindsight* and (ii) he incorrectly concluded that Aquila deviated from its GCR plan. However, to his credit, Mr. Miller’s calculations reflected recognition of additional Consumers Energy storage utilization, the extreme cold weather and Transportation customer ATL activity in February 2003.¹⁵⁰ Neither Mr. Ozar nor Mr. Hollewa considered these factors. Recognizing these factors would reduce Messrs. Ozar’s and Hollewa’s recommended disallowances by \$566,163.53.¹⁵¹

The Company disagrees with Mr. Miller’s conclusion that any disallowance is appropriate. Mr. Miller testified that the Company “purchas[ed] much less gas than it should have in January and February 2003”.¹⁵² He knows this because the period has concluded and he can look back, *i.e.*, *hindsight*. In effect, Mr. Miller penalized the Company because it did not expect the unexpected. He also testified that “gas prices were much higher in March than they had been earlier in the winter season”.¹⁵³ This is classic *hindsight*, -- easy testimony to provide a year after the winter heating season compared to three months before the start of the GCR year.

148 Tr 235, lines 17 *et seq.*

149 Tr 236, line 1.

150 Tr 99, lines 17-20.

151 Disallowances reduced by \$566,163.53, calculated by determining the per unit disallowance in Mr. Miller’s recommendation (\$775,000) divided by 294,770 which equals \$2.63. Then taking the \$2.63 multiplied by the ATL activity for February 2003 of 215,114 Mcf. $\$2.63 \times 215,114 = 566,163.53$

152 Tr 234, line 17.

153 Tr 235, line 11.

It would have been more accurate for Mr. Miller to suggest that “gas prices were *unexpectedly* much higher in March than they had been earlier in the winter season”. Similarly, Mr. Miller argued that a disallowance is required because “gas prices in January and February had not yet risen to the level of the high prices that Aquila actually paid in March”.¹⁵⁴ Again, this is classic *hindsight* -- it would have been more accurate for Mr. Miller to suggest that “gas prices in January and February had not yet *unexpectedly* risen to the level of the high prices that Aquila actually paid in March”. Mr. Miller failed to consider prices at the time Aquila had to make its purchase decisions.

A key to understanding the *hindsight* nature of Mr. Miller’s approach is asking “*what would have happened if January through March were warmer than expected?*” In this event, Aquila would have been left with too much storage – and then subjected itself to *hindsight* criticism that it under-utilized storage in January to meet peak weather conditions. As noted in Point No. 6, “*what would have happened if NYMEX futures for March settled at or below January prices, as expected?*” Mr. Miller and RRC witness Hollewa criticized Aquila for under-utilizing its storage in 2001. Now, they criticize for not saving storage until March. The decisions made were *reasonable and prudent based on the knowledge available or reasonably foreseeable* in January and February 2003.

Mr. Miller wrongly assumed that Aquila deviated from its GCR plan.¹⁵⁵ Mr. Miller’s presentation implied that Aquila provided a GCR plan which base loaded storage by misperceiving Exhibit WPA-8-1 from the GCR plan case.¹⁵⁶ In so doing he assumed use of the

154 Tr 235, line 17.

155 Tr 234, lines 16 *et seq.*

156 Exhibit AG-4. Tr 94, lines 16-18.

same January through March storage withdrawal quantities for normal weather, 10% warmer than normal weather and 10% colder than normal weather. In other words, he base loaded storage for each of those months, *i.e.*, Aquila would use no more than 600,000 Mcf in January and 475,000 Mcf in February so that when March rolled around, Aquila would be sure to have at least 370,000 Mcf left in storage to handle the LWF/FWM.¹⁵⁷ This is misleading.

To the contrary, in its Case No. U-13550 GCR plan presentation, Aquila clearly stated that it would *base load FOM purchase* and storage would handle the swing:

Aquila term supplies, supplies longer than one month, both fixed and indexed priced, will have first priority in Aquila’s supply mix. *First of the month base-load supplies* will be the next priority. As weather changes occur, Aquila will increase storage withdrawals with daily purchases being the last supply priority.¹⁵⁸

Also, in its Case No. U-13550 GCR plan presentation, the Company testified that storage should be used for hourly and daily balancing – *not base loading*:

Storage is utilized by Aquila to balance and operate its system on a daily, even an hourly basis.¹⁵⁹

Mr. Ono testified that storage is also utilized to manage weather forecast deviations on an intra-day basis. Flowing supplies are not readily available on an intra-day basis and if they are available, the supplies are generally prohibitively expensive – because suppliers extract a premium for intra-day supply.¹⁶⁰ *Nowhere was the concept of base loading storage part of Aquila’s GCR plan.*

¹⁵⁷ Exhibit AG-4, line 16. Tr 94, line 18 through Tr 95, line 1.

