BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of Aquila, Inc. d/b/a Aquila Networks L&P and Aquila Networks MPS to implement a general rate increase in natural gas rates	))))	**GR-2004-0072**

SUGGESTIONS OF SEDALIA INDUSTRIAL ENERGY USERS' ASSOCIATION IN SUPPORT OF OFFICE OF PUBLIC COUNSEL'S MOTION TO DISMISS

COMES NOW Sedalia Industrial Energy Users' Association, (SIEUA) and submits its response and suggestions in support of Public Counsel's Motion to Dismiss and Reject Aquila Networks Unauthorized Filing of Proposed Natural Gas Tariffs as follows:

SUMMARY OF ARGUMENT

Just as Aquila lacks legal authority to file and pursue a rate case related to St. Joseph Light & Power Company electric and steam service area (as raised by Ag Processing Inc (AGP) in ER-2004-0034 et. al.) Aquila lacks legal authority to initiate a rate case for St. Joseph Light & Power Company's natural gas service area. Any colorable basis for Aquila's authority and standing for commencing such a rate case has been eliminated by a decision of the Missouri Supreme Court in the judicial review proceedings undertaken by AGP concerning EM-2000-292.[1/] The merger is void and Aquila has no legal authority to seek to increase rates for any franchises owned by St. Joseph Light &

[1/] *State ex rel. Ag Processing, Inc. v. Public Service Commission,* 120 S.W.3d 732 (Mo. *en banc* 2003).

Power. Indeed, under the law, the merger did not occur and thus the territories are still owned by St. Joseph Light & Power Company. Since that entity no longer exists, those assets and franchises are equitably owned by the former shareholders of the St. Joseph Light & Power Company in that interest, not Aquila.

The Missouri Supreme Court's clear and unambiguous decision in review of the Commission's Report and Order in EM-2000-292, invalidated the Commission's approval of the UtiliCorp and St. Joseph Light & Power merger. That Report and Order was reversed and then remanded to the Commission to

- specifically "consider and decide the issue of the recoupment of the acquisition premium" and
- "reconsider the ***totality of all of the necessary evidence to evaluate the reasonableness***" of a decision to approve the merger. (Emphasis added)

As a result, the prior Commission order is a nullity. In what remains of the EM-2000-292 case, the Commission's task is now to make a valid, reasonable decision that complies with the Court's opinion. That decision, when made, ***will have no retroactive effect.***

Despite any legal gymnastics Aquila or other parties may attempt ***in this case***, the merger is void and is without legal effect. No legal rights to seek a rate increase can flow from that attempted, but void, merger. Fully realizing that the EM-2000-292 Report and Order could be reversed on appeal, Aquila

nonetheless gambled by closing the merger. Aquila lost that bet and cannot now seek to increase rates for the St. Joseph Light & Power Company gas distribution system.

ARGUMENT

1. On January 15, 2004, the Missouri Office of the Public Counsel filed its Motion to Dismiss and Reject Aquila Networks' Unauthorized Filing of Proposed Natural Gas Tariffs. The Commission directed that responses to Public Counsel's motion be filed through February 5, 2004.

2. Article V, Section 18 of the Missouri Constitution establishes a minimum standard of review of administrative decisions. *State ex rel. St. Louis Public Service Company v. Public Service Commission*, 291 S.W.2d 95, 102 (Mo. *en banc* 1956). It mandates direct review by the courts "as provided by law." The Public Service Commission Law then sets out specific statutory provisions regarding the appeal of decisions of the Public Service Commission. Section 386.510[2/] sets out how to seek a writ of certiorari or review from the circuit court and Section 386.540 sets out the method to appeal circuit court decisions to the court of appeals or supreme court.

3. Recognizing that the appeal of a Public Service Commission decision can have impacts upon business transactions the

[2/] All statutory references, unless otherwise indicated, are to RSMo. 2000.

