

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 21st day of
September, 2006.

In the Matter of the Tariffs of Aquila, Inc., d/b/a)	
Aquila Networks – MPS and Aquila Networks – L&P)	
Increasing Electric Rates for the Services Provided)	<u>Case No. ER-2007-0004</u>
to Customers in the Aquila Networks – MPS and)	Tariff No. YE-2007-0001
Aquila Networks – L&P Service Areas)	

**ORDER DENYING MOTION TO ESTABLISH TRANSITIONAL
PROCEDURES**

Issue Date: September 21, 2006

Effective Date: September 21, 2006

On August 11, 2006, Aquila, Inc., filed a motion asking the Commission to issue an order establishing transitional procedures for the handling of Aquila's request for a fuel and purchased power cost recovery mechanism. Specifically, Aquila's motion asks the Commission to adopt, for this case, the transitional procedures set out in a proposed rule – 4 CSR 240-20.090(16) – that the Commission published in the Missouri Register on July 17, 2006. On August 31, the Office of the Public Counsel and AARP filed responses opposing Aquila's motion. Those responses were endorsed by AG Processing and Sedalia Industrial Energy Users' Association. Aquila replied on September 6.

Aquila's motion contends that the Commission should adopt transitional procedures to establish the means for dealing with Aquila's request for a fuel and purchased power cost recovery mechanism. Section 386.266, RSMo (Supp. 2005), gives the Commission the authority to approve the fuel and purchased power cost recovery mechanism proposed

by Aquila. However, the statute requires that the Commission promulgate implementing rules before “issuing an order for any rate adjustment.”¹ The Commission published such implementing rules as proposed rules on July 17 as part of Case No. EX-2006-0472. Under the procedure for creation of administrative rules established in Chapter 536, RSMo, those rules will not become effective until after the Commission receives and considers public comments and thereafter publishes an order of final rulemaking. In requesting the inclusion of a fuel and purchased power cost recovery mechanism in its rate case filing, Aquila is anticipating that the Commission will have the required implementing rule in place before it issues an order adjusting Aquila’s rates at the conclusion of this case.

The problem is that in filing for a rate increase that includes a fuel and purchased power cost recovery mechanism before a rule is in place, Aquila has had to anticipate the filing requirements that the Commission will include in its implementing rule. Aquila represents that its filing fully complied with the requirements of the Commission’s proposed rule. However, Aquila recognizes that the Commission could decide to modify some of the rule’s requirements when it files a final rule. Aquila proposes to make whatever supplemental filings are needed to comply with the final rule once that rule is promulgated.

The rule that the Commission proposed includes provisions that set out in great detail the procedure that the Commission is to follow in dealing with the supplemental filings that Aquila may need to make.² However, as a part of the proposed rule, those transitional procedures are also not yet in effect and are subject to modification or elimination in the final rule. In order to avoid the uncertainty that results from that situation,

¹ Section 386.266, 12, RSMo (Supp. 2005).

² Proposed Rule 4 CSR 240-20.090(16).

Aquila asks the Commission to adopt, by order, the transitional procedures from the proposed rule for use in this particular case.

In their pleadings opposing Aquila's motion, Public Counsel and AARP argue that the Commission cannot lawfully adopt the transitional procedures from the proposed rule without following the required rulemaking procedure set out by statute. Whatever the merits of that argument may be, the Commission does not need to reach that question. Quite simply, there is no need for the Commission to adopt any transitional procedures at this time.

Aquila has already filed its proposed tariff and supporting documentation requesting the implementation of a fuel and purchased power cost recovery mechanism. Aquila represents that its tariff and documentation comply with the requirements found in the Commission's proposed rule. It will not need to modify that tariff and documentation until the Commission promulgates a modified final order of rulemaking. That final order of rulemaking will not include transitional procedures for the handling of those modifications. As a result, the Commission will not adopt any such transitional procedures for this case at this time. Rather, the Commission will adopt whatever procedures it believes are necessary when and if Aquila modifies its tariff and documentation to comply with the final rule.

IT IS ORDERED THAT:

1. The Motion of Aquila, Inc., for an Order Applying the Transitional Procedures Included in 4 CSR 240-20.090(16) to the Current Case is denied.

2. This order shall become effective on September 21, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton and Appling, CC., concur

Woodruff, Deputy Chief Regulatory Law Judge