

**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 July, 2005.

In the Matter of the Tariff Filing of Aquila, Inc.,)	
to Implement a General Rate Increase for)	<u>Case No. ER-2005-0436</u>
Retail Electric Service Provided to Customers)	Tariff No. YE-2005-1045
in its MPS and L&P Missouri Service Areas.)	

**ORDER CONCERNING TEST YEAR AND TRUE-UP,
AND ADOPTING PROCEDURAL SCHEDULE**

Issue Date: July 21, 2005

Effective Date: July 21, 2005

Procedural History and Positions of the Parties:

On May 24, 2005, Aquila, Inc., which does business as Aquila Networks - MPS and as Aquila Networks - L&P, submitted to the Missouri Public Service Commission certain proposed tariff sheets, Tariff File No. YE-2005-1045. The purpose of the filing, according to Aquila, is to implement a general rate increase for retail electric service provided by the Company in its MPS and L&P service areas. Aquila states that the new retail electric service rates are designed to produce an additional \$69.2 million in gross annual electric revenues excluding gross receipts, sales, franchise, and occupational taxes in its MPS service area, a 20.3% increase over existing revenues, and \$9.4 million in additional gross annual electric revenues in its L&P service area, exclusive of gross receipts, sales, franchise, and occupational taxes, a 9.6% increase.

The Test Year:

The Commission issued its Suspension Order and Notice on May 31, suspending the proposed tariff sheets until April 21, 2006. The Suspension Order also required that Aquila file its test year recommendation, plus any request for a true-up audit and hearing, by June 14 and that the other parties respond by June 28. On June 7, Aquila timely filed its recommendation that the test year be the twelve-month period ending December 31, 2004, adjusted and updated for known and measurable changes through June 30, 2005. Several parties concurred in Aquila's recommendation and no party objected to it.

The test year is a central component in the ratemaking process. Rates are usually established based upon a historical test year which focuses on four factors: (1) the rate of return the utility has an opportunity to earn; (2) the rate base upon which a return may be earned; (3) the depreciation costs of plant and equipment; and (4) allowable operating expenses.¹ From these four factors is calculated the "revenue requirement," which, in the context of ratemaking, is the amount of revenue ratepayers must generate to pay the costs of producing the utility service they receive while yielding a reasonable rate of return to the utility's investors.² A historical test year is used because the past expenses of a utility provide a basis for determining what rate is reasonable to be charged in the future.³

¹ *State ex. rel. Union Electric Company v. Public Service Commission*, 765 S.W.2d 618, 622 (Mo. App., W.D. 1988).

² *State ex rel. Capital City Water Co. v. Missouri Public Service Commission*, 850 S.W.2d 903, 916 n. 1 (Mo. App., W.D. 1993).

³ See *State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 59 (Mo. banc 1979).

The proposed test year is suitable and no party has objected to it. The Commission will adopt the test year recommended by Aquila, updated and adjusted for known and measurable changes through June 30, 2005.

True-Up Audit and Hearing:

Aquila also recommended a true-up of "all significant cost increases and cost decreases that have occurred through November 30, 2005," for plant and reserve, revenues, cost of fuel and purchased power, payroll and payroll taxes, depreciation expense, and corporate allocation. Only intervenor Empire District Electric Company concurred in Aquila's recommendation.

Staff responded to Aquila's recommendation with an alternative proposal: a true-up through October 31, 2005, for a much more extensive list of accounts, encompassing "all major changes to revenue, expenses, rate base, and capital structure occurring through the true-up date." Intervenors AG Processing, the Federal Executive Agencies and the Sedalia Industrial Energy Users Association ("SIEUA") concurred in Staff's alternative recommendation.

The Public Counsel responded in opposition to Aquila's request for a true-up audit and hearing, stating:

The true-up is designed to capture in rate base the gas-fired generation station currently under construction near Peculiar, Missouri. On June 21, 2005, the Missouri Court of Appeals, Western District, in Case No. WD 64985, affirmed a permanent injunction against Aquila from constructing the plant. Absent a showing from Aquila that it plans to seek inclusion of the plant in rate base despite the Western District Court's ruling, or that it expects significant post-test-year changes in the other items it proposes to true up, Public Counsel opposes Aquila's true-up proposal.

Aquila replied to the Public Counsel, stating:

Aquila does intend to seek inclusion of the subject plant (South Harper) in rate base. The plant is set to begin commercial operation very shortly. Combustion turbine units 2 and 3 of the plant have been synchronized into the power grid and unit 1 is scheduled to be synchronized into the grid in early July, 2005. The units will supply megawatts to the grid to meet the summer 2005 peak requirements of Aquila's customers for electric power.

Aquila goes on to note that the case relied on by Public Counsel is not yet final and that enforcement of the injunction has been stayed pending appeal.

