

**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 )	Case No. ER-2007-0004
the Services Provided to Customers in the )	
Aquila Networks - MPS and Aquila Networks )	
- L&P Service Areas. )	

**REPLY REGARDING RESPONSES TO AQUILA’S MOTION  
FOR EXPEDITED CONSIDERATION AND APPROVAL OF TARIFF SHEETS AND  
ADDITIONAL MOTION FOR EXPEDITED TREATMENT**

COMES NOW Aquila, Inc. (“Aquila”), by and through counsel, and, for its Reply to the Responses to Aquila’s Motion for Expedited Consideration and Approval of Tariff Sheets Filed in Compliance with Commission Report and Order (“Aquila’s Motion”), submitted herein by AG Processing, Inc. (“AGP”) and Sedalia Industrial Energy Users’ Association (“SIEUA”) and the Office of the Public Counsel (“Public Counsel”), respectfully states as follows to the Missouri Public Service Commission (“Commission”), and, pursuant to 4 CSR 240-2.080(16), requests that the Commission act on the matters addressed herein as expeditiously as possible:

1. Aquila initiated this rate proceeding on July 3, 2006 by the filing of tariff sheets with a proposed effective date of August 2, 2006. The Commission docketed the filing as Case No. ER-2007-0004 and suspended the effectiveness of those tariff sheets for 120 days, from August 2, 2006, to November 30, 2006, plus an additional six months beyond November 30, 2006, to May 30, 2007. On May 17, 2007, the Commission issued its Report and Order in said Case No. ER-2007-0004 rejecting the tariff sheets filed on July 3, 2006, and directing Aquila to file tariff sheets to effectuate the terms of the Report and Order.

2. On May 18, 2007, Aquila, pursuant to the directions of the Commission, filed revised tariff sheets. Those sheets, however, bore an effective date of May 31, 2007.

Accordingly, on May 21, 2007, Aquila filed in lieu thereof revised tariff sheets, identical in all respects to the May 18 tariff sheets, with the exception of the effective date of June 20, 2007. On May 23, 2007, Aquila filed replacement revised tariff sheets 30 and 33. At the suggestion of the Commission Staff, Aquila restored two sentences to each of these tariff sheets regarding the metering loss adjustment.

3. Aquila believes that the revised tariff sheets filed on May 21, as modified by the filing on May 23 of substitute sheets 30 and 33, are in compliance with the Report and Order, and Aquila asks that the Commission approve all of said tariff sheets related to base rates on an expedited basis and allow the same to become effective for electric service rendered on and after May 31, 2007.<sup>1</sup>

4. Although Aquila believes that all of its revised tariff sheets currently on file are in compliance with the Report and Order, Staff expressed various concerns regarding the FAC portion of Aquila's revised tariff sheets (numbers 124, 125, and 126). Accordingly, Aquila will, on or before close of business on May 24, 2007, file replacement revised FAC tariff sheets to address some of these concerns. For all of the reasons stated herein and in Aquila's Motion for Expedited Consideration and Approval of Tariff Sheets Filed in Compliance with Commission Report and Order, Aquila requests that the Commission approve the replacement revised FAC tariff sheets to be effective for service rendered on and after May 31, 2007. Aquila immediately acted in response to Staff's filing, and Aquila is making this request at the earliest possible time.

5. Historically, it was common practice for the Commission, on its own and without a motion from the company, to specify in a rate case order that revised tariff sheets could

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<sup>1</sup> To avoid arguments regarding the measuring of the six month period, Aquila asks that the revised tariff sheets be effective for service rendered on and after May 31, 2007, instead of May 30, 2007.

become effective on the operation of law date and on less than thirty days notice.<sup>2</sup> For example, in Case No. GR-96-285,<sup>3</sup> the Commission issued its Report and Order on January 22, 1997, and authorized Missouri Gas Energy to file revised tariff sheets to be effective for natural gas service rendered on and after February 1, 1997. The Commission ordered as follows:

1. That pursuant to the findings of fact and conclusions of law in this Report And Order, the proposed tariff sheets filed by Missouri Gas Energy, a division of Southern Union Company, on March 1, 1996 are hereby rejected.

