BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Aquila, Inc. d/b/a Aquila Networks (Aquila), Omaha, seeking individual rate increases for Aquila's Rate Area One, Rate Area Two, and Rate Area Three.	)	Application No. NG-0041 ORDER OVERRULING OBJECTION TO ASSESSMENT Entered: February 5, 2008

BY THE COMMISSION:

On August 21, 2007, the Commission entered Assessment Order No. GDS-005 assessing costs to Aquila, Inc., d/b/a Aquila Networks (Aquila) for an invoice dated July 26, 2007, from GDS Associates, Inc. (GDS) for costs associated with the above-captioned docket, totaling $42,587.71.

On September 28, 2007, Aquila filed an objection to Assessment Order No. GDS-005 pursuant to *Neb. Rev. Stat.* § 66-1844(1) for $12,000 of the invoice at issue attributable to work completed by Mr. Jim Daniel of GDS Associates in the above-captioned matter. Subsequently, Assessment Order No. GDS-006 was entered on October 2, 2007, which also included invoice amounts attributable to work completed by Mr. Daniel. Aquila's objection relates to any assessments attributable to work completed by Mr. Daniel in Application No. NG-0041.

E V I D E N C E

Hearing on this matter was held on December 11, 2007. Mr. Larry Headley testified on behalf of Aquila. The Public Advocate also appeared.

Mr. Headley testified that Aquila objects generally to the use of GDS by the Commission as Aquila believes them to be consumer advocates.[1] Mr. Headley further stated that at the time that Mr. Daniel was working through GDS advising the Commission on the present matter, he was also employed through GDS by the Wichita School District in Aquila's Kansas rate application.[2] Furthermore, Mr. Daniel was advising the Commission and the school district on similar issues including the reasonableness of Aquila's cost of service study, revenue distribution, rate design, and transportation service terms.[3]

[1] Direct Testimony of Larry Headley, Trans. 5:24 - 6:2.
[2] Headley, 7:3-5.
[3] Headley, 7:4-11.

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Aquila was aware that Mr. Daniel was associated with GDS since 1992.[4] Mr. Headley stated that Aquila did not become aware of Mr. Daniel's participation in the Nebraska rate proceeding until March 2007.[5] However, Aquila did not make any formal filings with the Commission during the pendency of the Nebraska rate proceeding objecting to the participation of Mr. Daniel in the Kansas case while advising the Commission.[6] The information from the Kansas rate case was made a part of the record in Aquila's Nebraska rate proceeding.[7] Mr. Daniel and GDS were not privy to any information in Kansas that was not also produced in the Nebraska proceeding.[8]

OPINION AND FINDINGS

Pursuant to *Neb. Rev. Stat.* § 66-1844(1), "The Commission shall determine if the assessment or any part of the assessment is excessive, erroneous, unlawful, or invalid and shall render an order upholding, invalidating, or amending the assessment.

The Commission recognizes Aquila's concerns regarding Mr. Daniel's participation in the Kansas proceeding on behalf of a party adverse to Aquila concurrent with his involvement as a Commission consultant on Aquila's Nebraska rate proceeding. Although access to information in the Kansas case did not prejudice Aquila because all Kansas discovery was made part of the record as described above, we strive to avoid even an *appearance* of a conflict. The Commission is committed to ensuring that a similar situation will not be repeated in future proceedings.

Based upon the evidence presented, the Commission finds that the assessment was not excessive, erroneous, unlawful, or invalid and therefore the objection should be overruled and the assessment upheld.

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[4] Headley, 26:15-17.
[5] Headley, 26:9-14.
[6] Headley, 22:10-13.
[7] Headley, 18:17-23.
[8] Headley, 19:8-12.

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O R D E R

IT IS THEREFORE ORDERED by the Commission that the Objection to the Assessment is overruled and the assessment is upheld.

MADE AND ENTERED at Lincoln, Nebraska, this 5th day of February, 2008.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

//s// Anne C. Boyle
//s// Frank E. Landis

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