

**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 Services Provided)	Case No. ER-2007-0004
to Customers in the Aquila Networks – MPS and)	
Aquila Networks – L&Pi Service Areas.)	

**REPLY OF AQUILA, INC., TO THE RESPONSES FILED BY
AARP, THE OFFICE OF THE PUBLIC COUNSEL,
AG PROCESSING, INC., AND SEDELIA INDUSTRIAL
ENERGY USERS' ASSOCIATION**

Aquila, Inc. ("Aquila" or "Company"), by its counsel and pursuant to 4 CSR 240-2.080 of the Rules of Practice and Procedure of the Missouri Public Service Commission ("Commission"), hereby replies to the August 31, 2006, filings by AARP, the Office of the Public Counsel ("OPC"), and AG Processing and Sedalia Industrial Energy Users' Association (jointly "Industrial Intervenors")¹ in opposition to Aquila's motion for a Commission order applying to this case the transitional procedures for processing requests for fuel and purchased power cost recovery mechanisms that were included in 4 CSR 240-20.090(16). Aquila replies to the arguments in opposition to its motion as follows:

1. AARP and the OPC argue in their pleadings in opposition tht Aquila's motion to apply the transitional procedures in 4 CSR-20.090(16) is based on invalid authority in that the transitional rules are proposed rules and not actual rules. Aquila's motion, however, was not intended to circumvent rulemaking that is currently underway in Case No. EX-2006-0472 or to prejudice the interests of any party who may choose to

¹ The Industrial Intervenors endorsed the filing made by AARP. All arguments in opposition to AARP's filing will, therefore, apply to the Industrial Intervenors' endorsement as well.

file comments in that case. And, in fact, the motion does neither. All Aquila is seeking is an order establishing the transitional procedures that the Commission has proposed to deal with requests for energy cost recovery mechanisms as the "law of the case" in Case No. ER-2007-0004 until such time as the Commission adopts final rules. As soon as final rules are adopted, Aquila will conform its request for an energy cost recovery mechanism to the requirements of those rules. The rulemaking proceeding that is currently underway will continue unimpeded and unaffected by the relief Aquila seeks.

2. Next, AARP and the OPC argue that if the Commission applies the transitional rules here the parties will be prejudiced. Neither AARP, the OPC, nor any other party to Aquila's rate case will be prejudiced if the Company's motion is granted. All parties will remain free to file whatever comments to the Commission's proposed rules that those parties desire to file. And the Commission will remain free to adopt whatever final rules it deems to lawful and prudent. Allowing a portion of the proposed rules to apply to this case on a temporary basis will not prejudice the Commission in favor of those proposed rules. The Commission designed the transitional procedures that it included in 4 CSR-240.090(16) to cover requests for energy cost recovery mechanisms made prior to the adoption of final rules. All Aquila is requesting is that the Commission issue an order directing its intended result because the proposed rules, which do not have the force and effect of law, will not automatically apply without such an order.

3. The OPC argues that the proposed transitional procedures are deficient in certain respects and should not be adopted until the Commission has heard comments regarding these deficiencies. Whatever arguments the OPC desires to make regarding

the proposed transitional procedures can and should be made in the pending rulemaking proceeding. The Commission can then fully consider those comments before it adopts final rules. The Commission, however, need not consider those comments now in connection with Aquila's motion, which seeks only to have the proposed transitional procedures adopted on a temporary basis until the Commission adopts final rules.

4. The arguments of AARP and the OPC to the contrary notwithstanding, the decision of the Missouri Supreme Court in *NME Hospitals v. Dept. of Social Services*, 850 S.W.2d 71 (Mo. Banc 1993) is inapplicable because Aquila is not proposing that the transitional procedures be adopted as a rule. Instead, Aquila is asking that the transitional procedures be applied temporarily, by order, until such time as final rules are adopted. The Commission has met all of the legal requirements for notice in rulemaking in Case No. EX-2006-0472, and it is not required to satisfy them anew to grant Aquila's motion.

5. AARP also argues that the order Aquila has requested through its motion violates Section 386.288(12), RSMo, which states that the Commission "shall have previously promulgated rules to implement the application process for any rate adjustment mechanism under this section prior to the commission issuing an order for a rate adjustment." That argument may have merit if the Commission has not yet adopted final rules governing energy cost recovery mechanisms by the time it issues its final order in Aquila's rate case. But as of now, the argument is premature. In addition, AARP's argument ignores the provisions of Section 386.266(9), RSMo, which

specifically authorize electric companies like Aquila to request an energy cost recovery mechanism before the Commission has adopted final rules.

6. AARP's arguments regarding supposed due process deficiencies in the transitional procedures are also premature. Whether or not there will be adequate time to address Aquila's proposed energy cost recovery mechanism, either in its present form or after amendment to conform it to the Commission's final rules, is not a question that can or need be addressed at this time. Under the procedural schedule that has been established for this case, AARP and all parties other than Aquila will not be required to file direct testimony until January 16, 2007 – more than four months from now. Until that time, all parties will be able to conduct discovery regarding Aquila's proposed fuel cost recovery mechanism. When the Commission adopts the final rules – which Aquila believes will be well before January 16, 2007 – the parties will be able to conduct additional discovery regarding any amendments that Aquila makes to conform its proposal to the final rules. If, nearer to the date its direct testimony is due to be filed, AARP believes its due process rights have been adversely affected because of unanticipated delays in adopting final rules or in amending Aquila's energy cost recovery mechanism AARP can bring those concerns to the Commission's attention at that time and seek appropriate adjustments to the procedural schedule. At the present time, however, AARP's due process concerns are speculative, at best.

WHEREFORE, for the reasons stated above, the Commission should reject the arguments in opposition that have been raised by AARP and the OPC. The Commission should grant Aquila's motion and issue an order that applies to the current case the transitional procedures contained in 4 CSR 240-20.090(16) and any other portions of

the Proposed Rules referenced therein, and that the order remain in effect until such time as the Commission adopts final rules governing the filing and approval of fuel and purchased power cost recovery mechanisms.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, electronic mail or hand delivery, on the 6th day of September, 2006, to the following:

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