¹⁵⁸ Emphasis added; Case No. U-13550, Tr 81, line 8 *et seq.* Case No. U-13550-R, Tr 95, lines 5-10.

¹⁵⁹ Case No. U-13550, Tr 98, line 8 *et seq.* Case No. U-13550-R Tr 95, lines 14, 15.

¹⁶⁰ Tr 95, lines 17-20.

Mr. Miller’s reliance on Exhibit WPA-8-1 from the GCR plan is misplaced. That exhibit was not presented as Aquila’s GCR plan for the colder-than-expected weather experienced in January and February. Instead, it represented an approach *if the entire winter were 10% colder than normal across the board, i.e., for every day of every month* – because the Company must plan for the entire winter period of five months November through March.¹⁶¹ In putting together a "plan", the Company takes its limited storage capacity and assigns it over the five month winter period. The Company’s designs its plan to meet the weather peak in January and then schedules reserves for the remaining months accordingly. This need to meet peak in January was clearly noted in Aquila’s Case No. U-13550 GCR plan presentation in discussing January through March storage management:

Late season [January, February and March] storage plan will depend on storage inventory levels in place. Under colder than normal situations with low inventory levels going into the month, Aquila will reduce withdrawal levels while purchasing more daily and/or monthly supplies. . . . *The objective is to have adequate supplies for the most extreme from a weather perspective, which would be the month of January.*¹⁶²

It should be noted that in his reconciliation testimony in this docket, Mr. Miller quoted a portion of the above *but deleted the italicized sentence.*¹⁶³

The Company’s GCR plan intended that storage be in place for “the most extreme from a weather perspective, . . . the month of January”.¹⁶⁴ The entire excerpt (without Mr. Miller’s deletions) mitigates against Mr. Miller’s interpretation. Otherwise, it would not have been

¹⁶¹ Tr 95, lines 22-26.

¹⁶² Case No. U-13550, Tr 79, line 6 *et seq.* Case No. U-13550-R Tr 96, lines 5-11.

¹⁶³ Tr 240, line 5.

¹⁶⁴ Tr 96, lines 16, 17.

necessary to have the first sentence state “[l]ate season storage will depend on storage inventory levels in place” since, under Mr. Miller’s approach, storage inventory levels would be locked in regardless of weather extremes. In effect, Mr. Miller has made the first sentence of the excerpt superfluous. Logic and a basic knowledge of the industry dictate the importance of having storage in place for the most extreme parts of the winter – rather than end of season weather.¹⁶⁵

If Exhibit WPA-8-1 from the GCR plan case really constituted Aquila’s GCR plan for the CTN winter experienced, there would have been no need to discuss subjects such as (i) what storage inventory levels were in place and (ii) the need to meet January extreme weather. Instead, the Company could have simply pointed to Exhibit WPA-8-1 from the GCR plan case and said “here’s our GCR plan”. Contrary to Mr. Miller’s assumption, Aquila did not do that.¹⁶⁶ From Mr. Miller’s reliance on Exhibit WPA-8-1 from the GCR plan case, one would think the Commission approved three different GCR plans, *i.e.*, one for normal weather, a second for warmer than normal weather and a third for colder than normal weather. The Commission approves only one GCR Plan – and its focus has to be on normal weather.¹⁶⁷

Even Mr. Miller acknowledged that “the planned requirements reflect normal weather”.¹⁶⁸ Mr. Hollewa also recognized that the GCR Plan consisted of target levels for storage and estimated supply and demand based on normal weather. The key is that when the Company operates under its GCR Plan, it must operate under the premise that weather can be "normal", "warmer than normal", or "colder than normal" at any given time -- and as such, it

¹⁶⁵ Tr 96, lines 16-24.

¹⁶⁶ Tr 96, line 25 through Tr 97, line 4.

¹⁶⁷ Tr 97, lines 9-12.

¹⁶⁸ Tr 237, lines 9 *et seq.*

must plan for and accommodate all three scenarios simultaneously -- not just one of the three scenarios. The GCR plan therefore must remain flexible and is not as rigid as Mr. Miller conveyed by his singular focus on Exhibit WPA-8-1 from the GCR plan case.¹⁶⁹

Mr. Miller's presentation suggested that Aquila's GCR plan anticipated "additional purchases in January and February". However, nowhere did the GCR Plan indicate additional purchases to such an extent because the plan did not, and could not, anticipate *the conditions which actually occurred during the year*. In addition, while Mr. Miller laid blame on Aquila for "reduced purchases" in January, he ignored the impact of the additional Consumers Energy storage. Aquila purchased less because it had the benefit of Consumers Energy's unexpected storage adjustment of 469,000 Mcf.¹⁷⁰

