

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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| 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. |) | |

**MOTION OF AQUILA, INC., FOR AN ORDER APPLYING
THE TRANSITIONAL PROCEDURES INCLUDED IN
4 CSR 240-20.090(16) TO THE CURRENT CASE**

Comes now 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"), moves the Commission to issue an 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). In support of its motion, Aquila states as follows:

1. By order dated June 15, 2006, the Commission adopted two proposed rules governing the filing of requests by jurisdictional electric utilities for fuel and purchased power cost recovery mechanisms (the "Proposed Rules") and sent those rules to the Secretary of State for publication in the *Missouri Register*. One of the Proposed Rules, 4 CSR 240-20.090, includes in its Section 16 a detailed set of filing requirements and procedures that the Commission designed specifically to deal with requests for fuel and purchased power cost recovery mechanisms made in rate cases that would be filed during the transitional period before final rules are adopted but that would be adjudicated afterward. A copy of 4 CSR 240-20.090(16) is attached to this motion as Appendix A.

2. On July 3, 2006, Aquila initiated the current case by filing revised tariff sheets seeking a general increase in rates charged for electric services provided to customers in the Company's Missouri service area. Included as part of Aquila's filing were tariff sheets proposing to implement a fuel and purchased power recovery mechanism. By order dated July 5, 2006, the Commission suspended the revised tariff sheets for periods prescribed by law to allow for further investigation of the tariff changes proposed by Aquila.

3. The fuel cost recovery mechanism proposed by Aquila as part of its rate filing was designed to fully comply with the Proposed Rules, including the transitional procedures set out in 4 CSR 240-20.090(16). In addition to the tariff sheets mentioned previously, Aquila filed written testimony by several witnesses in support of its proposed fuel and purchased power cost recovery mechanism. Taken together, the proposed tariff sheets and the supporting written testimony meet or exceed all of the requirements of the Proposed Rules that apply to filings made during the transitional period, including providing all of the information specified in 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (9).

4. Because the transitional procedures included in the Proposed Rules have not been finally adopted, they do not have the force and effect of law and, accordingly, there is some uncertainty as to their applicability to this case. This is true despite the fact that the reason the Commission included transitional procedures in the Proposed Rules was to deal with cases like this one – where a rate case that included a proposed fuel and purchased power cost recovery mechanism is filed during the transitional period but will be adjudicated after final rules are adopted and in place.

5. To eliminate any uncertainty as to how its pending request for a fuel and purchased power cost recovery mechanism will be processed in this case, Aquila requests that the Commission issue an order adopting for purposes of this case all transitional procedures included 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 final rules governing the filing and approval of fuel and purchased power cost recovery mechanisms are finally adopted. As soon as final rules are adopted, Aquila will make whatever supplemental filings are necessary to conform its proposed cost recovery mechanism to the final rules and will do so within whatever timeframes are specified in those rules.

6. Aquila's request will not prejudice any of the other parties to the current proceeding or impose any undue burdens on them. All other parties will remain free to file whatever comments to the Proposed Rules that they choose, including comments regarding those portions of the Proposed Rules that govern filings made during the transitional period. In addition, the other parties remain free to take whatever positions they deem appropriate in this case regarding Aquila's proposed fuel and purchased power cost recovery mechanism, both in the form it is currently proposed and as it may be modified, if necessary, to conform to whatever final rules are adopted by the Commission.

WHEREFORE, for the reasons stated above, Aquila prays that the Commission 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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ATTORNEYS FOR AQUILA, INC.

CERTIFICATE OF SERVICE

I hereby certify that the undersigned has caused a complete copy of the attached document to be electronically filed and served on the Commission's office of General Counsel (at gencounsel@psc.mo.gov) and on the office of Public Counsel (at opcservice@ded.mo.gov), and also to be served electronically or by U.S. Mail on the following counsel of record, on this 11th day of August, 2006.

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L. Russell Mitten

(A) Any adjustment mechanism, rate schedule, tariff, incentive plan, or other ratemaking mechanism that was approved by the commission and in effect prior to the effective date of this rule; and

(B) Any experimental regulatory plan that was approved by the commission and in effect prior to the effective date of this rule.

(13) Nothing in this rule shall preclude a complaint case from being filed, as provided by law, on the grounds that a utility is earning more than a fair return on equity, nor shall an electric utility be permitted to use the existences of its RAM as a defense to a complaint case based upon an allegation that it is earning more than a fair return on equity. If a complaint is filed on the grounds that a utility is earning more than a fair return on equity, the commission shall issue a procedural schedule that includes a clear delineation of the case timeline no later than sixty (60) days from the date the complaint is filed.

