

**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)	<u>Case No. ER-2007-0004</u>
for the Service Provided to Customers in)	
the Aquila Networks MPS and Aquila)	
Networks-L&P Service Areas.)	

**RESPONSE TO AQUILA’S REQUEST FOR RECONSIDERATION
AND POST-CIRCUIT COURT JUDGMENT SCENARIO**

COME NOW AG Processing (AGP) and the Sedalia Industrial Energy Users’ Association (SIEUA) and for its Response to the Request for Reconsideration and Post-Circuit Court Judgment Scenario respectfully state as follows:

1. On June 29, 2007, the Commission issued its Order Granting Expedited Treatment and Approving Tariff Sheets. In that Order, the Commission approved certain fuel adjustment tariffs filed by Aquila for service on an after July 5, 2007. Recognizing the need to allow parties an opportunity to file an Application for Rehearing, the Commission provided five days prior to that Order becoming effective.

2. Shortly after the Commission issued its Order, Aquila filed its Request for Reconsideration and Post-Circuit Court Judgment Scenario. In that pleading, Aquila properly recognizes that 4 CSR 240-20.090(2)(I) requires any fuel adjustment clause to be implemented at the beginning of a calendar month. As such, Aquila asks this Commission to reconsider its Order and allow its fuel adjustment tariff to become effective four days earlier, on July 1, 2007. In order to accommodate the parties’

statutory right to file for rehearing, Aquila proposes that the Commission merely waive certain rules: 4 CSR 240-2.045(2) and 4 CSR 240-2.080(11). These rules provide that:

4 CSR 240-2.045(2): Any item of document filed electronically shall, if received during business hours or the commission's records room, be considered filed as of that day, otherwise, such item or document shall be considered filed as of the next following business day.

4 CSR 240-2.080(11): The date of filing shall be the date the pleading or brief is stamped filed by the secretary of the commission. Pleadings or briefs received after 4:00 p.m. will be stamped filed the next day the commission is regularly open for business.

3. Aquila apparently believes that the Commission can magically accommodate the parties' right to file an Application for Rehearing by simply waiving its rule on the timing of pleadings. Aquila is incorrect. While the Commission's rules do provide for electronic filing, the Commission is also required to accept filing of pleadings by hand delivery. In order to allow any party to file its Application for Rehearing by hand, the Commission would have to ensure that its offices are open and an authorized employee available to accept the pleading for filing.

4. Furthermore, Aquila's request runs afoul of certain statutory provisions. While Aquila contends that the Commission may waive certain rules, the Commission can not waive statutory provisions. In this case, the hours of business for the Commission and agencies are established by the Legislature and memorialized in several statutes.¹ While Aquila may find such an action convenient, it is clear that the Commission can not waive these statutory provisions.

5. Furthermore, AGP / SIEUA note that the Commission has not properly noticed a public meeting for the purpose of addressing this pending Motion. As such, the

¹ Section 386.120.5

Commission would have to gather within the next two hours, presumably under some notion of good cause, for the purpose of ruling on Aquila's Motion.

6. As a final matter, AGP / SIEUA point out that the presiding officer is not authorized to act in this matter under delegation. Specifically, the presiding officer has not been authorized: (1) to rule on motions for rehearing / reconsideration; (2) to waive the rules in question or (3) to modify the Commission's hours of business.

7. By way of notice, AGP / SIEUA point out that this pleading is filed solely for the purpose of responding to Aquila's pending motion. AGP / SIEUA have certain concerns with the Commission's Order Granting Expedited Treatment and Approving Tariff Sheets. Those concerns have not been included in the immediate pleading, but will be contained in a timely filed Application for Rehearing.

WHEREFORE, AGP / SIEUA respectfully request that the Commission deny Aquila's Motion for Reconsideration and Post-Circuit Court Judgment Scenario.

Respectfully submitted,



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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.



David L. Woodsmall

Dated: June 29, 2007