Legislature in Sections 386.530 and 386.540.2 granted reviews of Commission decisions priority over all other civil cases.

4. Pursuant to Article V, Section 18 and in compliance with the statutory framework of the Public Service Commission Law, AGP sought judicial review of the Commission's Report and Order in EM-2000-292. That review process ended when the Missouri Supreme Court ruled that the Commission's Report and Order was not reasonable under Article V, Section 18 of the Missouri Constitution because the Commission had failed and refused to consider the issue of the disposition of the roughly $92 million premium that Aquila had incurred in connection with the purported acquisition. The Missouri Supreme Court voided the decision that approved the merger and directed the case back to the circuit court with instructions to remand to the Commission as follows:

> The judgment is reversed, and the case is remanded. The circuit court shall remand the case to the PSC to consider and decide the issue of recoupment of the acquisition premium in conjunction with the other issues raised by PSC staff and the intervenors in making its determination of whether the merger is detrimental to the public. Upon remand the Commission will have the opportunity to reconsider the totality of all of the necessary evidence to evaluate the reasonableness of a decision to approve a merger between UtiliCorp and SJLP.

State ex rel. Ag Processing, Inc. v. Public Service Commission, 120 S.W.3d 732, 737 (Mo. *en banc* 2003).

5. It is well settled law in Missouri that the purpose of the review proceedings pursuant to Sections 386.510 and 386.540 is to determine the validity of Commission decisions. *State ex*

rel. Consumers Public Service Co. v. Public Service Commission, 180 S.W.2d 40, 44 (Mo. *en banc* 1944). The process is akin to that associated with a declaratory judgment. Missouri courts have only two options in reviewing a decision of the Commission. If the order of the Commission is determined to be valid, it is affirmed (declared valid). If it is found invalid, it can only be set aside (declared invalid). At that point the court case is ended and further proceedings must be before the Commission. *Id. See also, State ex rel. Anderson v. Public Service Commission,* 134 S.W.2d 1069 (Mo. App. 1939), *aff'd.,* 154 S.W.2d 777 (Mo. 1941); *State ex rel. Ry. Express Agency, Inc. v. Public Service Commission,* 169 S.W.2d 88, 91 (Mo. App. 1943). In the case at bar, the Missouri Supreme Court found in clear and unambiguous terms that the Commission's Report and Order in Case No. EM-2000-292 was invalid.

6. The general rule is that when an administrative decision is reversed, vacated, or remanded, the case stands as if no decision had ever been made. 73A C.J.S. *Public Administrative Law and Procedure* § 258 (1983). *See also Cremer v. Police Pension Fund Bd. of Mount Prospect*, 387 N.E.2d 711 (1978). The Supreme Court of Illinois in *Illinois Commerce Commission v. N.Y. Central Ry. Co.,* 398 Ill. 11, 75 N.E.2d 411, 415, 72 PUR (NS) 227 (1947) articulated the rule where it said ". . . the court in reviewing an order of the Commerce Commission must either confirm or set aside the order as a whole; and where the court reverses the

order because a part of the same is invalid, it need not consider the validity of any other part of the order, since the invalidity of a part renders the entire order void." *See also, Gulf Transport Co. v. Illinois Commerce Commission,* 402 Ill. 11, 83 N.E.2d 336, 345 (1948); *Transcontinental Bus System, Inc., v. State Corp. Commission,* 56 N.M. 158, 241 P.2d 829 (1952).

7. Section 386.490.3 recognizes this general rule, stating:

> 3. Every order or decision of the commission shall of its own force take effect and become operative thirty days after the service thereof, except as designated therein or until changed or abrogated by the commission, ***unless such order be unauthorized by this law or any other law or be in violation of a provision of the constitution of the state or of the United States.***

(R.S. 1939, § 5601) (emphasis added). Since the Missouri Supreme Court determined that the Commission's Report and Order was unreasonable under Article V, Section 18 of the Missouri Constitution, the Commission's EM-2000-292 decision has no effect.

