

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

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 Service Provided to Customers in       )  
the Aquila Networks MPS and Aquila           )  
Networks-L&P Service Areas.                    )

**Case No. ER-2007-0004**

**RESPONSE TO MOTION FOR EXPEDITED TREATMENT  
AND APPROVAL OF TARIFF SHEETS**

COMES NOW, AG Processing, Inc. (“AGP”) and Sedalia Industrial Energy Users’ Association (“SIEUA”) and for their Response to Aquila’s Motion For Expedited Treatment and Approval of Tariff Sheets respectfully states as follows:

1.       On May 18, 2007, Aquila filed tariff sheets which it claims “effectuate the decisions made by the Commission in its Report and Order.” On May 21, 2007, Aquila filed updated tariff sheets in order to correct an apparent violation of Section 393.140(11). Although those tariff sheets now provide for a 30-day effective date, Aquila still asks that the Commission expedite its approval of those tariff sheets so that the new rates may go into effect on May 31, 2007.

2.       In support of its request Aquila claims that: (1) the Commission can not lawfully extend the effective date beyond May 30, 2007; (2) thirty days is not “necessary or appropriate;” and (3) good cause exists for allowing changes on less than thirty days.

3.       In the recent Empire rate proceeding, the Commission issued its Report and Order ten days prior to the operation of law date. Based largely upon Empire’s legal arguments, the Commission hurriedly issued its Order Granting Expedited Treatment and

Approving Tariffs.<sup>1</sup> While the Commission's Order Approving Tariffs accommodated Empire's belief that the Commission could not lawfully extend the effective date, it did not accommodate the due process rights of the other parties. Specifically, the Commission's Order did not provide adequate time for parties to apply for rehearing prior to those rates going into effect. In response to Public Counsel's Petition for Writ of Mandamus, the Missouri Supreme Court recently issued its Alternative Writ of Mandamus. In that Alternative Writ, the Supreme Court ordered the Commission to show case "why a writ of mandamus should not issue requiring you to vacate your order granting expedited treatment and approving tariffs issued on December 29, 2006, and in lieu thereof allow Relator adequate time to prepare and file an application for rehearing on the tariffs."<sup>2</sup> The Supreme Court's recent Order makes clear that the utility's belief that any rate increase must be implemented by the end of the statutory suspension period must take a backseat to other parties' due process rights.

4. Aquila's argument, as reflected in the recent Supreme Court Order, is obviously flawed. Contrary to Aquila's belief, Missouri statutes do not guarantee that any rate increase will be implemented by the end of the statutory suspension period. Rather, the Missouri statutes merely guarantee that any Commission hearing on the propriety of the utility's rate shall be completed by the end of the suspension period.<sup>3</sup> In this case, the Commission met its statutory obligation by holding its hearing and issuing

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<sup>1</sup> See Case No. ER-2006-0315 in which the Commission issued its Order Granting Expedited Treatment and Approving Tariffs on December 29, 2006. That Order claimed to be effective on January 1, 2007.

<sup>2</sup> *State ex rel. Office of the Public Counsel v. Public Service Commission*, Case No. SC88390, Alternative Writ of Mandamus, issued May 1, 2007. (emphasis added).

<sup>3</sup> See, Section 393.150 RSMo. "[T]he Commission shall have, and it is hereby given, authority, either upon complaint of upon its own initiative without complaint, . . . to enter upon a hearing concerning the propriety of such rate, . . . and pending such hearing and the decision thereon, the commission . . . may suspend the operation of such schedule and defer the use of such rate." "If any such hearing cannot be concluded with the period of suspension, as above stated, the commission may, in its discretion, extend the time of suspension for a further period not exceeding six months."

its Report and Order which rejected Aquila's July 3, 2006 tariffs. By the clear wording of the statutes, the Commission's Report and Order **concluded** this matter. By filing its May 20, 2007 tariff sheets, Aquila **started** an entirely new process. Nothing in the Missouri statutes permit Aquila to piggyback its new tariff sheets on the old suspension period. Rather, those tariff sheets are treated independently and, if deemed appropriate, the Commission, by the authority of Section 393.150 RSMo, may suspend Aquila's new tariff sheets for a period of time. AGP / SIEUA do not, at this time, recommend any suspension of the Aquila tariffs. Nevertheless, AGP / SIEUA will insist that any Commission procedure accommodate its due process rights including the right to seek rehearing prior to the tariffs becoming effective. As such, AGP / SIEUA recommend and request that the Commission deny expedited treatment and consider Aquila's tariff sheets pursuant to the thirty-day time frame reflected in the statute.

5. Contrary to Aquila's assertions, the thirty-day statutory notice period is necessary and appropriate. Within hours of Aquila's filing of its tariff sheets and consistent with the due process rights provided in Section 536.073 RSMo., AGP / SIEUA submitted data requests in order to independently determine whether Aquila's tariffs "effectuate the decisions made by the Commission in the Report and Order." Although Aquila has not yet had an opportunity to fully respond to those data requests, the expedited time frame sought by Aquila would not accommodate response and review of AGP / SIEUA's discovery. Without such responses, AGP / SIEUA is unable to determine if the tariffs are in compliance with the Commission's Report and Order.

6. Additionally, SIEUA / AGP point out that the Commission's Staff has filed its Recommendation in which it notes that certain tariff sheets filed by Aquila "do

not conform to the Commission's Report and Order and are otherwise deficient." After detailing the nature of the deficiencies in Aquila's tariffs, Staff recommends that "the Commission not approve the tariff sheets" filed by Aquila.

7. There are numerous problems with Aquila's request to expedite the approval of its proposed tariff sheets. Staff has pointed out numerous deficiencies in those tariff sheets. Despite Aquila's assertions to the contrary, Missouri law clearly indicates that the Commission should not rush to approve those tariffs. Rather, the Commission should take the time necessary to ensure that the tariffs actually comply with the provisions of its Report and Order.

WHEREFORE, SIEUA / AGP respectfully request that the Commission deny Aquila's Motion For Expedited Consideration.

Respectfully submitted,

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ATTORNEYS FOR AG PROCESSING,  
INC. AND SEDALIA INDUSTRIAL  
ENERGY USERS' ASSOCIATION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.

A handwritten signature in black ink, appearing to read "David L. Woodsmall", is positioned above a horizontal line. A vertical red line is located to the right of the signature.

David L. Woodsmall

Dated: May 22, 2007