

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

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

**MOTION IN LIMINE AND MOTION FOR EXPEDITED TREATMENT**

Comes now the Staff of the Missouri Public Service Commission (Staff) and respectfully states as follows:

1. On May 24, 2005 Aquila, Inc. filed with the Commission tariff sheets designed to implement a general electric rate increase for service it provides to its Missouri customers in and about Kansas City and St. Joseph, Missouri under the names Aquila Networks—MPS and Aquila Networks—L&P, respectively. The Commission opened Case No. ER-2005-0436 to address that filing.

2. This matter is currently set for hearing commencing on January 17, 2006.

3. Pursuant to the List of Issues filed on December 22, 2005, two issues in this case are:

26. Low Income Weatherization Assistance (Electric): Should an amount for low-income customer weatherization assistance programs be included in Aquila Networks-MPS's and Aquila Networks-L&P's cost of service? If so, what amount should be included, how should it be funded, which programs should be included, and what kind of review should be ordered by the Commission?

27. Demand Side Management (Electric): Should an amount for energy efficiency services to residential and commercial customers be included in Aquila Networks-MPS's and Aquila Networks-L&P's cost of service? If so, what amount should be included, how should it be funded, which programs should be included, and what kind of review should be ordered by the Commission?

4. Pursuant to the List of Issues filed on December 22, 2005, the witnesses expected to testify on these issues are: Matthew Daunis (Aquila); Anita Randolph (DNR); Robert Jackson (Kansas City); and Lena Mantle (Staff).

5. A review of the record in EFIS shows that Matthew Daunis (Aquila) did not file Direct Testimony, filed Rebuttal in response to the Direct Testimony of Anita Randolph and filed Surrebuttal Testimony. Mr. Daunis stated Aquila's opinions and observations regarding Ms. Randolph's testimony. In addition, Mr. Daunis stated:

Third, the breadth and depth of Aquila's proposed programs is far in excess of what the DNR is requesting in this rate case.

(Daunis Rebuttal, p. 2, lines 19-20). Mr. Daunis also stated that Aquila is not currently requesting revenue from customers to fund its existing programs (Daunis Rebuttal, p. 2, lines 12-14). Mr. Daunis also states that the Commission should order a pilot effort to fund either DNR's proposed programs or Aquila's proposed programs (Daunis Rebuttal, p. 2, lines 11-15).

6. Commission Rule 4 CSR 2.130(7)(A) provides as follows: "Direct testimony shall include all testimony and exhibits asserting and explaining the party's entire case-in-chief." If Aquila wanted to propose low-income or energy efficiency programs, then pursuant to Commission Rule Commission Rule 4 CSR 2.130(7)(A), it was required to propose and support such programs in its DIRECT Testimony. Aquila failed to do so. Accordingly, despite the contrary protestations of Mr. Daunis in his Rebuttal testimony, the only programs before the Commission are those proposed by Ms. Randolph. Furthermore, even in his Rebuttal Testimony, Mr. Daunis does not provide a detailed description of the programs Aquila wants funded (Mantle Rebuttal, p. 4, lines 13-14).

7. Staff Witness Mantle filed her Rebuttal Testimony on November 18, 2005. Ms. Mantle addressed Staff's position on DNR's proposals.

8. On December 13, 2005, Mr. Daunis filed his Surrebuttal Testimony. The content of his Surrebuttal testimony is in direct violation of Commission Rules and deprives the Commission and the other Parties to this case, including Staff, of the opportunity to properly evaluate and respond to Aquila's proposal.

9. In his Surrebuttal testimony filed on December 13, 2005, Mr. Daunis states that the purpose of his Surrebuttal testimony is to respond to the rebuttal testimony of Ms. Mantle regarding Staff's positions on Weatherization Assistance and other energy efficiency programs (Surrebuttal of Matthew E. Daunis, p. 2, lines 1-4). Mr. Daunis then summarizes Ms. Mantle's position and proceeds to introduce in his Surrebuttal testimony how demand side resource programs are integrated into Aquila's 2005 resource planning process (Surrebuttal of Matthew E. Daunis, p. 2, lines 5 through p. 4 line 10).

10. Mr. Daunis clearly recognized that Ms. Mantle only addressed the programs that were proposed in the direct testimony of Anita Randolph (Surrebuttal of Matthew E. Daunis, p. 5, lines 19-22). This is exactly what should be done in rebuttal testimony (Commission Rule 4 CSR 240-2.130(B)).

11. Commission Rule 4 CSR 240-2.130(D) requires surrebuttal testimony to be responsive to matters raised in rebuttal testimony. The introduction of Aquila's resource planning process in support of Aquila's own programs and/or program funding preferences in surrebuttal testimony violates fundamental fairness and procedural due process. All parties are entitled to such. Neither Staff nor any other Party had an opportunity to respond to the demand side programs that were a part of Aquila's resource planning process. Furthermore, the Commission is hindered in deciding the case by not having evidence about the demand side programs or resource planning process from other Parties.

12. Staff requests that suggests that the following portions of Mr. Daunis' surrebuttal be excluded from evidence at the hearing: p. 2, lines 15 through p. 5, line 16; p. 6, line 1-17; p. 9, line 20 through p. 10, line 3; Schedule MED-2; Schedule MED-3. In the alternative, Staff requests that the Commission order that Mr. Daunis' testimony be used only for the limited purpose of responding to Ms. Randolph's testimony. Staff would also suggest the option of delaying the hearing on this issue for a period of time to allow discovery and subsequent live testimony on Mr. Daunis' proposals raised for the first time in surrebuttal.

13. Staff seeks expedited treatment of this motion. Staff requests that the Commission shorten the time for Aquila's response to this Motion to January 13, 2006 at 4 p.m. Staff requests that the Commission issue an order on this Motion by January 17, 2006. The harm that will be avoided by expedited treatment is that Staff and other parties will not be harmed by the inappropriate introduction of new programs for the first time in surrebuttal. Furthermore, the Commission will not hear inappropriate surrebuttal testimony or in the alternative can properly limit its use or allow a later hearing on this issue following discovery and testimony. Staff acted as promptly as possible by filing this Motion in that Staff only discovered this matter in preparing its Pretrial brief. Staff notes that these issues are set for hearing commencing on January 18, 2006 at 8:30 a.m.

**WHEREFORE**, the Staff respectfully moves the Commission to enter an order finding the following portions of Mr. Daunis' surrebuttal testimony are inadmissible at the hearing: p. 2, lines 15 through p. 5, line 16; p. 6, line 1-17; p. 9, line 20 through p. 10, line 3; Schedule MED-2; Schedule MED-3. In the Commission declines to grant the foregoing relief, in the alternative, the Staff requests the Commission issue an order restricting the use of Mr. Daunis' surrebuttal testimony to the purposes permitted by Commission Rule 4 CSR 240-2.130(D) responding to

matters raised in Ms. Randolph's rebuttal testimony or change the hearing dates on this matter to allow discovery and preparation for the new information.

Respectfully submitted,

**/s/ Robert V. Franson**

Robert V. Franson  
Senior Counsel  
Missouri Bar No. 34643

Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-6651 (Telephone)  
(573) 751-9285 (Fax)  
[robert.franson@psc.mo.gov](mailto:robert.franson@psc.mo.gov)

### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record this 9<sup>th</sup> day of January 2006.

**/s/ Robert V. Franson**