8. Section 386.270 states that the orders of the Commission shall "be in force and shall be prima facie lawful and reasonable until found otherwise in a suit brought for that purpose pursuant to the provisions of this chapter." In interpreting the language of § 386.270, the Court of Appeals in *State ex rel. GTE North v. Public Service Commission*, 835 S.W.2d 356 (Mo. App. 1992) found that "the most reasonable construction of § 386.270 requires the finding that the legislature intended the

orders of the Commission to remain in force and be *prima facie* lawful until found otherwise by the ultimate ruling of a court at the conclusion of the appeal process." *Id.* at 367. When the Missouri Supreme Court invalidated the Commission's decision in EM-2000-292, it declared that decision to have had no legal effect. The decision approving the merger is not lawful or reasonable because it has been reversed by the state's highest court. The process of judicial review of that decision is now over. The Supreme Court's decision relates back to the issuance of the order that was under review because the Court does not review current circumstances but rather reviews whether the Commission's Report and Order was reasonable at the time it was entered and on the ***same record*** that was before the Commission. Section 386.510.[3/] Thus the court's determination (like a declaratory judgment) determines that the Commission's decision either was or (as in this case) was not valid *ab initio*. *State ex rel. Consumers Public Service Co. v. Public Service Commission,* 180 S.W.2d 40, 44 (Mo. *en banc* 1944). It is indeed remarkable that Aquila now asserts that none of the court decisions

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[3/] Section 386.510 provides, *inter alia:*

> No new or additional evidence may be introduced upon the hearing in the circuit court but ***the cause shall be heard by the court*** without the intervention of a jury ***on the evidence and exhibits introduced before the commission and certified to by it.***

(Emphasis added)

matter and that it can just go about its business as though nothing has happened. Under Missouri's Constitution, judicial review is ***not a meaningless process*** without force or effect.

9. By closing its merger with St. Joseph Light & Power prior to the exhaustion of appellate review Aquila bet on the validity of the merger. It bet that the circuit court and appellate courts would ultimately determine that the Commission's Report and Order in EM-2000-292 was both lawful and reasonable. Aquila misjudged the law and lost that bet. Indeed, Aquila and St. Joseph Light & Power Company chose to close their transaction even before the Public Service Commission had ruled on timely applications for rehearing and a request for a stay, thus they closed their merger prior to receiving a final order even from the Commission. Aquila made a business decision to take a risk both that the Commission would reject the pending applications for rehearing and that subsequent judicial review would affirm the order issued. This turned out to be an exceptionally bad business decision. Now Aquila tries to run from the Missouri Supreme Court's decision and avoid the consequences of that bad business decision. The Commission cannot let Aquila hide from the consequences of its business decision to close a merger that was still subject to judicial review.

10. Without a valid Commission decision approving Aquila's merger with St. Joseph Light & Power Company, Aquila simply does not have authority to seek, pursuant to Section 393.150, a rate

increase for the St. Joseph Light & Power Company. Section 393.190.1 states "[e]very such sale, assignment, merger or consolidation made other than in accordance with the order of the commission authorizing same shall be void." Without a valid order, there is no merger.

11. The primary rule of statutory construction is to ascertain the intent of a legislature from the language used, to give effect to the intent, if possible, and to consider the words used in their plain and ordinary meaning. *Wolff Shoe Company v. Director of Revenue*, 762 S.W.2d 29, 31 (Mo. *en banc* 1988). In determining whether the language is clear and unambiguous, the standard is whether the statute's terms are plain and clear, and clear to one of ordinary intelligence. The language used in Section 393.190.1 is clear and unambiguous. Because there is no valid order approving Aquila's merger with St. Joseph Light & Power, the transaction is void under Section 393.190.1.

