

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 14th day of
June, 2007.

In the Matter of Aquila, Inc., to Implement)	
a General Rate Increase for Retail Electric)	
Service Provided to Customers in Its Aquila)	<u>Case No. ER-2007-0004</u>
Networks-MPS and Aquila Networks-L&P)	Tariff No. JE-2007-0860
Missouri Service Areas.)	

**ORDER REJECTING TARIFF, GRANTING CLARIFICATION,
DIRECTING FILING AND CORRECTING ORDER NUNC PRO TUNC**

Issue Date: June 14, 2007

Effective Date: June 14, 2007

Syllabus: This order rejects the four tariff sheets filed by Aquila, Inc., d/b/a Aquila Networks – MPS and Aquila Networks – L&P, on May 25, 2007, grants Aquila’s May 29, 2007, Motion for Clarification, authorizes Aquila to file revised tariff sheets in compliance with the Report and Order as clarified herein, and corrects the Report and Order nunc pro tunc.

Background

On May 17, 2007, the Commission issued its Report and Order in this case. On May 21, 2007, the Commission issued an Order Clarifying Report and Order clarifying that hedging costs were to flow through the fuel adjustment clause as provided for under the terms of the Stipulation and Agreement as to Certain Issues approved by Commission order on April 12, 2007. On May 25, 2007, the Commission issued an Order Granting Expedited Treatment, Approving Certain Tariff Sheets and Rejecting Certain Tariff Sheets

(First Tariff Order), which among other things, rejected Aquila's Original Sheet Nos. 124, 125 and 126, which were designed to implement Aquila's authorized fuel adjustment clause, as not being in compliance with the Report and Order. That order further authorized Aquila to file substitute sheets in compliance with the Report and Order.

On May 25, 2007, Aquila filed four (4) tariff sheets (the Tariff Sheets) designed to comply with the Report and Order and First Tariff Order. The Tariff Sheets bear an effective date of June 25, 2007. On May 29, 2007, Staff filed its recommendation that the Commission reject the Tariff Sheets contending they did not comply with the Report and Order. First, Staff objects to the Tariff Sheets based upon the inclusion of SO₂ emission allowance costs in the costs that will flow through the fuel adjustment clause. Staff contends that, because SO₂ emission allowance costs do not vary directly with Aquila's kWh sales of electricity, they are not "variable fuel and purchased power costs." Next, Staff objects to the provisions in Aquila's proposed fuel adjustment clause that call for the calculation of interest on deferred electric energy costs on a monthly basis, contending the calculation of interest on a monthly basis is not authorized by the Report and Order. Staff contends the interest on deferred electric energy costs should only be computed and applied in connection with the true-up audit, and with the "refund" of imprudently incurred costs in the case of the prudence review as provided for under Section 386.266.4 RSMo¹ and Commission Rule 4 CSR 240-20.090.

Also on May 29, AG Processing, Inc. (AGP), and the Sedalia Industrial Energy User's Association (SIEUA) filed a supplemental objection to the tariff sheets filed by Aquila on May 24, 2007. Although those tariff sheets were subsequently withdrawn and replaced

¹ All references to Section 386.266 RSMo are to the 2006 Cumulative Supplement.

with revised sheets on May 25, 2007, SIEAU and AGP argue one point that is germane to a Commission decision regarding the Tariff Sheets. Specifically, SIEAU and AGP argue that neither the Report and Order, nor the applicable Commission Rules, permit interest to be recovered in Aquila's fuel adjustment clause. They further contend that Section 386.266 RSMo only contemplates interest calculations on refunds after true-up, but not overages.

On May 29, 2007, Aquila filed its response to Staff's recommendation to reject the Tariff Sheets and a Motion for Clarification of Report and Order. Aquila argues the Tariff Sheets comply with the Report and Order and seeks clarification from the Commission regarding the objections raised by Staff.

SO₂ Emission Allowance Costs

At page 44 of the Report and Order, the Commission stated "Aquila will only be allowed to flow variable fuel and purchased power costs, including variable transportation costs, through its fuel adjustment clause." Although Staff supported inclusion of SO₂ emission allowance costs in the costs that should flow through a fuel adjustment clause,² Staff interprets the language set out above as excluding these costs from recovery or refund through the fuel adjustment clause. Specifically, Staff contends that, because SO₂ emission allowance costs do not vary directly with Aquila's kWh sales of electricity, they are not "variable fuel and purchased power costs."

The Commission herein clarifies that the language in question was intended to include SO₂ emission allowance costs. SO₂ emission allowance costs are variable fuel related costs in that they vary based upon the volume of coal used, as well as, the market

² Ex. 208 HC, Featherstone Surrebuttal, page 13, lines 1-2.

prices of the allowances themselves.³ The Commission did not specifically list SO₂ emission allowance costs as costs that should flow through the fuel adjustment clause, because no party, including Staff, argued for their exclusion. Further, other costs that do not vary directly with kWh sales, such as transportation costs, flow-through the fuel adjustment clause.

Interest on Deferred Fuel and Energy Costs

Staff suggests that Aquila's fuel adjustment tariff does not comply with the Report and Order in that it provides for computation of interest on monthly over/under collection balances. SIEUA and AGP suggest, in addition, that the fuel adjustment clause tariff must specify an interest rate, absent which Aquila, the Commission and customers will not be able to ascertain the rates to be charged.

