

**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/ MOTION 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/move for rehearing of the Commission’s June 29, 2007 Order Granting Expedited Treatment and Approving 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 the 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.¹ 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 attempt by Aquila to alter its 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 Order according to its express language was issued by the presiding officer pursuant to a purported 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.² The Commission has not, through its rules or any particular order in this proceeding, “expressly authorized” its presiding officer to grant expedited treatment for compliance

¹ 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)).

² *Id.*

tariffs. As such, the Order is unlawful and any change of Aquila to tariffs pursuant to such an order is unlawful.

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 the presiding officer's Order issued under delegation fails to follow the expressed directives of the Commission. Specifically, and without prejudice to the foregoing, the Commission's Order Rejecting Tariff, Granting Clarification, Directing Filing and Correcting Order Nunc Pro Tunc states that Aquila's Tariff Sheets should be suspended "for seven days." In contrast to this clear direction, the Presiding Officer's Order fails to suspend the tariffs as clearly directed by the Commission.

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 Order approves tariffs that do not comply with Section 386.266.4(3). That section requires any fuel adjustment tariffs to include "provisions requiring that the utility file a general rate case with the effective date of new rates to be no later than four years after the effective date of the commission order implementing the adjustment mechanism." Although the tariffs include a provision which would cause them to expire on May 31, 2011, those tariffs do not include provisions which would require that a general rate increase be filed no later than July 1, 2010.

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 Order purports to make fuel adjustment tariffs effective on July 5. Commission rule 4 CSR 240-20.090(2)(I) clearly indicates that any fuel adjustment tariff must become effective on the first day of a calendar month. Indeed, Aquila has recognized this same regulatory requirement. Nevertheless, the Order purports to make the fuel adjustment tariff effective on July 5, 2007 in direct contravention of the Commission's rules.

6. 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 there is no competent and substantial evidence on the whole record to support a finding that the approved tariffs "are consistent with the Report and Order, as clarified by the First Tariff Order and Second Tariff Order, Section 386.266 RSMo, and Commission Rule 4 CSR 240-20.090."

7. Because the tariffs purportedly approved appear to provide for the collection of interest in a manner that is not consistent with Section 386.266 RSMo., the tariffs that were purported to be approved exceed the authority of the Commission to so order and the order purporting to approve such tariffs is accordingly, unlawful, unreasonable, unjust and void and is not supported by competent and substantial evidence on the whole record.

8. Because the tariffs purportedly approved lack the specificity required by law regarding the calculation of interest, provide no methodology for the calculation of interest and therefore exceed the authority of the Commission to approve, the order purporting to do so is unlawful, unreasonable, unjust and void and not supported by competent and substantial evidence on the whole record. The failure to specify a method for interest calculation, without limitation as to other problems, thereby fails to preclude the unlawful imposition of interest upon interest.

9. Because the tariffs purported to be approved are not complete in themselves with regard to all specifics of collection, calculation and the like, they are in violation of Missouri law and the order purporting to approve them is unlawful, unreasonable, unjust and void and not supported by competent and substantial evidence on the whole record.

10. Because the tariffs and the order approving them purport to postpone questions of ratepayer impact, methodology of calculation and standards to evaluate compliance until unspecified future proceedings yet to be initiated before the Commission when the law requires that such matters be dealt with and addressed by the Commission as a part of the consideration of the reasonableness of the proposed tariffs, the Order is therefore unlawful, unreasonable, unjust and void and not supported by competent and substantial evidence on the whole record.

WHEREFORE, AGP / SIEUA respectfully request that the Commission issue its Order granting rehearing in this matter.

Respectfully submitted,



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ATTORNEYS FOR AG PROCESSING,
INC. AND SEDALIA INDUSTRIAL
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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: July 3, 2007