12. Lacking a valid decision from the Commission approving its merger with St. Joseph Light & Power, Aquila lacks authority and standing to commence a rate increase proceeding pertaining to rates for electric and steam service in the service territory of St. Joseph Light & Power Co. Without legal authority, Aquila has no basis to commence or pursue a rate case and ***no valid case has been initiated by Aquila's filing*** with respect to St. Joseph Light & Power territory or franchise.

13. Moreover, and perhaps of even greater importance for ***this*** case, the Commission ***lacks jurisdiction*** to process Aquila's request to increase rates for St. Joseph Light & Power Company. SIEUA is unaware of any statute authorizing or empowering the Commission to approve rate schedules proffered by an entity that has no valid statutory authority to seek such an increase. While the Public Service Commission law is to be liberally construed to further its purposes, *State on inf. Barker ex rel. Kansas City v. Kansas City Gas Co.*, 163 S.W. 854 (Mo. 1914), "neither convenience, expediency or necessity are proper matters for consideration in the determination of" whether or not an act of the Commission is authorized by statute. *State ex rel. Utility Consumers' Council of Missouri, Inc. v. P.S.C.*, 585 S.W.2d 41, 49 (Mo. *en banc* 1979 citing *State ex rel Kansas City v. Pub. Serv. Comm'n*, 257 S.W. 462 (Mo. *en banc* 1923)). "[T]he exigency of a situation does not constitute grounds for the Commission to act without statutory authority." *State ex rel. Fischer v. Public Service Com.*, 645 S.W.2d 39, 43 (Mo. App. 1982).

14. It is anticipated that Aquila and other parties will desperately try to stretch reasonable legal analysis to argue that the Court's decision in *State ex rel. Ag Processing, supra,* found that the Report and Order was "lawful," relying upon the following passage at page 735:

> There is no dispute that the Applicants are regulated utilities under chapter 393. Section 393.190.1, requiring the issuance of a merger approval order from

> the PSC, provides the lawful authority for the PSC's decision. Having found the PSC's decision to be lawful, the Court must examine its reasonableness.

(footnotes omitted). Anyone even remotely familiar with Commission jurisprudence knows this argument to be specious. The Supreme Court earlier reminded its readers that "[t]he lawfulness of a PSC order is ***determined by whether statutory authority for its issuance exists***, and all legal issues are reviewed *de novo*." *Id.* at 734 (emphasis added). Thus the Court merely gave recognition to the long-established two-pronged standard of review for Commission decisions. The first prong of that standard of review is whether the Commission exercised power that has been granted to it by the General Assembly through statute. The Supreme Court's statement that Section 393.190.1 provided authority for the Commission's action was never a disputed issue in the case,[4/] and is only a recognition that the Commission had satisfied the first prong of the two-pronged standard of review. It does not mean the Supreme Court determined the Commission's decision approving the merger in EM-2000-292 was valid. It only means that ***statutory authority existed*** for the Commission to act in the circumstance of two utilities seeking approval of their merger by virtue as a result of Section 393.190.1. The Commission had the lawful authority to consider and approve the merger, but the manner in which it exercised that authority was unlawful

[4/] In fact, the Joint Applicants submitted their application to the Commission for its approval under Section 393.190.1.

and unreasonable, and therefore, the Commission’s act was void. A Commission decision establishing just and reasonable rates to be charged by personal injury attorneys in the State of Missouri would not be "lawful" because the General Assembly has not conferred such regulatory power upon the Commission.

> We start with the premise that the Commission "is an administrative body of limited jurisdiction, created by statute. It has only such powers as are expressly conferred upon it by the statutes and reasonably incidental thereto. State ex rel. and to Use of Kansas City Power & Light Co. v. Buzard, 350 Mo. 763, 168 S.W.2d 1044." State ex rel. Harline v. Public Service Commission, Mo. App., 343 S.W.2d 177, 181. Accordingly, we must find the power conferred by statute if it exists at all.

