

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

In the Matter of Aquila, Inc., d/b/a Aquila)
Networks-MPS and Aquila Networks-L&P)
for Authority to Implement Rate Adjustments) **Case No. EO-2008-0415**
Required By 4 CSR 240-20.090(4) and the)
Company's Approved Fuel and Purchased)
Power Cost Recovery Mechanism)

MOTION TO REJECT TARIFFS

COME NOW, Ag Processing Inc., a cooperative, and Sedalia Industrial Energy Users' Association ("Industrial Intervenors") and for their Motion to Reject Tariffs state as follows:

1. On June 30, 2008, Aquila, Inc. filed tariffs designed to implement a change in rates to reflect an increase in fuel and purchased power expense. As reflected in the accompanying testimony, those tariffs reflect changes in fuel and purchased power experienced during the months of December, 2007 through May, 2008.

2. On May 17, 2007, the Commission issued its Report and Order in Case No. ER-2007-0004. In that Order, the Commission **rejected** rate and FAC tariffs previously filed by Aquila, Inc. on July 3, 2006. The Commission, however, authorized Aquila to file tariffs in compliance with that Report and Order, including fuel adjustment clause tariffs. On May 25, 2007, the presiding officer, under a purported delegation of authority, approved rate tariffs filed by Aquila for service on and after June 1, 2007. In that same Order, the presiding officer, based primarily upon a recommendation from Staff, again **rejected** Aquila's fuel adjustment tariffs on the basis that those FAC tariffs did not comply with the Report and Order. After several iterations of FAC tariffs filed by

Aquila, the presiding officer, again under a purported delegation of authority, finally found a set of FAC tariffs which she claimed complied with the Report and Order. Those FAC tariffs were approved, over the timely objections of OPC and the Industrial Intervenors, on June 29, 2007 “to become effective on and after July 5, 2007.”

3. Section 386.266.1 clearly ties the effectiveness of a fuel adjustment clause to the approval of rate schedules.

Subject to the requirements of this section, any electrical corporation may make an application to the commission to approve rate schedules authorizing an interim energy charge, or periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation. The commission may, in accordance with existing law, include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities.¹

4. The effectiveness of a fuel adjustment clause is further complicated by the requirement that all amounts collected under a fuel adjustment clause be subject to true-up.² Recognizing the virtual impossibility of conduct a true-up for amounts collected in the middle of a month, the Commission’s rule requires that such a true-up period must necessarily commence on the first day of the succeeding month.³ As such, the fuel adjustment rate schedules were not effective until August 1, 2008.

5. The Commission’s Report and Order in ER-2007-0004 clearly contemplates biannual adjustments to rates to reflect changes in fuel and purchased

¹ See also, Section 386.266.4 (“The Commission may approve such rate schedules after considering all relevant factors which may affect the costs or overall rates and charges of the corporation.”). (emphasis added).

² Section 386.266.4(2).

³ 4 CSR 240-20.090.

power expense.⁴ Therefore, the first adjustment period must necessarily run from August 1, 2007 through January 31, 2008.

6. That said, however, Aquila prematurely filed its first rate adjustment to reflect changes in fuel and purchased power for the period of June 1, 2007 through November 30, 2007. Despite the objections of the Office of the Public Counsel and the Industrial Intervenors, and the clarity of the statute, the Commission unlawfully found that the fuel adjustment clause commenced with the issuance of the Report and Order, therefore June 1, 2007.⁵

7. Public Counsel and the Industrial Intervenors both sought judicial review of the Commission's finding that the fuel adjustment clause started on June 1, 2007. The Cole County Circuit Court has yet to rule on that matter. In the event that Public Counsel and the Industrial Intervenors prevail in that matter, it is apparent that the current adjustment is premature. That is to say, if the Court rules that the first adjustment period should have commenced on August 1, 2007 and run through January 31, 2008, then the pending rate schedules should reflect a deferral period starting on February 1, 2008 and not December 1, 2007. As such, these tariffs have also been filed two months early.

8. The Industrial Intervenors do not expect the Commission to reverse ground on this matter at this point in time. Nevertheless, in order to preserve their arguments as well as all of its rights in the event that they prevail on their appeal, the Industrial Intervenors find it necessary to file this Motion to Reject Tariffs.

⁴ *Report and Order*, Case No. ER-2007-0004, issued May 17, 2007, at page 48.

⁵ *Order Approving Tariff to Establish Rate Schedules for Fuel Adjustment Clause*, Case No. EO-2008-0216, issued February 14, 2008.

WHEREFORE, AGP / SIEUA respectfully request that the Commission reject Aquila's tariffs and order Aquila to file new tariffs on September 30, 2008 reflecting the recovery of amounts deferred between February 1, 2008 and July 31, 2008.

Respectfully submitted,



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ATTORNEYS FOR AG PROCESSING,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.



David L. Woodsmall

Dated: August 8, 2008