In part, Mr. Miller's presentation accurately reflected the extreme conditions that actually occurred during the GCR year under review. He noted that total GCR requirements were 1,080,000 Mcf higher than anticipated due to colder than normal weather in January and February, and noted that GCR requirements were greater than those presented in Aquila's GCR Plan presentation for a colder than normal winter – again due to January and February weather extremes. However, he mis-relied on Exhibit WPA-8-1 from the GCR plan case as "the GCR Plan" for the extreme winter actually experienced.¹⁷¹ In so doing, Mr. Miller ignored significant portions of the Company's presentation in the GCR plan docket, *i.e.*,¹⁷²

¹⁶⁹ Tr 97, lines 13-21.

¹⁷⁰ Mr. Miller criticized Aquila for purchasing less gas than it should have in January and February 2003. Mr. Miller failed to recognize that Aquila purchased additional gas, over GCR plan levels, in the amount 94,899 Dth in January; and 634,446 Dth in February. Exhibit A-7, p 3 of 5. Thus, Mr. Miller is in error when he stated that the entire 1,080,000 Mcf shortfall was met from storage. Tr 237, line 18. Tr 98, lines 1-7.

¹⁷¹ Tr 98, lines 8-16.

¹⁷² Tr 98, line 17 through Tr 99, line 2.

- Mr. Ono’s discussion with respect to how the Company would handle a CDDD above the GCR protection level, *i.e.*, “withdrawing gas from Aquila storage at volumes above design levels”; and
- Mr. Ono’s discussion with respect to how storage flexibility may be impacted if price fluctuations cause accelerated locking provision targets to be implemented increasing the quantities of fixed price supplies that are locked which are required to be taken.

Mr. Miller also ignored the following Case No. U-13550 GCR plan discussion with respect to how storage management could be affected by deviations from normal weather:

Other factors that affect Aquila operationally, particularly from a storage management perspective, are deviations from normal weather, weather forecast accuracy,¹⁷³

If the intent were to singularly rely on Exhibit WPA-8-1 from the GCR plan case, as Mr. Miller suggested, the Company’s Case No. U-13550 GCR plan presentation would not have included the above excerpted discussion. Aquila strongly disagrees with Mr. Miller’s contention/implication that the Company deviated from its GCR plan.

Mr. Hollewa’s Presentation

In many respects, Mr. Hollewa’s testimony mirrored Staff’s and the AG’s in critiquing the Company’s storage management plan for January/February and its resultant impact on the LWF/FWM. Thus, the above discussion with respect to Staff and the AG is equally applicable to Mr. Hollewa. However, this brief will address the following additional issues which merit a response:

¹⁷³ Case No. U-13550 Tr 98, line 5 *et seq.* Case No. U-13550-R Tr 99, lines 6-8.

- ASA Focus -- Mr. Hollewa engaged in an exhaustive discussion of what he described as his alternative supply approach or “ASA” which he represented as the GCR plan approach he recommended in Case No. U-13550. His \$1,560,791 disallowance was based on his ASA.
- BP Focus – Mr. Hollewa questioned the propriety of ten Aquila payments to BP for daily spot purchases where the price paid exceeded the Gas Daily listing by \$0.15 to \$3.05 per Mcf. His proposed adjustment was \$445,674. Mr. Hollewa also recommended that a maximum \$0.01 to \$0.02 be placed on all future daily spot purchases when comparing actual price paid to the Gas Daily posting; and absent such restriction, that sole source purchases from BP be limited to one day and not three days without competitive bidding by telephone and documentation.

With respect to Mr. Hollewa’s ASA presentation, he went on for page after page bemoaning the fact that the Company and implicitly the Commission did not follow his ASA. Aquila filed a motion to strike portions of Mr. Hollewa’s testimony arguing that a reconciliation proceeding should not focus on the Company’s gas costs *vis a vis* a party’s approach – it should focus on the GCR plan actually adopted by the Commission. In other words, Mr. Hollewa’s ASA was irrelevant. In response, RRC’s counsel, *for the first time*, took the position that Mr. Hollewa’s ASA was adopted by Commission. However, not once in his testimony, prefiled or otherwise, did Mr. Hollewa even hint that the Commission adopted his ASA. Instead, he continuously referred to the testimony as “my alternative supply approach” or “my testimony in the 2003 MGU GCR Plan case”.¹⁷⁴ It seems logical that if Mr. Hollewa wanted to reference the

¹⁷⁴ E.g., Tr 206, line 20.