The use of a true-up audit and hearing in ratemaking is a compromise between the use of a historical test year and the use of a projected or future test year.⁴ It involves adjustment of the historical test year figures for known and measurable subsequent or future changes.⁵ However, while the "test year as updated" involves all accounts, the true-up is generally limited to only those accounts necessarily affected by some significant known and measurable change, such as a new labor contract, a new tax rate, or the completion of a new capital asset. Both the "test year as updated" and the true-up are devices employed to reduce regulatory lag, which is "the lapse of time between a change in revenue requirement and the reflection of that change in rates."⁶

The Commission will adopt Staff's true-up recommendation. Its scope -- "all major changes to revenue, expenses, rate base, and capital structure occurring through the true-up date" -- is broad enough to encompass all significant items, including the

⁴ *St. ex rel. Missouri Public Service Commission v. Fraas*, 627 S.W.2d 882, 887-888 (Mo. App., W.D. 1981).

⁵ *Id.* at 888.

⁶ *In the Matter of St. Louis County Water Company*, Case No. WR-96-263 (*Report & Order*, issued December 31, 1996), at p. 8.

South Harper Plant, should its inclusion in rate base be found to be appropriate. As Aquila rightly points out, that matter has not yet been finally determined.

The Procedural Schedule:

The Suspension Order also required that the parties cooperatively prepare and file a proposed procedural schedule by July 7, a date later extended until July 14. The Suspension Order also required the parties to file recommendations as to the dates, times, number, and locations of local public hearings by June 10. The parties timely filed a proposed procedural schedule on that date.

Briefing:

In the proposed procedural schedule, the parties express reservations concerning the new briefing process now being implemented in contested cases before the Commission. The new process calls for a detailed prehearing brief and a page-limited posthearing brief. The parties state that "pre-hearing briefs are not an acceptable substitute for effective and well-drafted post-hearing briefs for several reasons." The reasons enumerated by the parties include (1) a reluctance to reveal hearing strategy in prehearing briefs; (2) a belief that the new briefing process will hinder the Commission in its effort to reach a sound resolution of each contested issue based upon competent and substantial evidence of record; (3) the contention that the Commission's new briefing process is in fact unlawful under Section 536.080.2, RSMo 2000, which requires that each Commissioner certify that he or she has either heard all of the evidence, read the full record, or personally considered the portions of the record cited or referred to in the arguments or briefs. The Commission does not share the parties' concerns.

Section 536.080, RSMo 2000, states:

1. In contested cases each party shall be entitled to present oral arguments or written briefs at or after the hearing which shall be heard or read by each official of the agency who renders or joins in rendering the final decision.

2. In contested cases, each official of an agency who renders or joins in rendering a final decision shall, prior to such final decision, either hear all the evidence, read the full record including all the evidence, or personally consider the portions of the record cited or referred to in the arguments or briefs. The parties to a contested case may by written stipulation or by oral stipulation in the record at a hearing waive compliance with the provisions of this section.

The parties' rights are set out in subsection 1 of Section 536.080. That provision states that the parties may "present oral arguments or written briefs." The statute does not entitle a party to file a brief of any particular length. The present procedural schedule provides for *both* oral arguments *and* two written briefs, only one of which is subject to a page limitation. Additionally, the parties will file proposed findings of fact and conclusions of law, a filing that represents yet another opportunity for each party to present its point of view. The Commission considers that the present procedural schedule provides ample opportunities to the parties to present their cases.

At the point of filing the prehearing brief – which is not subject to any page limit – each party is fully aware of the nature and contents of the testimony that it will present and of the testimony that every other party will present. Only the results of cross-examination are unknown. The Commission considers it reasonable under the circumstances to require the parties to prepare and file detailed prehearing briefs containing citations to the evidence contained in the prefiled testimony.

After the hearing, the parties are permitted to file short posthearing briefs in order to update their initial briefs with the results of cross-examination. That is the purpose of the posthearing briefs. The Commission considers ten pages to be ample for this purpose.

Conditions:

The Commission has reviewed the proposed procedural schedule and finds it to be generally appropriate for this matter. The Commission will adopt the proposed procedural schedule, and finds that the following conditions should be applied to the schedule:

(A) All testimony, pleadings and other formal case papers filed by any party must also be provided directly to the Regulatory Law Judge. The filing party must provide one (1) paper copy of each filed item to the Regulatory Law Judge for his use, as well as an editable electronic copy in Word or Word Perfect format. The electronic copy should be e-mailed directly to the Regulatory Law Judge at kevin.thompson@psc.mo.gov. Every item filed that is longer than five (5) pages in length must be prefaced with a succinct executive summary that fairly summarizes its contents. All pleadings, briefs and amendments shall be filed in accordance with Rule 4 CSR 240-2.080.

(B) The Commission will require the pre-filing of testimony as defined in 4 CSR 240-2.130. All parties shall comply with this rule, including the requirement that testimony be filed on line-numbered pages. The practice of pre-filing testimony is designed to give parties notice of the claims, contentions and evidence in issue and to avoid unnecessary objections and delays caused by allegations of unfair surprise at the hearing. Copies of the work papers of each witness must be served on every party within three (3) working days of the filing of the prefiled testimony of the witness.

