

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 10th day
of July, 2007.

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)	
Aquila Networks – L&P Service Areas)	

ORDER DENYING APPLICATIONS FOR REHEARING

Issue Date: July 10, 2007

Effective Date: July 20, 2007

On May 17, 2007, the Commission issued a Report and Order regarding Aquila, Inc., d/b/a Aquila Networks – MPS and Aquila Networks – L&P’s tariffs to increase its rates for electric service. That Report and Order became effective on May 27. On May 21, 2007, the Commission issued an Order Clarifying Report and Order. That order also became effective on May 27, 2007. Sedalia Industrial Energy Users Association (“SIEUA”), AG Processing, Inc. (“AGP”), AARP, the Office of the Public Counsel; and Aquila each filed timely applications for rehearing of the Report and Order.

On May 25, 2007, the Commission issued an Order Granting Expedited Treatment, Approving Certain Tariff Sheets and Rejecting Certain Tariff Sheets. That order became effective on May 31, 2007. SIEUA, AGP, and Public Counsel each filed timely applications for rehearing of the Commission’s May 31 order. Aquila filed a response to SIEUA and AGP’s applications for rehearing on May 31. No other responses were filed.

On June 29, 2007, the Commission issued an Order Granting Expedited Treatment and Approving Tariff Sheets. That order became effective on July 5, 2007. Aquila, SIEUA and AGP filed timely applications for rehearing of the Commission's June 29 order. SIEUA and AGP filed a response to Aquila's application for rehearing on June 29. No other responses were filed.

Section 386.500.1, RSMo 2000, indicates the Commission shall grant an application for rehearing if "in its judgment sufficient reason therefore be made to appear." The applications for rehearing restate the positions the parties espoused at the hearing. The Commission rejected those positions in its Report and Order. Each application for rehearing will be denied.

The Commission will, however, address an issue raised in the applications for rehearing to further explain the Commission's decision. The applications for rehearing filed by SIEUA, AGP and Public Counsel note that the Commission's Report and Order spoke approvingly of the testimony offered by SIEUA and AGP's expert witness, Michael Gorman, regarding an appropriate return on equity. As indicated in the Report and Order, Gorman's overall recommendation for a return on equity was 9.7 percent,¹ but the Commission found a 10.25 percent return on equity to be appropriate.

Gorman's testimony, in its totality, was and is the most credible of all the testimony offered on the issue; however, his testimony was not without its shortcomings. The Commission fully addressed the shortcomings of Mr. Gorman's testimony and data analysis in the Report and Order and will not repeat them here.

¹ Mr. Gorman recommended and return on equity of 10 percent without a fuel adjustment clause and 9.7 percent with a fuel adjustment clause. See: Transcript, pages 532-533.

More fundamentally, the criticisms of the Commission's return on equity decisions are based on the mistaken assumption that the Commission must accept, without change, a return on equity recommendation suggested by one of the expert witnesses. None of the return on equity experts offering their testimony in this case recommended a return on equity of 10.25 percent, but the Commission is not limited to simply choosing from among the submitted expert recommendations when establishing a return on equity.

Establishing a return on equity is part of the Commission's attempt to establish just and reasonable rates. As the Missouri Court of Appeals has indicated, "[under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling. It is not theory but the impact of the rate order which counts."² For all the reasons set out in its Report and Order, the Commission has established a return on equity it believes to be just and reasonable. The criticisms of the return on equity allowed by the Commission are without merit and do not justify rehearing.

In its Motion for Rehearing, Public Counsel also identified four factual errors in the Report and Order that will be corrected nunc pro tunc. First, the last sentence on page 21, the Report and Order states "Public Counsel does not argue." The Commission is aware that Public Counsel briefly addressed the issue in question in its Post Hearing Brief with a single declaratory statement followed by two transcript excerpts of Mr. Kind's cross-examination. The language in question should read "Public Counsel does not convincingly or credibly argue." Second, at page 21, the Report and Order states that Aquila provided

² *State ex rel. Assoc. Natural Gas Co. v. Pub. Serv. Com'n of Missouri*, 706 S.W. 2d 870, 873 (Mo App. W.D. 1985)

information about the filing requirements in response to a Public Counsel data request. The information was in fact provided in response to a data request from SIEUA and AGP. Third, footnote 42 located on page 21 of the Report and Order cites pages 15 and 16 of Mr. Kind's Direct Testimony, Exhibit 401, as the source of the information, when the appropriate cite is to pages 15 and 16 of Mr. Kind's Rebuttal Testimony, Exhibit 402. Fourth, the Report and Order, at page 22, states that "The Commission finds the testimony of Aquila witnesses Dennis Williams and H. Davis Rooney contains all the information required . . ." In fact, in the referenced section the Commission also relied upon the testimony of Aquila witness Block Andrews who, along with Mr. Williams, filed testimony related to Aquila's compliance with 4 CSR 240-3.161(2)(R). All the identified factual errors will be corrected nunc pro tunc.

IT IS ORDERED THAT:

1. AG Processing, Inc., and Sedalia Industrial Energy Users Association's Application for Rehearing of the Report and Order is denied.
2. AARP's Application for Rehearing of the Report and Order is denied.
3. The Office of the Public Counsel's Application for Rehearing of the Report and Order is denied.
4. Aquila, Inc., d/b/a Aquila Networks – MPS and Aquila Networks – L&P's Application for Rehearing of the Report and Order is denied.
5. AG Processing, Inc., and Sedalia Industrial Energy Users Association's Application for Rehearing of the Commission's May 25, 2007 Order Granting Expedited

Treatment, Approving Certain Tariff Sheets and Rejecting Certain Tariff Sheets Report and Order is denied.

6. The Office of the Public Counsel's Application for Rehearing Application for Rehearing of the Commission's May 25, 2007 Order Granting Expedited Treatment, Approving Certain Tariff Sheets and Rejecting Certain Tariff Sheets Report and Order is denied.

7. AG Processing, Inc., and Sedalia Industrial Energy Users Association's Application for Rehearing of the Order Granting Expedited Treatment and Approving Tariff Sheets is denied.

8. The following items in the Commission's May 22, 2007 Report and Order are corrected nunc pro tunc:

- a. The last sentence on page 21 is corrected to read, "However, Public Counsel did not convincingly or credibly argue in either its Prehearing or Posthearing Brief that Aquila's fuel adjustment clause was, or continues to be, deficient as to any Commission Rule."
- b. The first sentence of the second paragraph on page 21 is corrected to read, "In response to an AGP and SIEUA data request, Aquila provided to all parties a guide identifying the location in Aquila's direct testimony where the information required by each section of the commission rules is located."
- c. The reference in footnote 42 on page 21 is, Kind Rebuttal, Ex. 402, pages 15 and 16, not Kind Direct, Ex. 401, pages 15 and 16.

- d. Brock M. Andrews is added to the list of Aquila witness contained in the first sentence under Findings of Fact on page 22.
 - e. Andrews Direct, Ex. 2, is added to the list of materials referenced in footnote 45 on page 22.
9. All other pending motions and requests are denied.
10. This order shall become effective on July 20, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

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

Voss, Regulatory Law Judge