State ex rel. Kansas City Transit, Inc. v. Pub. Serv. Comm’n., 406 S.W.2d 5, 8 (Mo. 1966).

15. As noted by the Supreme Court, the second prong of the two-pronged test required the Court to determine whether the decision was reasonable. *Id.* The Court specifically found the Commission’s decision was unreasonable because the Commission ". . . failed to consider and decide all the necessary and essential issues, primarily the issue of UtiliCorp's being allowed to recoup the acquisition premium. *Id.* at 736. Having found the Commission’s decision failed the second prong of the two-pronged standard of review, the Supreme Court determined that the Report and Order was invalid. An invalid Commission decision is not a lawful Commission decision and has no effect.

16. While the Commission (certainly not the sitting Commissioners) obviously has some responsibility for the present circumstances, it would be unfair to assert that the present circumstance is the Commission's fault. Arguments, whether expressed or implied, that Aquila was without responsibility in creating this circumstance are simply not factual. It was Aquila -- and Aquila alone (perhaps along with St. Joseph Light & Power) -- that chose to go forward with the merger transaction at the time that it (or they) chose so to do. Applications for Rehearing were timely filed with respect to the EM-2000-292 order both by AGP and by the City of Springfield. AGP's Application for Rehearing properly raised the issue of the deferral of a decision on the acquisition premium.

Aquila was well aware of what it was doing and the risk it was running in proceeding to "close" its merger with the Applications for Rehearing still pending. On December 28, 2000 it filed its Motion for Expedited Treatment and Response of UtiliCorp United Inc. to Application for Rehearing, Motion for Reconsideration and Request for Stay of City of Springfield and to Application for Rehearing of AG Processing Inc. In that Motion UtiliCorp stated that it "desires that the Application for Rehearing, Motion for Reconsideration and Request for Say filed by City Utilities and the Application for Rehearing filed by AGP be processed on an expedited basis and denied immediately." *Id.*, ¶ 2, p. 2. UtiliCorp then stated the following:

> 5. As indicated previously, the UtiliCorp/SJLP merger is scheduled to be closed on December 29, 2000. In the event the Commission ***fails to act*** upon the involved pleadings of City Utilities and AGP prior to December 29, 2000, UtiliCorp intends to close the subject merger on that date thereby rendering said pleadings moot.[5]

Aquila cited the Commission to no authority supporting this bold -- dare we say arrogant -- assertion. It is apparently thought to be within the authority of Missouri's utilities to simply determine on their own when the statutory and Constitutional administrative and judicial review process is at an end. Aquila's actions belie any contention that it was an innocent actor. But Aquila's action in closing its merger before obtaining a final order from the Commission is not the critical fact. AGP successfully sought judicial review of the ***Commission's*** decision to approve the merger. AGP did not seek review of Aquila's decision to close without a valid order from the Commission permitting that closure, indeed, Aquila had closed its merger even before AGP could successfully maintain judicial review, since the order did not become final and subject to judicial review until the Commission denied rehearing. Nor does it matter that AGP did not seek a stay. Springfield's application for stay at the Commission level did not deter Aquila's

[5] The referenced pleading is obviously available to the Commission in the EM-2000-292 record. It is also found in the case papers at p. 1373 in the *AGP v. PSC* appeal. Emphasis is added.

closing; and by the time the order was final and subject to judicial review, Aquila had already closed its merger, leaving nothing that the court could have "stayed." These meaningless acts have no effect on the proper result or outcome for Public Counsel's motion.

17. Electing to close a merger is entirely the utility's decision. There is no compulsion to merge. Aquila received Commission approval to merge with Empire District Electric in Case No. EM-2000-393, but chose not to go forward. Aquila simply exercised bad legal and business judgment. It does not follow that closing a merger pursuant to an invalid order gains the party any additional rights. We expect that at least one of the parties may cite *State ex rel. Intercon Gas, Inc. v. Public Serv. Commission,* 848 S.W.2d 593 (Mo.App. 1993), but that case is inapposite to these facts and addresses an issue that has not arisen here. We have not seen any pleadings in this rate case proceeding directed to what the Commission can or cannot consider in the context of the remand proceeding. That issue is for another day in the remand case and is only reached, if ever, in the context of that case. Nothing in *Intercon* suggests the contrary.