Commission’s GCR plan (as opposed to his ASA), he would have done so. He never did. As a matter of fact, when he had an opportunity to revise his testimony to reflect his new-found “belief” that his ASA was adopted by the Commission, Mr. Hollewa declined.¹⁷⁵

In oral argument on the motion to strike, RRC’s counsel cited the following language from the Commission’s order in favor of the proposition that the Commission adopted Mr. Hollewa’s ASA:

Aquila has agreed that it will do all of the following as part of its 2003 GCR plan: increase its contracted storage levels; file a tariff amendment to limit its transportation customers utilization of authorized tolerance levels (ATLs); change its GCR calendar year to an April through March year; implement a GCR ceiling price adjustment contingency mechanism to adjust its GCR factor quarterly; provide a more complete discussion of its Federal Energy Regulatory Commission filings; report ATLs separately in future GCR plan and reconciliation filings; apply an appropriate percentage of incremental change in NYMEX to its GCR ceiling price adjustment mechanism; provide a description of pipeline rates used; describe how fixed price supplies will be purchased; reduce the storage reserved for transportation customers; implement a CTN winter storage plan; reference dekatherms and Mcf consistently in future filings; and maintain a daily operational log. The Commission approves all of these provisions of Aquila’s 2003 GCR plan.¹⁷⁶ [emphasis added].

Note that nowhere does the Commission even hint that it has adopted Mr. Hollewa’s ASA. In Mr. Hollewa’s ASA presentation in this docket, there were literally tens if not hundreds of numbers that Mr. Hollewa used. His Exhibit RRC-1 includes hundreds of numbers. Not one of those numbers is in the Commission’s order.

Then there is the matter of timing, *i.e.*, the RRC belated claim that the Commission adopted Mr. Hollewa’s ASA or that Aquila agreed to Mr. Hollewa’s ASA *is impossible*. With

¹⁷⁵ Tr 195, lines 7-11.

¹⁷⁶ October 29, 2003 order, p 12; emphasis added.

respect to timing, the challenged period at issue is January through March 2003. When the order states that “Aquila has agreed that it will do all of the following as part of its 2003 GCR Plan”, it has to be read in the context of what is possible. Aquila did agree to increase its contracted storage levels – and it *subsequently* did – but it was physically and fiscally impossible to do that retroactive to January through March 2003. Instead, it added storage as soon as it could – by 1.6 Bcf. In effect, Aquila was saying “okay – we’ll do these things on a prospective basis” – and it did. It is important to note that the first sentence on page 12 of the Commission’s order states “Aquila has agreed that it *will do* all the following”. “*Will do*” is future tense – not retroactive in nature.

The Commission’s order next states that “Aquila has agreed that it will [future tense] . . . file a tariff amendment to limit its transportation customers utilization of authorized tolerance levels or ATLS.” In fact, Aquila *subsequently* kept its commitment in Case No. U-13840 – but it could not do so retroactively to January through March 2003. If one followed the RRC’s reasoning to its illogical extreme, Aquila was in violation of its GCR plan because it did not retroactively have the Case No. U-13840 matter decided in time for the January through March 2003 winter season.

Next, the order states that Aquila has agreed that it will (again, note future tense) change its GCR calendar year to an April through March year. Again, Aquila subsequently kept its commitment and did that in its next possible filing, Case No. U-13990. Per the RRC’s reasoning, Aquila was in violation of its GCR plan because it did not retroactively change its GCR year back to January through March 2003.

Next, the order states that Aquila has agreed that it will (again future tense) implement a GCR ceiling price adjustment contingency mechanism to adjust its GCR factor quarterly – and

Aquila did so following the issuance of the Commission's order. Aquila also agreed that it will (future tense) provide a more complete discussion of the status of its Federal Energy Regulatory Commission (FERC) filings. Again, Aquila kept its commitments and has done so in its future filings.

The point should now be obvious. When Aquila agreed to have more storage, to implement a CTN winter storage plan, *etc.*, it could not do so for a period which had long passed. Thus, when the Commission stated that "Aquila has agreed that it will do all of the following", the *future tense* of the phrase "*will do*" should not be ignored

