

**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 Retail)
Electric Service Provided to Customers in its)
Aquila Networks—MPS and Aquila Networks—)
L&P Missouri Service Areas.)

Case No. ER-2007-0004
Tariff No. YE-2007-0001

**PUBLIC COUNSEL’S RESPONSE TO AQUILA’S MOTION FOR AN ORDER
APPLYING THE TRANSITIONAL PROCEDURES FOR INCLUDED IN 4 CSR 240-
20.090(16) TO THE CURRENT CASE**

COMES NOW the Office of the Public Counsel (“Public Counsel”) and for its Response states as follows:

1. On July 3, 2006, Aquila, Inc. filed a general rate case. Included in that filing were tariff sheets and testimony addressing a fuel adjustment clause.
2. On August 11, Aquila filed a motion to adopt procedures for implementing a fuel adjustment clause. By order issued August 29, the Commission set August 31 as the deadline for responses to that motion.
3. Aquila’s motion in essence asks the Commission to adopt the procedures that the Commission, with little in-depth public discussion, provided to the Secretary of State for publication as part of a proposed rule. The provisions in the proposed rule that Aquila would have the Commission adopt for this case carry no weight simply because they have been published. Public Counsel strongly objected during the drafting of the proposed rules to these specific transition procedures. None of the stakeholders involved in the drafting of the proposed rules except for the utilities and possibly the Staff were in favor of these provisions. If the

Commission wants to afford Aquila the opportunity to use some sort of transitional procedure in this case, it must use a procedure that it has evaluated and found appropriate.

3. Some of the provisions in the proposed rule simply will not bear scrutiny. 4 CSR 240-20.090(16)4(E) sets out procedures for how a utility can proceed with a fuel adjustment clause even if the Commission finds it has not complied with the final rule, and 20.090(16)F(4) sets out a procedure for how a utility can proceed with a fuel adjustment clause after the Commission finds that good cause for waiving the rules has not been shown! Surely the Commission will not adopt rules that allow a utility can proceed with a fuel adjustment clause even after the Commission has made findings that it should not proceed. And yet Aquila requests that the Commission adopt these procedures before the Commission has even heard all the comments on them, and before the Commission has even begun to discuss the rules.

4. AARP, in its response filed today, cites a unanimous Missouri Supreme Court decision, NME Hospitals v. Dept. of Social Services, 850 S.W.2d 71 (Mo. banc 1993). Public Counsel agrees with AARP's analysis of that case that the Commission would be in error in using proposed rules before completing the rulemaking process.

WHEREFORE, Public Counsel respectfully requests that the Commission deny AmerenUE's request to adopt the procedures in the proposed rules for considering a fuel adjustment clause.

Respectfully submitted,

OFFICE OF THE Public Counsel

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 31st day of August 2006:

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