

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 6th day of
December, 2007.

Robert Burdette Corporation,)
)
Complainant,)
)
v.)
)
Aquila, Inc.)
)
Respondent.)

Case No. EC-2008-0039

ORDER APPROVING STIPULATION AND AGREEMENT

Issue Date: December 6, 2007

Effective Date: December 16, 2007

On August 9, 2007,¹ the Robert Burdette Corporation filed a complaint with the Commission against Aquila, Inc. ("Aquila"). On October 5, Aquila filed a pleading asserting that the Complainant had consented to its request to mediate. Consequently, on October 10, pursuant to Commission Rule 4 CSR 240-2.125, the Commission stayed all other proceedings in this matter while the parties mediated.

On November 28, the parties filed a Stipulation and Agreement resolving all issues in this matter. The Stipulation and Agreement was filed as a highly confidential document and the terms of the Agreement will not be revealed in this order; however, the parties jointly state that if the Commission accepts the terms of the Agreement, they will waive their respective rights to examine witnesses pursuant to Section 536.070, RSMo 2000;² to present oral argument or written briefs pursuant to Section 536.080.1; to the reading of the

¹ All dates throughout this order refer to the year 2007 unless otherwise noted.

² All statutory citations reference RSMO 2000 unless otherwise noted.

transcripts by the Commission pursuant to Section 536.080.2; and to judicial review pursuant to Section 386.510.

The Commission has the legal authority to accept a stipulation and agreement to resolve a case.³ The Commission notes that “[e]very decision and order in a contested case shall be in writing and, except in default cases or cases disposed of by stipulation, consent order or agreed settlement . . . shall include . . . findings of fact and conclusions of law.”⁴ Consequently, the Commission need not make findings of fact or conclusions of law in this order. Additionally, any requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence.⁵ No party has requested a hearing in this case, and the Commission may grant the relief requested based on the Stipulation and Agreement

The respective representatives for the Robert Burdette Corporation and Aquila have both signed the Agreement. Although the Staff of the Missouri Public Service Commission and the Office of the Public Counsel are parties to this action, neither has filed anything in this matter, neither has signed the Agreement nor have they objected to the Agreement. Pursuant to Commission Rule 4 CSR 240-2.115(2)(C) “if no party timely objects to a nonunanimous stipulation and agreement, the commission may treat the nonunanimous stipulation and agreement as a unanimous stipulation.” Commission Rule 4 CSR 240-2.115(2)(B) allows each party seven days to file an objection to a nonunanimous stipulation and agreement. Because all parties have either signed the Agreement or have not opposed the Agreement within the time period required, the Commission will treat the

³ See Section 536.060, RSMo 2000.

⁴ Section 536.090, RSMo 2000.

⁵ *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

Agreement as unanimous.

The Commission has reviewed the parties' pleadings and the Stipulation and Agreement, and having considered these verified pleadings, which are admitted into evidence, finds that the resolution of the complaint by the terms of the Agreement is not detrimental to the public interest and the Agreement shall be approved. Furthermore, no party objects to the Stipulation and Agreement. Therefore, under Commission rule 4 CSR 240-2.115(2)(C), the Commission will treat it as unanimous.

IT IS ORDERED THAT:

1. The Unanimous Stipulation and Agreement filed by the signatories in this matter on November 28, 2007, is approved.
2. The Robert Burdette Corporation and Aquila, Inc., the signatories to the Stipulation and Agreement, shall comply with the terms and conditions contained in the Stipulation and Agreement.
3. This order shall become effective on December 16, 2007.
4. This case may be closed on December 17, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton, Appling, and
Jarrett, CC., concur

Stearley, Regulatory Law Judge