

**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 the Service Provided to Customers in         )  
the Aquila Networks MPS and Aquila             )  
Networks-L&P Service Areas.                     )

**Case No. ER-2007-0004**

**APPLICATION FOR REHEARING**

COME NOW, AG Processing, Inc, a Cooperative (“AGP”), and Sedalia Industrial Energy Users’ Association (“SIEUA”), pursuant to Section 386.500 RSMo., and apply for rehearing of the Commission’s May 25, 2007 Order Granting Expedited Treatment, Approving Certain Tariff Sheets and Rejecting Certain Tariff Sheets (“Order”) on the following grounds:

1. The Order is unlawful, unjust and unreasonable, is based on inadequate findings of fact, is not supported by competent and substantial evidence on the whole record and is contrary to the competent and substantial evidence that is on record, is arbitrary and capricious and is an abuse of discretion in that Order is purported to be issued by the presiding officer under delegation of authority. Section 386.240 RSMo provides that any such delegation is binding only when “expressly authorized.”

The commission may authorize any person employed by it to do or perform any act, matter or thing which the commission is authorized by this chapter to do or perform; provided, that no order, rule or regulation of any person employed by the commission shall be binding on any public utility or any person unless expressly authorized or approved by the commission. (emphasis added).

In its rules and regulations the Commission has “expressly authorized” the presiding officer to exercise certain procedural powers of the Commission.<sup>1</sup> Noticeably, the Commission has not, through its rules or any particular order in this proceeding, “expressly authorized” its presiding officer to approve tariffs. As such, the Order is unlawful and any attempts by Aquila to charge the rates in its proposed tariffs would also be unlawful.

2. The Order is unlawful, unjust and unreasonable, is based on inadequate findings of fact, is not supported by competent and substantial evidence on the whole record and is contrary to the competent and substantial evidence that is on record, is arbitrary and capricious and is an abuse of discretion in that the Commission appears to assert that this docket is no longer a “contested case.” Specifically, the Commission claims that “Aquila’s May 18 tariff filing did not initiate a contested case under Section 536.070 RSMo 2000” and thus does not invoke the due process protections of Chapter 536. While not initiated by the filing of the May 18 tariff sheets, a contested case was initiated by the suspension of the original tariff sheets.<sup>2</sup> Although those tariff sheets were subsequently rejected by the May 17 Report and Order, this case nonetheless remains contested. While Aquila could arguably have initiated a new rate case by the filing of new tariffs in a new proceeding, it chose to submit those tariff sheets in the **current** proceeding asserting that they were tendered as “compliance” with an earlier order in that proceeding. By submitting “compliance” tariffs in the ongoing rate proceeding, Aquila

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<sup>1</sup> For instance, a presiding officer: (1) may schedule a prehearing conference (4 CSR 240-2.090(3)); (2) may order a continuance to a hearing (4 CSR 240-2.110(2)); (3) may establish hearing procedure (4 CSR 240-2.110(5); and (4) shall rule on the admissibility of evidence (4 CSR 240-2.130(3).

<sup>2</sup> See, Section 393.150.

inextricably linked this filing with its “compliance” to the May 17 Report and Order.<sup>3</sup> Given there is no legal basis by which a contested case can be magically transformed from a contested to a non-contested proceeding, such tariff sheets must be treated pursuant to the due process requirements of Chapter 536.

3. The Order is unlawful, unjust and unreasonable, is based on inadequate findings of fact, is not supported by competent and substantial evidence on the whole record and is contrary to the competent and substantial evidence that is on record, is arbitrary and capricious and is an abuse of discretion in that Order fails to provide a single finding of fact on which a court may review how the Commission “conclude[d] that proposes tariff sheets 1 through 59 are consistent with the Commission’s Report and Order and Order Approving Stipulation. Rather, the Commission simply concludes that such tariffs are in compliance with its earlier order and should be approved.

4. The Order is unlawful, unjust and unreasonable, is based on inadequate findings of fact, is not supported by competent and substantial evidence on the whole record and is contrary to the competent and substantial evidence that is on record, is arbitrary and capricious and is an abuse of discretion in that the record is devoid of any evidence upon which the Commission could base a finding that the tariffs are in compliance with the May 17, 2007 Report and Order.

5. The Order is unlawful, unjust and unreasonable, is based on inadequate findings of fact, is not supported by competent and substantial evidence on the whole record and is contrary to the competent and substantial evidence that is on record, is arbitrary and capricious and is an abuse of discretion in that the Commission unlawfully

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<sup>3</sup> One might otherwise reasonably inquire as to what Aquila contends the proposed tariffs “comply” with.

denied AGP / SIEUA the ability to cross-examine James Watkins on the contents of his affidavit in contravention of Section 536.070(12)..

6. On May 29, 2007, the Office of the Public Counsel also sought rehearing of the May 25 Order. AGP and SIEUA hereby incorporate the assertions therein by reference as though fully set out herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David L. Woodsmall", is positioned above a horizontal line. To the right of the signature, a vertical red line extends downwards.

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ATTORNEYS FOR AG PROCESSING,  
INC. AND SEDALIA INDUSTRIAL  
ENERGY USERS' ASSOCIATION

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.

A handwritten signature in black ink, appearing to read "David L. Woodsmall", is positioned above a horizontal line. A vertical red line is located to the right of the signature.

David L. Woodsmall

Dated: May 30, 2007