2. That pursuant to the findings of fact and conclusions of law in this report And Order, the proposed substitute tariff sheets filed by Missouri Gas Energy, a division of Southern Union Company, on March 11, 1996 are hereby rejected.

3. That Missouri Gas Energy, a division of Southern Union Company, is hereby authorized to file, in lieu of the rejected tariff sheets, for approval of the Commission, tariff sheets designed to increase gross revenues, exclusive of any applicable license, occupation, franchise, gross receipts taxes, or other similar fees or taxes, by the amount of \$7,527,513 for natural gas service rendered in its Missouri service area on an annual basis over its current revenues.

4. That the tariffs sheets to be filed pursuant to this Report And Order shall become effective for natural gas service rendered on and after February 1, 1997.

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14. That this Report And Order shall become effective on the 1st of February, 1997.

6. Recently, however, Commission rate case orders have specified that revised tariff sheets may be filed in compliance with the Commission's directives, but have been silent regarding the authorized effective date of those tariff sheets. This current practice, apparently implemented at the urging of the former Chief Administrative Law Judge and Secretary of the Commission, has resulted in the utilities filing motions for expedited treatment, as has been done

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<sup>2</sup> A listing of many such cases was included in paragraph 11 of Aquila's Motion for Expedited Consideration and Approval of Tariff Sheets Filed in Compliance with Commission Report and Order.

by Aquila herein. Furthermore, this practice has resulted in absurd arguments being made regarding the operation of law date, as have been advanced by AGP, SIEUA, and Public Counsel in this proceeding. All of this can be avoided by the Commission returning to its prior practice of specifying in its rate case orders that the involved utility file revised tariff sheets bearing an effective date less than thirty days later.<sup>4</sup>

7. In any event, while §393.140(11) specifies that, unless the Commission orders otherwise, a change shall not be made to any rate filed by an electrical corporation except after thirty days' notice, this statute has been satisfied in the case at hand. The thirty day period in this case began to run on July 3, 2006, when the tariffs that initiated this proceeding were filed with the Commission. Further, §393.140(11) specifies that the Commission, for good cause shown, may order a change to a filed rate on less than thirty days' notice. As set forth in Aquila's Motion, sufficient good cause exists in this case to permit the tariffs filed in compliance with the Commission's Report and Order to take effect in less than 30 days.

8. With their responses to Aquila's Motion, AGP, SIEUA, and Public Counsel assert that the Commission must treat the filing of the compliance tariffs as a *new* rate case filing, thereby triggering a *new* authorized suspension period pursuant to RSMo. §393.150. Under this interpretation of §393.150, the Commission would be able to delay the effectiveness of rates filed pursuant to the "file and suspend" statutes ad infinitum, and the statutes would be rendered

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<sup>3</sup> *In re Missouri Gas Energy*, 5 Mo. P.S.C. 3d 437, Report and Order issued January 22, 1997.

<sup>4</sup> Commission Rule 4 CSR 240-3.145 indicates that a utility may file revised tariff sheets for electric service on less than thirty days' notice. Pursuant to 4 CSR 240-3.145(9)(F), revised tariff sheets may be issued on less than 30 days' notice "by permission of the commission." Rule 4 CSR 240-3.145(9)(F) also provides that a revised tariff sheet may be filed on less than 30 day's notice if "issued in compliance with an order of the commission" and if certain specified language is set forth on the tariff sheet.

meaningless. This result would be both illogical and unlawful.<sup>5</sup> The attempts by AGP, SIEUA, and Public Counsel in this regard are nothing but an attempt to re-litigate the FAC issue, challenge the Commission's directives, and further delay the impact of the Report and Order. If the other parties are now permitted to serve discovery and proceed as if a new rate case has been initiated with the filing of the compliance tariffs, Aquila will be denied recovery of a certain portion of the rate relief to which the Commission has already found Aquila to be entitled. This would be unlawful, unjust, unreasonable, and confiscatory.

