

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 23rd day of
February, 2006.

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
Tariff No. YE-2005-1045

ORDER APPROVING STIPULATION AND AGREEMENT

Issue Date: February 23, 2006

Effective Date: March 1, 2006

Syllabus: This order approves the stipulation and agreement submitted by the parties.

On May 24, 2005, Aquila, Inc., submitted proposed tariff sheets (YE-2005-1045) intended to implement a general rate increase for electric service provided to retail customers in its MPS and L&P operating divisions in Missouri. On May 31, the Commission suspended the Company's proposed tariff sheets until April 21, 2006.

On January 31, 2006, Aquila, Inc., d/b/a Aquila Networks – MPS and Aquila Networks – L&P, the Staff of the Missouri Public Service Commission, the Sedalia Industrial Energy Users' Association, AG Processing, Inc., the City of Kansas City, the Missouri Department of Natural Resources, the Federal Executive Agencies, and the City of St. Joseph filed a nonunanimous stipulation and agreement. That stipulation and agreement resolves all disputes between the parties regarding the proposed rate increase. A copy of the stipulation and agreement is attached to this order as Attachment 1.

Not all parties signed the stipulation and agreement. However, Commission Rule 4 CSR 240-2.115(2) provides that if no party objects to a nonunanimous stipulation and agreement within seven days of its filing, the Commission may treat that stipulation and agreement as unanimous. No party has filed a timely objection to the stipulation and agreement and the Commission will treat it as unanimous.

Staff filed suggestions in support of the stipulation and agreement on February 7. On February 9, the Commission held an on-the-record presentation regarding the proposed stipulation and agreement. At that proceeding, the Commission questioned the signatory parties, as well as those parties that did not sign but did not object to the stipulation and agreement.

As a part of the stipulation and agreement, the parties agreed to specific tariff language that Aquila will file to implement the agreed upon rate increase. That tariff has not yet been filed but the stipulation and agreement asks the Commission to authorize Aquila to file such a tariff. The stipulation and agreement also asks the Commission to allow that tariff, after it is filed, to become effective on March 1, 2006.

The stipulation and agreement provides that interclass revenue responsibility shifts agreed to in this stipulation and agreement will eliminate the need for the Commission to issue a decision in a related case, EO-2002-384, which was created to consider such interclass revenue responsibility shifts. The stipulation and agreement also provides that if Aquila funds its VEBA trust in the amount of \$1.4 million, as it has agreed to do in the stipulation and agreement, Public Counsel will dismiss, with prejudice, its complaint against Aquila, now pending before the Commission in Case No. EC-2006-0171.

The stipulation and agreement provides that the Commission shall order Aquila to use the depreciation rates set out in Appendix B to the stipulation and agreement. The Commission will do so. The stipulation and agreement also provides that the Commission is to grant Aquila an Accounting Authority Order regarding the company's hedging arrangements concerning fuel and purchased power costs. Staff recommended specific language for that Accounting Authority Order in its suggestions in support of the stipulation and agreement. The Commission will issue the requested Accounting Authority Order.

The parties further agreed that if the Commission approves the stipulation and agreement without modification or condition, then the prefiled testimony of all witnesses may be included in the record of this proceeding. The Commission will admit such evidence into the record.

The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of issues raised in this case.¹ Furthermore, Section 536.090, RSMo Supp. 2005, provides that when accepting a stipulation and agreement, the Commission does not need to make either findings of fact or conclusions of law. The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence.² Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the stipulation and agreement.

¹Section 536.060, RSMo Supp. 2005.

² *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

DISCUSSION:

In considering any rate increase request, this Commission must balance the need to keep rates affordable to protect the health and welfare of consumers, especially those with fixed or low incomes, with the need to ensure that utilities have the necessary cash flow to operate their business, maintain their infrastructure, and have the opportunity to earn a fair return on investment, which is necessary to encourage development and maintenance of infrastructure.³ Both of these objectives are statutory duties of this Commission.

The tariff that Aquila initially filed would have generated an increase of \$69.2 million in gross annual electric revenue from its Aquila Networks – MPS service area, and an additional \$9.4 million in gross annual electric revenue from its Aquila Networks – L&P service area. The stipulation and agreement provides for a base overall gross annual electric revenue increase of \$38.5 million from its Aquila Networks – MPS service area and \$6.3 million from its Aquila Networks – L&P service area. The stipulation and agreement also provides that the presently existing Interim Energy Charge will end when the new rates go into effect.

Although these rate increases are substantial, the parties, including the Office of the Public Counsel and the AARP, which did not sign the stipulation and agreement, indicated at the on-the-record proceeding that the agreed upon revenue increases are supported by the evidence. The parties also agreed that much of the need for a rate increase is driven by the rapidly increasing cost of the fuel Aquila uses to generate electricity.

Aquila has built a new generation facility known as the South Harper Generating Station. The legal status of that facility has been called into question and Aquila may be

³ See *generally*, Section 386.610, RSMo 2000.

required to dismantle that facility in the near future. The stipulation and agreement establishes an amount that Aquila will be allowed to carry on its books as an expense for the construction of that plant. However, it does not authorize Aquila to recover those costs in this case, and it does not place the South Harper Generating Station into the company's rate base. It also does not authorize Aquila to recover any costs associated with dismantling that facility, if that becomes necessary.

Based on the agreement of the parties and the testimony received at the on-the-record presentation, the Commission believes that the parties have reached a just and reasonable settlement in this case.

IT IS ORDERED THAT:

1. The Stipulation and Agreement filed on January 31, 2006, is approved as a resolution of all issues in this case (See Attachment 1).
2. All signatory parties are ordered to comply with the terms of the Stipulation and Agreement.
3. The proposed electric service tariff sheets (YE-2005-1045) submitted on May 24, 2005, by Aquila, Inc., are rejected.
4. Aquila, Inc., is authorized to file the tariff sheets agreed to as part of the Stipulation and Agreement. Aquila, Inc., may request that the tariff sheets be allowed to become effective on March 1, 2006.
5. Aquila, Inc., is ordered to use the depreciation rates set out in Appendix B to the Stipulation and Agreement.
6. Aquila, Inc., is authorized, for accounting and ratemaking purposes, to record in FERC Account 547 or Account 555, as part of fuel cost and purchased power cost, hedge

settlements, both positive and negative, and related costs (e.g. option premiums, interest on margin accounts, and carrying cost on option premiums) directly related to natural gas generation and on-peak purchases power transactions made under a formal Aquila Networks – MPS hedging plan when the hedge arrangement is settled. Aquila shall maintain separate accounting in FERC Accounts 547 and 555 to track the hedge settlements and related costs. As required by Financial Accounting Standard No. 133, Aquila shall continue to record these hedge settlements and related costs on a Mark-to-Market basis and make an offsetting regulatory asset or regulatory liability entry in FERC Account 182.3 (asset) or FERC Account 254 (liability) that recognizes the change in the timing of value recognition under Financial Accounting Standard No. 71. There shall be no rate base treatment afforded to the hedging settlements and related costs recorded on the Mark-to-Market basis.

7. The prefiled testimony of all witnesses is admitted into evidence and is included in the record of this proceeding.

8. This order shall become effective on March 1, 2006.

(S E A L)

BY THE COMMISSION



Colleen M. Dale
Secretary

Murray and Appling, CC., concur;
Davis, Chm., and Clayton, C., concur,
with separate concurring opinions to follow;
Gaw, C., dissents, with dissenting opinion to follow

Woodruff, Deputy Chief Regulatory Law Judge