(14) Rule Review. The commission shall review the effectiveness of this rule by no later than December 31, 2010, and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.

(15) Waiver of Provisions of this Rule. Provisions of this rule may be waived by the commission for good cause shown after an opportunity for a hearing.

(16) Transitional Period Respecting Initial RAM Rules Proposed and Adopted. If the electric utility files a general rate proceeding thirty (30) days or more after the commission issues a notice of proposed rulemaking respecting initial RAM rules, the provisions of this section shall apply to electric utilities which have made application in a general rate proceeding, by filing, with the commission, rate schedules, testimony, other information required by 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (9) and associated application, if any, seeking commission approval of a RAM, prior to the adoption of the initial final rules that implement the application process for a RAM.

(A) RAM filing by utility respecting initial proposed RAM rules. The electric utility shall file its rate schedules, testimony, other information required by 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (8) and associated application, if any, for a RAM in accordance with the proposed initial RAM rules as transmitted to the secretary of state, as the commission's proposed order of rulemaking, if the commission has not adopted initial final rules at the time of the electric utility's filing. If the electric utility files a general rate proceeding before the commission issues a notice of proposed rulemaking respecting initial RAM rules or if the electric utility files a general rate proceeding less than thirty (30) days after the commission issues a notice of proposed rulemaking respecting initial RAM rules, the electric utility shall request a RAM as part of its general rate proceeding filing.

(B) Final RAM Rules Different from Proposed RAM Rules. If the RAM rules adopted by the commission's final order of rulemaking are different from the commission's proposed rules, the electric utility shall:

1. Amend its filing to seek to bring the filing into compliance with the adopted RAM rules;
2. Seek waiver for good cause shown; or
3. Provide an adequate explanation why good cause exists not to require that the electric utility amend its filing or file a request for waiver.

(C) Procedure for utility unamended RAM filing when proposed RAM rules are not altered by final RAM rules and procedure for amendments to utility's RAM filing to address portions of proposed RAM rules altered by final RAM rules. The electric utility may amend its rate schedules, testimony, other information required by 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (8) and application, if any, to conform them to the adopted rules within fifteen (15) days after the commission issues an order adopting final rules and in no event later than one hundred sixty-five (165) days after the electric utility files the rate schedules, testimony, other information

required by 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (8) and associated application, if any, that initiates the general rate proceeding. Thereafter, and within ten (10) days of service of the electric utility's timely filing of amendments, other parties may file responsive pleadings respecting:

1. Whether the unamended portions of the electric utility's initial filing are in compliance with the provisions of this rule, 4 CSR 240-20.090, and 4 CSR 240-3.161 that were not altered by the final order of rulemaking;

2. Whether the timely-filed amendments bring its filing into compliance with the commission's final order of rulemaking; and

3. Whether the timely-filed amendments provide the parties to the general rate proceeding sufficient time for the opportunity for a fair hearing respecting the issues presented (including the request for a RAM) in the general rate proceeding so that the rates and charges resulting from the general rate proceeding may be based on a consideration of all relevant factors and may be just, reasonable and not unduly discriminatory or preferential.

(D) Commission determination whether to approve electric utility RAM filings when electric utility unamended filing and amended filing are in compliance with final RAM rules and sufficient time is available. The commission shall determine whether to approve the electric utility's proposed RAM if the following conditions are met:

1. The electric utility's unamended initial filing complies with the provisions of this rule, 4 CSR 240-20.090, and 4 CSR 240-3.161 contained in the proposed rulemaking that were not subsequently changed by the final order of rulemaking of the commission;

2. The timely-filed amendments comply with the commission's final order of rulemaking; and

3. The timely-filed amendments provide the parties to the general rate proceeding sufficient time, under the existing procedural schedule or a modified procedural schedule, for the opportunity for a fair hearing respecting the issues presented (including the request for a RAM) in the general rate proceeding so that the rates and charges resulting from the general rate proceeding may be based on a consideration of all relevant factors and may be just, reasonable and not unduly discriminatory or preferential;

4. The commission may modify the procedural schedule for making the determination whether to approve the electric utility's proposed RAM in order to provide parties sufficient time for the opportunity for a fair hearing, but still make the determination in the general rate proceeding.

