

**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

OBJECTION TO AFFIDAVIT

COMES NOW AG Processing, Inc. (“AGP”) and Sedalia Industrial Energy Users’ Association (“SIEUA”) and for their Objection to Affidavit respectfully state as follows:

1. On May 23, 2007, Staff filed its recommendation regarding the compliance tariffs filed by Aquila on May 18, 21 and 23, 2007. Accompanying its recommendation, Staff presented the affidavit of James Watkins.

2. Section 536.070 provides strict procedures to be followed in “any contested case.” Indeed, Missouri Courts have found that the provisions of Chapter 536 are applicable to Commission proceedings.¹

3. Section 536.070(12) provides guidance on the introduction of “an affidavit in evidence”. Among other things, that statute provides the parties with the ability to object to the receipt of any affidavit into evidence.

¹ See, *State ex rel. Noranda Aluminum v. Public Service Commission*, 24 S.W.3d 243 (Mo.App.W.D. 2000); *Utility Consumers Council v. Public Service Commission*, 562 S.W.2d 688 (Mo.App.E.D. 1978); *State ex rel. GS Technologies Operating Co. v. Public Service Commission*, 116 S.W.3d 680 (Mo.App.W.D. 2003); *Environmental Utilities, LLC. v. Public Service Commission*, 2007 Mo.App. Lexis 533 (Mo.App.W.D. 2007).

Not later than seven days after such service, or at such later time as may be stipulated, any other party (or, in a proper case, the agency) may serve on the party or the agency who served such affidavit an objection to the use of the affidavit of some designated portion or portions thereof on the ground that it is in the form of an affidavit. . . . If such objection is so served, the affidavit of the part thereof to which objection was made, may not be used except in ways that would have been permissible in the absence of this subdivision.

That statutory section continues to provide that “[n]othing herein contained shall prevent the cross-examination of the affiant.”

4. AGP and SIEUA, pursuant to the rights guaranteed by Section 536.070(12) hereby object to the receipt of the affidavit of James Watkins. Furthermore, AGP and SIEUA hereby notify the Commission of their desire to exercise their right to cross-examine James Watkins as provided by Section 536.070(12). Consistent with their request for cross-examination, SIEUA / AGP have simultaneously filed their Motion for Scheduling of a Hearing in this proceeding so that the Commission can provide for such cross-examination and the receipt of any evidence.

WHEREFORE, SIEUA / AGP respectfully inform the Commission of their objection to the affidavit of James Watkins and their intent to cross-examine James Watkins on the contents of his affidavit.

Respectfully submitted,



Stuart W. Conrad, MBE #23966
David L. Woodsmall, MBE #40747
3100 Broadway, Suite 1209
Kansas City, Missouri 64111
(816) 753-1122 Ext. 211
Facsimile: (816) 756-0373
Internet: stucon@fcplaw.com

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.



David L. Woodsmall

Dated: May 23, 2007.