The RRC's belated contention that the Commission adopted Mr. Hollewa's ASA or that Aquila somehow agreed to his ASA is a physical (and fiscal) impossibility. MCL 8.3 provides general rules of statutory construction. The Commission is a creature of the legislature – so the Commission's order is susceptible to interpretation consistent with the rules of statutory construction. First, there is the rule that when alternative interpretations are possible, court must ascribe the most probable and reasonable intention. *People v Schneider*, 119 Mich App 480 (1982). It is more probable and reasonable that the Commission did not ask Aquila to retroactively do the impossible. Then there is the rule that punitive statutes are never given retroactive effect. *Fletcher v Aetna Casualty*, 80 Mich App 439 (1978), *aff'd* by Supreme Court in 409 Mich 1 (1980). The RRC argued that Aquila agreed to retroactively increase its storage, *etc.*, and the failure to do the impossible should be given punitive effect. The RRC's approach should be rejected. Then there is the rule that a statute should be construed to avoid absurd consequences. *Oak Park Village v Gorton*, 128 Mich App 671 (1983). It is absurd to conclude that Aquila's so-called agreement in March of June 2003 on what it *will* do (future tense) can somehow be interpreted retroactively to January through March 2003. Then there is the rule that

statutes are to be interpreted so as to avoid hardship and injustice. *Stott v Weadock*, 287 Mich 678 (1939). The RRC is trying to push a \$1.5 million disallowance arguing that retroactive penalties should apply. The challenged testimony must be stricken as irrelevant or, even if relevant, highly prejudicial per MRE 402, 403.

Following oral argument, the ALJ rejected Aquila’s motion to strike Mr. Hollewa’s ASA presentation.¹⁷⁷ The ALJ is urged to reverse his ruling. It should be noted that the ALJ specifically found it impossible for Aquila to retroactively comply with the provisions on which Mr. Hollewa relied:

Now, having said that and having said that retroactivity is not favored, there’s no way that we can go back and look at Aquila’s conduct and say that they should have been in conformance, their conduct should have been in conformance with what they agreed to do on a going-forward basis. Can’t do that. . . .¹⁷⁸

Aquila submits that Mr. Hollewa’s ASA is irrelevant to this proceeding – and should be ignored. As noted in Point No. 2, if the Company is required to address how actual costs compare to the many GCR plans offered by the various parties in the reconciliation case, reconciliation cases would become unduly burdensome. Forcing a utility to address comparisons with rejected/not adopted GCR plans undermines the whole purpose for having an approved plan in the first place. This is especially true in a case with many intervenors in the plan case proceeding, *i.e.*, where each intervenor comes up with a different GCR plan approach and then, in the reconciliation case, the intervenor who guessed right could step to the front of the line and attack the utility for not adopting the approach in its proposed GCR plan.

¹⁷⁷ Tr 189, line 19 through Tr 190, line 21.

¹⁷⁸ Tr 190, lines 11-16.

This is especially problematic with respect to Mr. Hollewa.¹⁷⁹ In one case, he criticizes the Company for not fully utilizing its storage and in the next case, he criticizes the Company for over-utilizing storage. For example, in Case No. U-12617-R, Mr. Hollewa harshly criticized the Company for not utilizing storage when the rest of the country was utilizing storage:

[T]he Company was both remiss and unique in its deficient storage utilization compared to the national statistics If storage isn't fully utilized under such "crisis" conditions, when does the Company think it should be used?

Aquila should be embarrassed to represent that the Company was reluctant to operate its storage at even "normal" levels when Mr. Ono, in his rebuttal testimony, documents that the rest of the country was experiencing record withdrawals from storage. Moreover, Attorney General witness Ralph Miller and I both criticized the Company earlier in Case No. U-12122-R for lack of storage utilization during December 2000. Now, rather than GCR customers realizing the benefits of excess storage availability in January through March 2001, the Company again attempts to justify its failure to use that gas supply resource. It was the Company that ignored market conditions and was out of step with the rest of the country. Very high prices are precisely when you try to moderate gas costs by maximizing storage instead of minimizing storage use.¹⁸⁰

In this case, Mr. Hollewa attacked the Company for utilizing storage when its GCR Plan required it to use storage to meet the extreme January weather, market prices were high in January, NYMEX futures for March were expected to be lower, GCR consumers saved upwards

¹⁷⁹ The Commission has noted Mr. Hollewa's propensity to attempt to micro-manage. In its Case No. U-13550 GCR Plan order, the Commission equated Mr. Hollewa's suggestions to being "pecked to death":

Secondly, the RRC has recommended that Aquila implement a daily purchasing methodology. Aquila has rejected this suggestion as being too restrictive and amounting to micro-management of its daily operations. The Commission agrees with Aquila's argument and will not require it to be "pecked to death" by requiring it to implement a daily purchasing methodology. [October 29, 2003 order, p 13].

¹⁸⁰ Case No. U-12617-R Tr 240 *et seq.* Case No. U-13550-R Tr 102, lines 3-20.

of \$2 million by utilizing storage in January and February, *etc.* (Point No. 5). Mr. Hollewa engaged in classic *hindsight*.