9. AGP, SIEUA, and Public Counsel also assert that the Commission must allow other parties sufficient time to verify whether the tariffs comply with the Report and Order. First, it is the Commission's responsibility to verify whether the tariffs comply with the Report and Order – it is not a job for AGP, SIEUA, Public Counsel, or even Staff (acting as a party to the case). The Commission is entitled to interpret its own order and ascribe to that order a proper meaning. *Ex rel. Beaufort Transfer Company v. Public Service Commission of Missouri*, 610 S.W.2d 96, 100 (Mo.App. W.D. 1980). Second, Aquila is not asking the Commission to issue an order which does not permit sufficient time for review. Quite to the contrary, Aquila has encouraged this Commission to act expeditiously in approving the tariff sheets, so that any order with regard to the tariffs could provide ample time for parties to file applications for rehearing.<sup>6</sup>

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<sup>5</sup> AGP and SIEUA claim that the statute deals only with the time for the Commission to complete a hearing with regard to *each* tariff filing. This assertion, however, is not supported by the language of the statute or common sense. Section 393.150.1 even contemplates the possibility of a new rate taking effect prior to completion of a hearing.

<sup>6</sup> At this juncture, it should be noted that AGP and SIEUA point to the issuance of a preliminary writ in Case Number SC88390 as clear proof that the Supreme Court is of the opinion that the statutory suspension period must take a back seat to other parties' due process rights. Aquila is curious to know how AGP and SIEUA came upon this clear understanding, as the Court has issued no findings of fact or conclusions of law. A preliminary writ, or summons, was simply issued by the Court, directing the Commission to respond to Public Counsel's Petition for Writ of Mandamus. Further, approval of tariff sheets on less than thirty days notice has not been raised as an issue in the Supreme Court proceeding. In Case Number SC88390, Public Counsel has raised issues regarding his ability to seek judicial review of Commission orders, including interlocutory orders. An order's effective date allowing

10. Public Counsel also asserts in its Response that it is irrelevant that the Commission has been aware of the proposed rate increase for almost one year and that all aspects of this rate increase have been fully considered by the Commission. Aquila respectfully disagrees with Public Counsel's assertion in this regard. It is quite relevant that: (a) the Commission and the public have been put on notice and been made aware of Aquila's request for a rate increase since July 3, 2006, a period of almost one year; and (b) the Commission, through the rate case process, has been able to consider all aspects of Aquila's request and the possible impact of a rate increase on Aquila's customers.<sup>7</sup> The 30-day notice requirement has been satisfied, and, in any event, good cause exists in this case to permit the tariffs filed in compliance with the Commission's Report and Order to take effect in less than 30 days.

WHEREFORE, pursuant to law and past Commission practice, and for good cause shown, Aquila respectfully requests that the Commission grant Aquila's Motion for Expedited Consideration and Approval of Tariff Sheets Filed in Compliance with Commission Report and Order, grant the additional request for expedited treatment made herein, and approve the revised tariff sheets submitted herein by Aquila to be effective for service rendered on and after May 31, 2007.

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sufficient time for the filing of an application for rehearing is also at issue. The Supreme Court proceeding involving The Empire District Electric Company is not directly relevant to the case at hand.

<sup>7</sup> Public Counsel also alleges that Aquila's Motion failed to comply "almost completely" with Commission Rule 4 CSR 240-2.080(16). In conformity with (16)(A), Aquila asked the Commission to approve the tariff sheets Aquila had filed to be effective for service rendered on and after May 31, 2007; and, in conformity with (16)(B), Aquila informed the Commission that granting of the motion would prevent the Commission from violating §393.150 and that denial of the motion would result in Aquila being denied recovery of a certain portion of the rate relief to which the Commission has already found Aquila to be entitled. Although Aquila did not affirmatively state that the motion was filed as soon as possible, Aquila did make its request on the day its tariffs were filed. Surely Aquila's actions in this regard constitute substantial compliance.

Respectfully submitted,

/s/ Diana C. Carter

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**Certificate of Service**

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, hand-delivered, or sent by electronic transmission, on this 23<sup>rd</sup> day of May, 2007, to all counsel of record.

/s/ Diana C. Carter