18. We also expect that some party will suggest that the case should proceed because the Commission, on its own motion, could launch an investigation. Whether that contention is valid is also not involved here. The Commission has not launched an

investigation. And, were it to do so, the period of investigation as well as the contentions underlying that investigation would certainly be different from those involved in this rate case.

19. Nor is Public Counsel's contention that the EM-2000-292 Report and Order was not final until the pending applications for rehearing were denied open to legal dispute. Section 386.510 denies both access to the Courts and judicial review until the administrative decision is final. Section 386.510 conditions access to the courts upon a denial of an application for rehearing or, if a rehearing application is granted, thirty days after the rendition of a decision upon that rehearing.

Missouri's appellate courts have recently held that a Commission report and order that is subject to rehearing ***is not*** a "final order" of the Commission. *State ex rel. County of Jackson v. Public Service Commission*, 14 S.W.3d 99 (Mo. App., W.D. 2000). And if multiple applications for rehearing have been filed under Section 386.510, ***all*** applications for rehearing must be denied before the Report and Order becomes final and judicial review may be initiated by ***any*** party. *Id.*

In *State ex rel. Riverside Pipeline Company et al., v. Public Service Commission*, 26 S.W.2d 396 (Mo. App., W.D. 2000) the Court of Appeals rejected an attempt to obtain immediate judicial review of a PSC order:

> Both the Missouri Constitution and Mo. Rev. Stat. § 536.150 (1986), impose the additional requirement that the decision be final before it is deemed reviewable. 'Finality' is found when 'the agency arrives at a ***terminal, complete resolution of the case before it***. An order lacks finality in this sense while it remains tentative, provisional, ***or contingent, subject to recall, revision or reconsideration*** by the issuing agency.'

Id., at 400 (emphasis added) (quoting from *Dore & Assoc Contracting, Inc. v. Missouri Dept. of Labor & Indus. Relations Comm'n*, 810 S.W.2d 72, 75-76 (Mo. App 1990)).

Timely filing by AGP of its Application for Rehearing in advance of that effective date, accompanied by the separate filing by City of Springfield also for Rehearing meant that the Report and Order was still "tentative, provisional, or contingent, subject to recall, revision or reconsideration." *Id.* Timely filing of these applications for rehearing robbed the December 14, 2000 decision of finality until the Commission had disposed of those applications. That did not occur until January 9, 2001, some ten days ***after*** the merger "closed" as recited by Aquila. It thus follows that on December 31, 2000 Aquila acted to merge its assets and perform numerous other transactions that are undenied by Aquila ***"without having first secured from the commission an order authorizing it so to do."*** Section 393.130 RSMo. Though it may be invited to do so by other parties, or even by its own Staff, these legal principles are not subject to review or revision by the Commission. Missouri law has been

crystal clear for many years: The courts review the Commission's decisions under Article V, Section 18; not the other way around and the courts are the judges of the law; not the Commission.[6]

20. Nor did Aquila "reasonably rely" on a valid Commission order. Its own December 28, 2000 pleading recognized the risk of the applications for rehearing that were pending and requested that those applications be denied -- an action without meaning if the applications were "mooted" by closing the merger. Aquila very well knew what it was doing and the risk that it was taking.

21. Nor should an argument that the Commission's order "became effective" on December 27, 2000 be persuasive. The effective date of the Commission order has no effect upon Mo. Const. Article V, Section 18, nor upon the statutory process of challenging an order through the process of judicial review. The effective date of a Commission order serves to allow parties to seek rehearing of an order and is a required predicate to seeking review of a Commission decision. Section 386.510; *State ex rel.*

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[6] The Public Service Commission has no power to expound authoritatively any principle of law or equity and has no machinery for enforcing its orders. In reviewing a finding of facts made by the Public Service Commission, we do not accord to them that probative effect which would normally belong to the findings and judgment of a court of law in the course of regular judicial proceedings.