Another example of Mr. Hollewa’s shifting standards is his adjustments to FOM purchases. In the GCR Plan docket, Case No. U-13550, Mr. Hollewa insisted that FOM purchases be limited to 10,000 Mcf to 15,000 Mcf per day.¹⁸¹ In this reconciliation docket, with respect to the same GCR year, based on *hindsight*, Mr. Hollewa insisted that FOM purchases should have been 21,400 Dth per day.¹⁸² Again, Mr. Hollewa shifted his position based on *hindsight*.

Mr. Hollewa also ignored Transportation customers’ impact on Aquila operations, particularly during February. As noted earlier, Transportation customers have the right to build up a positive imbalance on Aquila's system (ATL). They also have the right to draw down that imbalance at any time other than during an OFO. During February 2003, Aquila had no OFOs and Transportation customers were free to utilize their imbalance gas as they saw fit. Nowhere in its GCR plan did Aquila project Transportation customer activity relative to their ATL balances because there is no way that Aquila can anticipate their actions. Aquila is in no way privy to Transportation customer decisions relative to natural gas purchasing or utilization other than under the terms contained in Aquila's Transportation tariff or contracts; neither of which cover natural gas purchasing activity. Mr. Hollewa completely ignored this matter.¹⁸³

In this docket, Mr. Hollewa’s *hindsight* analysis dismissed the 10% colder-than-normal weather in January and February as a minor issue that “should not present any unusual planning

181 Case No. U-13550 Tr 194, 195. Case No. U-13550-R Tr 103, lines 16-21.

182 Tr 208, lines 10 *et seq.*

183 Tr 103, lines 4-15. Exhibit A-20 shows the ATL customer impact in January and February 2003.

problems for Aquila”. The point to be made is that it was not 10% colder-than-normal for the entire winter across-the-board. As discussed earlier, (i) the GCR plan required Aquila to use storage to meet the extreme January weather, (ii) market prices were high in January, (iii) NYMEX futures for March were lower at the time Aquila set up its monthly plans for January and February 2003, and (iv) by utilizing storage in January and February, the Company saved GCR consumers significant dollars (Point No. 5). Mr. Hollewa’s presentation merits rejection.

With respect to Mr. Hollewa’s BP presentation, Messrs. Ono and Lutz provided rebuttal testimony. They focused on three points – (i) they provided detail to put the BP matter into proper perspective, (ii) Mr. Ono noted that Mr. Hollewa double-dipped on his proposed disallowance and (ii) they advised that Aquila does not support Mr. Hollewa’s proposal that a maximum \$0.01 to \$0.02 be placed on all future daily spot purchases when comparing actual price paid to the *Gas Daily* posting; and absent such restriction, that sole source purchases from BP be limited to one day and not three days without competitive bidding by telephone and documentation.¹⁸⁴

Putting the matter in perspective -- Mr. Hollewa made it appear that all of Aquila’s purchases were well out side the *Gas Daily* range when only 2 purchases were outside the range. In fact, the vast majority of Aquila’s daily purchases from BP were very close to the mid point of the range.¹⁸⁵

Mr. Lutz provided a necessary industry background on the LWF/FWM – to highlight the unforeseen conditions that existed during the LWF/FWM. He noted that more than 90% of Mr. Hollewa’s proposed disallowance was associated with the weekend of March 1–3, 2003. He

¹⁸⁴ Tr 105, line 14 through Tr 107, line 13.

¹⁸⁵ Tr 106, lines 12, 13.

summarized the extreme weather and operational problems discussed earlier in this brief¹⁸⁶ and the exceptional concurrence of events in the industry.

Aquila's actions, when placed in perspective for what really happened, were not imprudent or unreasonable. When placed in perspective, Aquila's actions were *reasonable and prudent based on the knowledge available or reasonably foreseeable as of the date the challenged decisions were made*.

Mr. Hollewa's double-dip -- In his *non-BP presentation*, Mr. Hollewa's proposed disallowance was \$1,560,791 for operations in January through March. In so doing, Mr. Hollewa, disallowed the pass-through of gas costs actually incurred in the LWF/FWM. In his *BP presentation*, Mr. Hollewa recommended a disallowance in the amount of \$445,674. His exhibit supporting the proposed BP disallowance¹⁸⁷ set forth ten purchases, nine of which had terms between February 22 and March 11, *i.e.*, basically within the LWF/FWM. This means that all but \$7,700 of Mr. Hollewa's proposed \$445,674 disallowance was already been included in his \$1,560,791 *non-BP* disallowance. Thus, even if there is merit in Mr. Hollewa's BP presentation, he has overstated the disallowance by \$437,974.¹⁸⁸ There is no competent, material and substantial evidence of record to the contrary.

