BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Aquila, Inc., d/b/a Aquila Networks-MPS and Aquila Networks-L&P for Authority to Implement Rate Adjustments Required By 4 CSR 240-20.090(4) and the Company's Approved Fuel and Purchased Power Cost Recovery Mechanism	))))))	**Case No. EO-2008-0216**

MOTION TO SCHEDULE PREHEARING AND
MOTION FOR EXPEDITED TREATMENT

COME NOW, AG Processing, Inc. and Sedalia Industrial Energy Users' Association (the "Industrial Intervenors"), and for their Motion to Schedule Prehearing and Motion for Expedited Treatment respectfully state as follows:

1. On February 14, 2008, the Commission issued its Order Approving Tariff to Establish Rate Schedules for Fuel Adjustment Clause. By that Order, the Commission purported to allow KCPL – GMO (f/k/a Aquila) to recover an undercollection of fuel and purchased power for the period of June 1, 2007 through November 30, 2007. On February 29, 2008, the Industrial Intervenors filed their Applications for Rehearing. In that Application, the Industrial Intervenors alleged that the Commission's Order was unlawful in that it sought to grant GMO recovery for fuel and purchased power expenses that were incurred prior to the approval of the underlying FAC tariff.[1]

2. On March 23, 2010, the Western District Court of Appeals issued its Opinion finding that the Commission's Order was unlawful.[2] Specifically, the Court held that the Commission's Order "wholly disregards the applicable statutory language, the

[1] On March 13, 2008, the Commission denied the pending Applications for Rehearing.
[2] *State ex rel. Ag Processing, Inc. v. Public Service Commission*, 311 S.W.3d 361 (Mo.App. 2010).

filed rate doctrine, and the prohibition on retroactive ratemaking."[3] Contrary to the Commission's Order, the Court of Appeals found that:

> [U]nder the plain language of this statute, the Commission may approve a fuel adjustment clause by adopting specific rate schedules (tariffs) incorporating such an adjustment. ***Only costs incurred after the effective date of an appropriate tariff may be recovered under a fuel adjustment clause.***[4]

3. On April 27, 2010, the Western District Court of Appeals denied pending Motions for Rehearing and Applications for Transfer. On June 29, 2010, the Supreme Court denied the pending Applications for Transfer. On July 2, 2010, the Court of Appeals issued its Mandate to the Cole County Circuit Court. On July 19, 2010, the Cole County Circuit Court issued its Mandate which "vacates the PSC's Order and remands for future proceedings consistent with the Court of Appeals opinion."[5] As such, this matter is properly before the Commission.

4. As indicated, the Commission's original order allowed GMO to recover costs for the period of June 1, 2007 through November 30, 2007. The Commission's Order approving GMO's fuel adjustment tariff did not become effective until July 5, 2007. Furthermore, Commission Rule 4 CSR 240-20.090(2)(I) provides that a fuel adjustment clause becomes effective on the "first day of the first calendar month following the effective date of the Commission Order approving a RAM." Therefore, the GMO fuel adjustment clause could not become effective until August 1, 2007. As such, any costs recovered for the months of June and July of 2007 were unlawful.

5. Section 386.266, Commission Rules and Commission Orders expressly recognize that any amounts collected under the fuel adjustment clause are interim and

[3] Opinion at page 13.
[4] *Id.* at page 10 (emphasis added).
[5] Attachment A.

subject to refund. As such, the Commission has the authority to require GMO to refund the amounts unlawfully collected.

6. Commission Rule 4 CSR 240-20.090(5)(A) mandates that "any refunds shall include interest at the electric utility's short-term borrowing rate." Given the complexities of calculating the amount of the necessary refund, the Industrial Intervenors ask that the Commission immediately schedule a prehearing conference so that the parties can discuss and provide to the Commission a proper quantification of the amount to be refunded.

7. Pursuant to 4 CSR 240-2.080(16), the Industrial Intervenors ask that the Commission act on this pleading in an expedited fashion and schedule a prehearing conference to be held in the next 14 days. Rules contained in GMO's fuel adjustment tariff provide a total of 2 months for the Commission to approve the utility's undercollection of fuel and purchased power costs. Certainly, it is only equitable for an overcollection to be returned to the customers in a similarly expedited fashion. Recognizing that GMO has unlawfully retained this money for almost 2 ½ years, notions of intergenerational equity also mandate that GMO return this money as quickly as possible. In this regard, except for issues regarding the proper quantification of this refund, the Commission should not condone any further delays from the utility in returning this money. By all accounts, therefore, no party shall be harmed by the Commission acting in an expedited fashion.

8. Since the Circuit Court's Mandate was only issued on July 19, 2010, this pleading has been filed as soon as practical.

WHEREFORE, AGP / SIEUA respectfully request that the Commission, acting expeditiously, issue its Order Setting Prehearing Conference to be held within the next 14 days.

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: August 2, 2010