

**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)	<u>Case No. HR-2005-0450</u>
Retail Steam Heat Service Provided to)	Tariff No. YH-2005-1066
Customers in its L&P Missouri Service Area.)	

Dissenting Opinion of Commissioner Steve Gaw

This Commissioner must dissent from the Majority Order issued on February 28, 2006, that allowed Aquila's unlawful fuel rider to go into effect prior to the promulgation of fuel adjustment mechanism rules as required by statute. Under §386.266.9, any electrical or gas corporation "may apply for any adjustment mechanism under this section whether or not the commission has promulgated any such rules." However, §386.266.12 explicitly states that "the commission shall have previously promulgated rules to implement the application process for any rate adjustment mechanism under this section *prior to* the commission *issuing an order* for any rate adjustment."

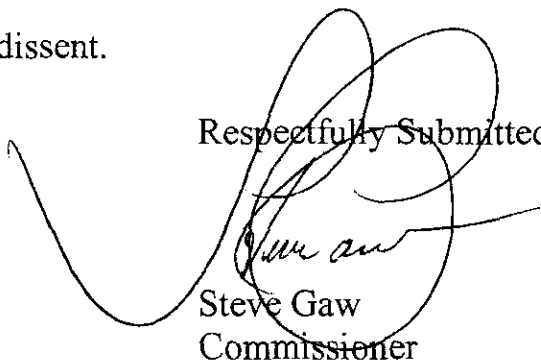
The rules passed by the Commission were transmitted to the Missouri Secretary of State's office on October 23, 2006, and went into effect on January 30, 2007.¹ The Majority Order was not issued after the rule promulgation, and therefore this Order was in direct violation of the decision in *State ex. rel Utility Consumers Council of Missouri, Inc., etc. v. Missouri Public Service Commission*, 585 S.W.2d 41 (Mo. Banc 1979) (UCCM). UCCM specifies that application of fuel adjustment clauses is beyond the statutory authority of the commission to grant. *Id.* at 47.

¹ See 4 CSR 240-20.090 and 4 CSR 240-3.161 respectively.

While explicitly told, the Commission is without statutory authority by case law and without rules yet promulgated as required under the new statutory language, the Majority's order is unlawful and Aquila's fuel rider should have been denied.

Therefore, I respectfully dissent.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Steve Gaw", is written over the printed name and title. The signature is stylized with a large, looping initial 'S'.

Steve Gaw
Commissioner

Dated in Jefferson City, Missouri,
on this 17th day of September, 2007.