Response to Mr. Hollewa's BP proposal -- Aquila does not support Mr. Hollewa's proposal that a maximum \$0.01 to \$0.02 be placed on all future daily spot purchases when comparing actual price paid to the *Gas Daily* posting; and absent such restriction, that sole

186 See, pp 7-9, *supra*.

187 Exhibit AG-1.

188 Tr 106, lines 14-23.

source purchases from BP be limited to one day and not three days without competitive bidding by telephone and documentation.¹⁸⁹

It should be understood that the BP agreement was addressed in the GCR plan docket. In addition, the BP agreement was fully addressed with Staff, the AG and RRC in a technical conference at the Commission's offices on October 9, 2002. The discussion included BP representatives and referenced the three-day limitation included in Mr. Hollewa's testimony.¹⁹⁰

It should also be understood that Mr. Hollewa's recommendations focused on a contract which is already in place with BP. *Aquila does not have the ability to unilaterally change that contract to comply with Mr. Hollewa's revisions*; and, at most, Aquila would be forced to early terminate the agreement.¹⁹¹

Mr. Hollewa's suggestion, if adopted, will raise the overall cost of gas paid by Aquila GCR consumers. Mr. Lutz testified that a requirement placed on a supplier to provide firm spot supplies at the *Gas Daily* midpoint (rather than the *Gas Daily* range) will carry a \$0.02- \$0.04 demand payment for the estimated daily supply required by Aquila -- paid each day for a predetermined contractual volume whether Aquila requires the supply or not.¹⁹²

Mr. Hollewa suggested that his recommendation will result in more proposals at or below the posted price than above the posted price. Aquila disagrees. First, Aquila conforms with respect to FOM purchases, *i.e.*, Aquila seeks via competitive RFP bid, prices from multiple suppliers for monthly or seasonal gas needs. Second, an RFP during times of high demand and

189 Tr 106, line 24 through Tr 107, line 2.

190 Tr 107, lines 3-8.

191 Tr 107, lines 9-13. The BP Agreement is Exhibit A-22

192 Tr 151, lines 6-10.

volatility is simply not practical. Third, regarding spot purchases, requiring Aquila to seek bids during the normal bid cycle 24 hours prior to gas flow will not ensure acquisition of gas at or below the midpoint. During highly volatile timeframes, the Company is quoted fixed prices for firm spot supplies. The culmination of prices during the bid cycle 8:00- 10:00 EST for spot gas needs forms the index published in *Gas Daily*. Aquila must make a decision based both on price and reliability of the supply during the 8:00-10:00 a.m. timeframe.¹⁹³ This timing does not allow the luxury of knowing the index prior to the decision to acquire a reliable package of gas. Mr. Hollewa's proposal would be similar to suggesting that a financial analyst/stock broker always be able to pick the top or bottom of the market and sell or buy there, respectively. The history of spot purchases from BP demonstrates that, in most cases, BP has sold Aquila spot supplies at or

¹⁹³ From his questioning of Mr. Lutz, it appears that the ALJ recognized the difficulty of securing low prices for gas in the intra-day market:

Q. [By ALJ] You recall . . . questioning you . . . about intra-day trades . . . and you testified that liquidity is lower and it's harder to find. Is there a correlation between those two factors and the price of intra-day trades?

A. . . . It's just when intra-day, like gas for the following-day trades in that 8:00 to 10:00 o'clock period in the morning, that's when the industry transact for next-day-gas. It doesn't mean that you can't buy or sell gas for the next day after 10:00 o'clock, but the industry typically has shut down in terms of those gas prices wouldn't be included, for instance, in like an index, those normally wouldn't get submitted to a publication for part of a posting process or for calculation into the index for the next day. So the schedulers are scheduling gas to get things scheduled in the timely cycle so that things will be firm on the interstate pipelines. If you schedule gas intra-day, typically the pipelines will not give . . . you your primary deliverability status on nominations done after the timely cycle.

So if gas is available, liquidity is much harder to find, and typically when you have less liquidity, you're going to get wider [bids to ask] spreads in the marketplace. And so to some extent, the price transparency will be harder to see. Whereas in the 8:00 o 10:00 o'clock period, there are electronic trading platforms where it's pretty clear what, where prices are trading. Intra-day, after that 10:00 o'clock period, there won't be any prices posted on the electronic trading platforms typically, so price discovery is a little more difficult as well. Tr 165, 166.

near the midpoint published in *Gas Daily*. Only during a highly volatile period has BP charged at the upper end of the range published in *Gas Daily*.¹⁹⁴

Mr. Lutz focused on the specifics of Mr. Hollewa’s BP presentation – specifically, Mr. Hollewa’s criticism of the current BP Agreement. Mr. Lutz disagreed with Mr. Hollewa statement that BP engaged in “opportunistic pricing”, for several reasons:

- Mr. Hollewa misread §3(h) of the BP Agreement, *i.e.*, Mr. Hollewa kept referencing “the *Gas Daily* listing” whereas the Agreement requires the price to be “*within the price range* published for the Day for the applicable receipt point by Platts *Gas Daily* . . .” (emphasis added).¹⁹⁵
- Mr. Hollewa failed to distinguish between the ten packages which he claims should be subject to disallowance. Six of the ten, comprising \$216,993 of the proposed \$445,674 disallowance, were clearly within the *Gas Daily* range for the day.¹⁹⁶
- Mr. Hollewa failed to recognize that the price for CEM 32 was negotiated on May 21st for the rest of the month, *i.e.*, it was *not a daily package* -- it was a package of gas for the balance of the month. To compare a beginning of month (“BOM”) package of gas to *Gas Daily* prices for each

¹⁹⁴ Tr 151, 152.

¹⁹⁵ Tr 147, lines 7-11.

¹⁹⁶ Tr 147, lines 12-16. AMC 63, AMC 75-78 and CEM 14. These comprise \$216,993 of Mr. Hollewa’s proposed \$445,674 disallowance.

day is unsupported. CEM 32 represented \$7,700 of Mr. Hollewa's proposed disallowance.¹⁹⁷

- Mr. Hollewa failed to recognize that AMC 80 was a purchase that Aquila negotiated with Co-Energy, not BP. Since supplies were so tight, Aquila initiated contacts with suppliers to supplement BP's efforts. For credit reasons, Co-Energy would not sell to Aquila. Thus, Aquila asked BP to serve as an intermediary, lending BP's credit to support the deal. BP did so by purchasing the gas from Co-Energy at \$16.00/MMBtu and reselling the gas to Aquila for the same price. The fact that a third party, Aquila, tested the market and validated that indeed prices were high undermines Mr. Hollewa's "opportunistic" accusations. AMC 80 represented \$91,500 of Mr. Hollewa's proposed disallowance.¹⁹⁸

For the reasons set forth above, Mr. Hollewa's BP presentation should be rejected in its entirety.

Conclusion

For the reasons set forth in this brief, the disallowances recommended by the Staff, the AG and the RRC should be rejected. In addition, Mr. Hollewa's BP recommendations should be rejected. If the Commission is inclined to adopt a disallowance, at a minimum, there should be offset or reductions as follows:

¹⁹⁷ Tr 147, lines 17-21.

¹⁹⁸ Tr 147, line 22 through Tr 148, line 8.

<u>Issue</u>	<u>Description</u>	<u>Dollar Impact</u>
Point No. 4 addressed at pages 21, 22 of this brief	Additional <i>Demand and Transportation</i> Costs With Additional Storage --	\$367,482 to \$489,976
Point No. 4 addressed at pages 21, 22 of this brief	Additional <i>Gas</i> Costs With Additional Storage --	\$1,224,000
Point No. 5 addressed at pages 22, 23 of this brief	Lower Costs Incurred in January/February By Use of Storage – <i>MGU</i> Storage	\$297,087 compared to replacement daily \$244,021 compared to FOM purchases
Point No. 5 addressed at pages 22, 23 of this brief	Lower Costs Incurred in January/February By Use of Storage – <i>ANR</i> Storage	\$2,556,372 compared to replacement daily \$1,341,994 compared to FOM purchases
Point No. 8 addressed at pages 25, 26 of this brief	Daily Requirements For Entire Month on FOM Purchases	\$2,991,500 to \$5,983,000
Transportation Customer Activity Related to ATL Provisions addressed at page 40 of this brief	Right of Transportation Customers to Build Positive Imbalance on Aquila’s System Which Uses Storage	\$566,163

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Dated: January 21, 2005

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of AQUILA)
NETWORKS - MGU (formerly known as)
MICHIGAN GAS UTILITIES) for a gas cost)
recovery reconciliation proceeding for the)
12-month period ended December 31, 2003)
_____)

Case No. U-13550-R

PROOF OF SERVICE

STATE OF MICHIGAN)
) SS.
COUNTY OF INGHAM)

Jeanne M. Beachnau, an employee of Dykema Gossett PLLC, being first duly sworn, deposes and says that on the 21st day of January, 2005, she served a copy of Initial Brief of Aquila Inc., d/b/a Aquila Networks – MGU upon persons listed in the attached Service List, by United States First Class mail and electronic mail.

Jeanne M. Beachnau

Subscribed and sworn before
me this 21st day of January, 2005.

Trace Graham, Notary Public, Ingham County, MI
Acting in Ingham County, Michigan
My Commission Expires: 08/20/06

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