

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 5th day of
January, 2006.

In the Matter of the Tariff Filing of Aquila, Inc.)
to Implement a General Rate Increase for)
Retail Electric Service Provided to Customers)
in Its MPS and L&P Missouri Service Areas)

Case No. ER-2005-0436
Tariff No. YE-2005-1045

**ORDER REGARDING MOTIONS TO STRIKE TESTIMONY RELATING
TO CLASS COST OF SERVICE STUDIES**

Issue Date: January 5, 2006

Effective Date: January 5, 2006

On November 8, 2005, Sedalia Industrial Energy Users' Association (SIEUA), AG Processing, Inc., and the Federal Executive Agencies, intervenors in this case, filed a motion asking the Commission to strike portions of the direct testimony of Staff witnesses James Watkins and James Busch, as well as a new class-cost-of-service study filed by Staff. In addition, the movants asked the Commission to strike portions of the direct testimony of Public Counsel's witness Barbara Meisenheimer.¹ Thereafter, on November 23, the same movants filed a motion to strike portions of Meisenheimer's rebuttal testimony relating to class-cost-of-service issues.² Finally, on December 16, the

¹ The movants ask that the following portions of the testimony be struck: Watkins Direct, page 1, line 9, through page 5, line 16; Busch Direct, page 2, line 4, through page 17, line 16; and Meisenheimer Direct, page 1, line 9, through page 5, line 16.

² The movants ask that the following portions of the testimony be struck: Meisenheimer Rebuttal, page 1, line 7 through page 7, line 8, and all accompanying schedules.

movants filed a motion to strike a portion of the surrebuttal testimony of James Watkins.³ All of the challenged testimony relates to class-cost-of-service studies previously submitted by Staff and Public Counsel in a related case, EO-2002-384.

EO-2002-384 was opened in February 2002 to examine class cost of service and rate design issues for UtiliCorp United Inc., as Aquila was then known. The original goal of that case was to provide a means of examining those class-cost-of-service and rate design issues outside of the tight time constraints of a rate case. However, that goal was not met and EO-2002-384 was still pending at the time Aquila filed its current rate case. On July 8, 2005, SIEUA and the Federal Executive Agencies filed a motion in EO-2002-384 asking the Commission to establish a procedural schedule designed to bring that case to hearing before this rate case would be heard. Aquila supported that motion.

Staff and Public Counsel responded with a motion urging the Commission to consolidate EO-2002-384 with this rate case and proceed to a joint hearing on both cases. Public Counsel supported Staff's proposal.

On August 23, the Commission issued an order that denied Staff's motion to consolidate EO-2002-384 with this rate case and scheduled an evidentiary hearing in EO-2002-384 for November, 2005. In an attempt to avoid having to re-litigate the EO-2002-384 issues in the rate case, the Commission ordered that all parties in the rate case be added as parties to EO-2002-384. EO-2002-384 was, in fact, heard in November and is now awaiting a decision by the Commission.

Despite the existence of EO-2002-384, Staff and Public Counsel have filed testimony in the rate case that reiterates the testimony they presented in EO-2002-384.

³ The movants ask that the following portions of the testimony be struck: Watkins Surrebuttal, page 2, line 2, through page 7, line 18 and the attached Schedule 1.

Staff's testimony also purports to update its previously submitted class-cost-of-service study with more current data. SIEUA, AG Processing, and the Federal Executive Agencies, supported by Aquila, contend that Staff and Public Counsel's class-cost-of-service testimony should be struck from the rate case because the Commission previously determined that all such issues would be resolved in EO-2002-384, and the relitigation of those issues in the rate case would be a waste of the resources of the Commission and the parties. Furthermore, they argue that they have been unfairly denied an opportunity to prepare a response to the unexpected class-cost-of-service testimony submitted by Staff and Public Counsel.

In reply to the motion to strike their testimony, Staff and Public Counsel, supported by another intervenor, AARP, contend that the Commission simply cannot prohibit the consideration of class cost responsibilities in a general rate case. Such class cost responsibilities would be a relevant issue to a determination of Aquila's rates and to deny the parties an opportunity to address those issues in the rate case would be a denial of due process.

The Commission does not intend to relitigate the issues that will be resolved in EO-2002-384. The parties in this case are parties in that case and would be precluded from relitigating those issues by collateral estoppel. However, Public Counsel and Staff indicate that they need to present further information to update the class-cost-of-service question. The Commission cannot prevent the parties to this rate case from raising all relevant issues in the rate case. To the extent that the parties have raised new evidence regarding class cost of service, they will be allowed to present that evidence for the Commission's consideration.

The motion to strike testimony is overbroad in that it would strike all testimony relating to class cost of service. For that reason it must be denied.

IT IS THEREFORE ORDERED:

1. That SIEUA, AG Processing, Inc., and the Federal Executive Agencies' Motion to Strike Staff and Public Counsel's Class Cost of Service Studies in ER-2005-0436 and Direct Testimony, Including the Testimony of James Watkins, James Busch and Barbara Meisenheimer, is denied.

2. That SIEUA, AG Processing, Inc., and the Federal Executive Agencies' Motion to Strike Public Counsel Rebuttal Testimony of Barbara Meisenheimer on Class Cost of Service in ER-2005-0436 is denied.

3. That SIEUA, AG Processing, Inc., and the Federal Executive Agencies' Alternative Motion to Strike Surrebuttal Testimony of James Watkins, or Postpone Hearing Should This and Prior Motions to Strike not be Granted, is denied.

4. That this order shall become effective on January 5, 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, Senior Regulatory Law Judge