(C) The parties shall provide a copy of each Data Request propounded to every other party. Beginning on November 18, 2005, and continuing until this case is finally resolved, a party shall have only seven (7) calendar days after receipt to respond to a Data Request, and only seven (7) calendar days from receipt to serve all of the objections or reasons for its inability to answer in writing upon the requesting party.

(D) The parties shall agree on and file a list of issues to be determined herein by the Commission. Staff shall be responsible for actually drafting and filing the list of issues and the other parties shall cooperate with Staff in the development thereof. Any issue not included in the issues list will be presumed to not require determination by the Commission.

(E) Each party shall file a list of the witnesses to appear on each day of the hearing and the order in which they shall be called. The parties shall establish the order of cross-examination and file a joint pleading indicating the same.

(F) All pleadings, briefs and amendments shall be filed in accordance with 4 CSR 240-2.080.

(G) All parties are required to bring an adequate number of copies of exhibits which they intend to offer into evidence at the hearing. If an exhibit has been prefiled, only one copy of the exhibit is necessary for the court reporter. If an exhibit has not been prefiled, the party offering it should bring, in addition to the copy for the court reporter, copies for the five Commissioners, the Regulatory Law Judge, and all counsel.

(H) Each party shall prepare and file Proposed Findings of Fact and Conclusions of Law as directed by the procedural schedule adopted by this order. Each proposed finding of fact shall be supported by citations to the pertinent portion of the

record. Each proposed conclusion of law shall be supported by citations to pertinent authorities.

(I) Because much of the evidence will have been filed before the hearing, the Commission will require prehearing briefs that address all the issues in dispute and all the relevant prefiled testimony. The briefs to be submitted by the parties shall follow the same list of issues as filed in the case. The briefs must set forth and cite the proper portions of the record concerning the remaining unresolved issues that are to be decided by the Commission.

(J) Since the prehearing briefs will cover most of the record, post-hearing briefs need not be lengthy and will be limited to ten pages. Posthearing briefs will update the prehearing briefs for new evidence adduced at the hearing.

Local Public Hearings:

The parties' timely-filed proposed procedural schedule included recommendations for local public hearings. The parties suggest that two local public hearings be held, one in Raytown and one in St. Joseph, on November 7 and November 9, respectively. The Commission will set these hearings, and provide specific details, in a later order.

IT IS THEREFORE ORDERED:

1. That the test year in this matter shall be the 12 months ending December 31, 2004, updated and adjusted for known and measurable changes through June 30, 2005.

2. That there shall be a true-up audit and hearing as recommended by the Staff of the Missouri Public Service Commission. The true-up shall include all major

changes to revenue, expenses, rate base, and capital structure occurring through October 31, 2005.

3. That the following procedural schedule is adopted, subject to the conditions set out above, with which the parties are hereby directed to comply:

Direct Testimony, all parties except Aquila Revenue Requirement	October 14, 2005 4:00 p.m.
Preliminary Reconciliation circulated to Parties – Staff	October 20, 2005
Direct Testimony, all parties except Aquila Rate Design, Class Cost of Service	October 28, 2005 4:00 p.m.
Issues/Settlement Conference Room 305, GOB	October 31-November 4, 2005 10:00 a.m.
Preliminary List of Issues All Parties	November 4, 2005 4:00 p.m.
Rebuttal Testimony All Parties	November 18, 2005 4:00 p.m.
Seven (7) calendar day discovery turn-around begins	November 18, 2005
Surrebuttal & Cross-Surrebuttal Testimony All Parties	December 13, 2005 4:00 p.m.
List of Issues, Order of Witnesses, and Order of Cross-examination	December 14, 2005 4:00 p.m.
Reconciliation and Statements of Positions on Issues, all Parties	December 16, 2005 4:00 p.m.
Prehearing Briefs All Parties	January 3, 2006 4:00 p.m.
Evidentiary Hearing Room 310, GOB	January 9 – February 10, 2006 9:00 a.m.
Expedited Transcript Due:	February 13, 2006

Proposed Findings of Fact and Conclusions of Law All Parties	February 17, 2006 4:00 p.m.
Posthearing Briefs (ten-page limit) All Parties	February 17, 2006 4:00 p.m.
Final Revised Reconciliation and Supporting Accounting Schedules Staff	February 22, 2006 4:00 p.m.
True-up Hearing Room 310, GOB	February 23 and 24, 2006 9:00 a.m.
Closing Argument All Parties	March 1, 2006 9:00 a.m.

4. That the evidentiary hearing, true-up hearing and oral argument will be held at the Commission's offices at the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, Room 310. This building meets accessibility standards required by the Americans With Disabilities Act. If a person needs additional accommodations to participate in the hearing, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or dial 711 for Relay Missouri prior to the hearing.

5. That this order shall become effective on July 21, 2005.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

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

Thompson, Deputy Chief Regulatory Law Judge