In the Report and Order the Commission did not specifically authorize Aquila to accrue interest on over- or under-collections of fuel and purchased power costs because the authority and method to accrue interest on such amounts is expressly set out in Section 386.266.4(2) RSMo and Commission Rule 4 CSR 240-20.090(5). Specifically, Section 386.266.4(2) states:

The commission shall have the power to approve, modify, or reject adjustment mechanisms submitted under subsections 1 to 3 of this section . . . , provided that it finds that the adjustment mechanism set forth in the schedules: (1) ...; (2) Includes provisions for an annual true-up which shall accurately and appropriately remedy any over- or under-collections, **including interest** at the utility's short-term borrowing rate, through subsequent rate adjustments or refunds; (emphasis added)

³ Ex. 2, Block Direct, page 4, lines 5-9; and Ex. 208 HC, Featherstone Surrebuttal, page 13, lines 1-2.

Under this section, the Commission is not authorized to approve a fuel adjustment clause that does not provide for the recovery or refund of over- or under-collections of fuel costs and purchased power costs, including interest at the utility's short-term borrowing rate.

Similarly, Commission Rule 4 CSR 240-20.090(5), requires an electric utility filing for a rate adjustment mechanism;

. . . to include in its tariff schedules and application, if filed in addition to tariff schedules, provision for true-ups on at least an annual basis which shall accurately and appropriately remedy any over-collection or under-collection through subsequent rate adjustments or refunds.

(A) The subsequent true-up rate adjustments or refunds shall include interest at the electric utility's short-term borrowing rate. (emphasis added)

These provisions are dispositive of the issue. The statute provides for interest to be computed and paid at and after the annual true-up performed in accordance with a Commission approved fuel adjustment clause.

As set out in the Conclusions of Law on page 48 of the Report and Order, Under 4 CSR 240-20.090(4)(A) "An electric utility with a fuel adjustment clause must file at least one adjustment to its fuel adjustment clause in each true-up year coinciding with the true-up of its fuel adjustment clause." Section 396.266 RSMo, 4 CSR 3.161(1)(G) and 4 CSR 240-20.090(1)(I) define the true-up period at the conclusion of which interest on over- or under-collection of fuel and purchased power costs is to be calculated as an annual period.

Although the fuel adjustment clause authorized by the Commission in the Report and Order allows Aquila to make two "adjustments" per year, nothing in the applicable statute, rule or the Commission's Report and Order authorize the true-up of the fuel adjustment clause or application of interest, except during the "annual true-up" performed

at the conclusion of the “true-up year.” Further, Commission Rule 4 CSR 240-3.161(7), which sets out the filing requirements for interim adjustments under a fuel adjustment clause, does not even require the utility to submit information on its cost of short-term debt. In contrast, Commission Rule 4 CSR 240-3.161(8), which sets out the filing requirements for an annual true-up application, does require information on the utility’s short-term borrowing costs.

Therefore, under its fuel adjustment clause Aquila shall calculate interest monthly on its cumulated over/under recovery of fuel costs, and collect that interest in the rate calculated during the annual true-up. The Commission intends that the fuel adjustment process track the process used in the purchased gas adjustment/actual cost adjustment process for local gas distribution companies.

Further, in order to implement an additional, interim rate under the fuel adjustment clause, Aquila must compute, file and separately identify on bills the specific rate charged customers. The statute and rules provide for review of such riders prior to their implementation, and for their true-up review prior to becoming final, permanent rate elements. SIEAU and AGP’s contention in this regard are without merit.

The Commission has reviewed the Tariff Sheets, Staff’s Recommendation, SIEUA and AGP’s objections and Aquila’s responses. In addition to the issues addressed above, the Commission finds the Tariff Sheets are not in compliance with Commission Rule 4 CSR 240-20.090(6) which requires the effective period for any fuel adjustment clause to be no more than four years. Based upon its review of Tariff Sheets, Recommendation, objections and responses the Commission concludes that the Tariff Sheets are not

consistent with the Report and Order, Section 386.266 RSMo, or Commission Rule 4 CSR 240-20.090, and should be rejected.

Aquila will be directed to file revised tariff sheets 124 through 127 that are in compliance with the Report and Order, as clarified herein, Section 386.266 RSMo (2006 Cum. Supp.), and Commission Rule 4 CSR 240-20.090.

The Commission has identified a factual error in the Report and Order that it will correct nunc pro tunc. Legal Counsel for AARP is identified in the Report and Order as John W. Coffman. The attorney's middle initial is in fact B. The identified factual error will be corrected nunc pro tunc.

The Commission will direct its Staff to review the Tariff Sheets and determine if they are in Compliance with the Report and Order as clarified. The Commission will suspend the Tariff Sheets for seven days to allow Staff sufficient time to complete its review and recommendation, and allow the Commission time to further analyze the Tariff Sheets and the Staff recommendation.

IT IS ORDERED THAT:

1. Aquila's Motion for Clarification filed on May 29, 2007, is granted, as addressed in the body of this order.
2. The proposed electric service tariff sheets submitted by Aquila, Inc., d/b/a Aquila Networks – MPS and Aquila Networks – L&P, on May 25, 2007, are rejected. The specific sheets rejected are:

P.S.C. MO. No. 1, Electric Rates

**Original Sheet No. 124
Original Sheet No. 125
Original Sheet No. 126
Original Sheet No. 127**

3. Aquila, Inc., d/b/a Aquila Networks – MPS and Aquila Networks L&P shall file revised tariff sheets 124 through 127 in compliance with the Report and Order as clarified herein.

4. The following item in the Commission's May 17, 2007 Report and Order is corrected nunc pro tunc: In the Appearances section of page 1, the name of AARP's attorney is John B. Coffman, not John W. Coffman.

5. This order shall become effective on June 14, 2007.

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, and Appling,
CC., concur.

Gaw, C., dissents, with separate
dissenting opinion to follow.

Clayton, C., dissents.

Voss, Regulatory Law Judge,