Lusk v. Atkinson, 268 Mo. 109, 117, 186 S.W. 703, 705 (Mo. 1916). *See also*, *American Petroleum Exchange v. Public Service Comm'n.*, 172 S.W.2d 952, 955 (Mo. 1943) and cases cited therein.

Alton Railroad Co. v. Pub. Serv. Comm'n, 255 S.W.2d 149 (Mo. 1941).

22. Nor are subsequent actions taken either by the utility or by the Commission that are based on or derived from the Commission's Report and Order in EM-2000-292 somehow resurrect that order. For example, on December 28, 2000 this Commission issued its Order Approving Tariffs in EM-2000-292. This order purported to approve several tariff sheets designed to adopt the existing tariff sheets of St. Joseph Light & Power Co. These tariff sheets specifically note that UtiliCorp United was adopting St. Joseph Light & Power Co. tariff sheets ". . . as authorized by the Missouri Public Service Commission in its Case No. EM-2000-292." The now-cancelled gas tariff sheet is attached. It was replaced when UtiliCorp changed its name to Aquila. The authority to adopt these sheets purportedly comes from the Commission's decision in Case No. EM-2000-292. Unfortunately, that Order is an invalid order and cannot confer upon Aquila the authority to adopt St. Joseph Light & Power Company's tariffs. Arguing that an invalid order is somehow made legal by undertaking subsequent ministerial actions that explicitly state that they are "pursuant to" and are intended to implement the invalid decision is like arguing that "I can't be overdrawn; I still have checks." A title defect that impairs A's title to Blackacre is not cured by A's lease of Blackacre to B. Public Counsel's

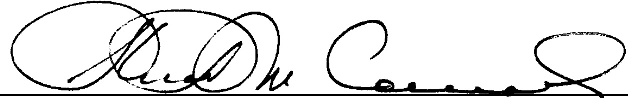
motion to dismiss is well taken and should be sustained or granted.

23. Finally, it does not matter that some party may now be concerned that the Missouri Supreme Court has determined and directed what the Commission shall do with the remanded case. The Missouri Supreme Court is, we submit, the final authority in this state on Missouri's statutes and in interpreting Missouri's Constitution. The Supreme Court's decision was issued October 28, 2003. Supreme Court rules provide for a 15-day period following issuance for any party to seek modification or reconsideration of the decision. No such filing was made. The Supreme Court's decision is final, completely disposes of the matter (and the December 14, 2000 Report and Order), and directs the Commission what action to take regarding the remand. Arguments about whether or what the Supreme Court should have ordered belonged in a motion for modification or reconsideration that could have been filed with the Supreme Court. None was filed. Those arguments are over. They are obviously misplaced before the Commission.

WHEREFORE, SIEUA requests that this Commission grant the Office of Public Counsel's Motion to Dismiss and Reject Aquila Networks' Unauthorized Filing of Proposed Natural Gas tariffs and any other relief deemed appropriate pursuant to said motion.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.



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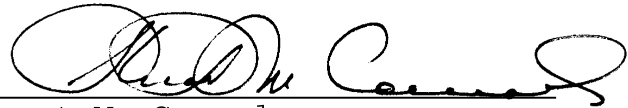
ATTORNEYS FOR SEDALIA INDUSTRIAL ENERGY USERS' ASSOCIATION (SIEUA)

February 5, 2004

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Application to Intervene by electronic means or by U.S. mail, postage prepaid or by electronic means addressed to all parties by their attorneys of record as provided by the Secretary of the Commission.



Stuart W. Conrad

Dated: February 5, 2004