(E) Procedure when electric utility's unamended initial filing or amended filing are not in compliance with final RAM rules. If the commission determines that the electric utility's unamended initial filing does not comply with the provisions of this rule, 4 CSR 240-20.090, and 4 CSR 240-3.161 contained in the proposed rulemaking that were not subsequently changed by the final order of rulemaking, or the timely-filed amendments do not bring the utility's filing into compliance with the commission's final order of rulemaking, then the commission may authorize the electric utility, on a procedural schedule set by the commission, to amend its rate schedules, testimony, other information required by 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (8) and associated application, if any, relating to the requested initial RAM, to the extent necessary to conform to the rules adopted by the commission. If the commission determines that there is a procedural schedule available that will provide the parties to the general rate proceeding the opportunity for a fair hearing respecting the issues presented (including the request for a RAM) in the general rate proceeding so that the rates and charges resulting from the general rate proceeding may be based on a consideration of all relevant factors and may be just, reasonable and not unduly discriminatory or preferential.

1. If the commission authorizes the electric utility to refile, other parties may file responsive pleadings within ten (10) days of service of the electric utility's timely refiling.

2. If the commission determines that the electric utility's refiling complies with the provisions of this rule, 4 CSR 240-20.090, and

4 CSR 240-3.161, as adopted by the commission, the commission shall determine whether to approve the electric utility's proposed RAM as part of its determination of the issues in the general rate proceeding.

(F) Waiver Procedure in Lieu of Amendment of RAM Filing by Electric Utility.

1. Rather than file an amendment to seek to bring its filing into compliance with the final RAM rules adopted by the commission, the electric utility may choose to file a request for waiver from specific provisions of the rules, but must do so within fifteen (15) days after the commission issues an order adopting final rules and in no event later than one hundred sixty-five (165) days after the electric utility files the rate schedules, testimony, other information required by 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (8) and associated application, if any, that initiates the general rate proceeding.

2. Waiver requests shall reference the specific requirements of the adopted rules from which waiver is sought and shall show and explain fully why good cause exists, and as a consequence why it is reasonable and appropriate, that waiver should be granted by the commission.

3. Within ten (10) days of the electric utility's filing of a request for waiver, other parties may file responsive pleadings respecting whether the timely-filed request for waiver is in compliance with the instant rule; and whether the timely-filed request for waiver provides the parties to the general rate proceeding sufficient time for the opportunity for a fair hearing respecting the issues presented (including the request for a RAM) in the general rate proceeding so that the rates and charges resulting from the general rate proceeding may be based on a consideration of all relevant factors and may be just, reasonable and not unduly discriminatory or preferential.

4. If the commission determines that the timely-filed request for waiver should be granted and the electric utility's filing is otherwise in compliance with 4 CSR 240-20.090 and 4 CSR 240-3.161, the commission shall proceed to determine whether to approve the electric utility's proposed RAM.

5. If the request for waiver is not granted, in whole or in part, because the commission finds that good cause does not exist, and as a consequence it is not reasonable or appropriate, that waiver should be granted by the commission, then the commission shall determine whether there is a procedural schedule available whereby the electric utility may amend its filing to conform to the final rules adopted by the commission, and provide sufficient time to the parties to the general rate proceeding for the opportunity for a fair hearing respecting the issues presented (including the request for a RAM) in the general rate proceeding so that the rates and charges resulting from the general rate proceeding may be based on a consideration of all relevant factors and may be just, reasonable and not unduly discriminatory or preferential. Should the commission permit the electric utility to refile, then within ten (10) days of service of the electric utility's timely refiling, other parties may file responsive pleadings. If the commission determines that the electric utility's refiling complies with the provisions of this rule, 4 CSR 240-20.090, and 4 CSR 240-3.161, as adopted by the commission, the commission shall determine whether to approve the electric utility's proposed RAM as part of its determination of the issues in the general rate proceeding.

(G) Procedure for Addressing Nonsubstantive and Nonmaterial Changes to Proposed RAM Rules. If portions of the proposed RAM rules are altered in a nonsubstantive manner or to a nonmaterial degree by the final rules adopted by the commission, the electric utility, rather than file amendments or request waivers, may file explanations that show good cause why the commission should not require the electric utility to either amend its filing or request waivers for these items. These explanations shall be processed by the commission according to the same procedures as amendments and requests for waivers are processed pursuant to 4 CSR 240-20.090(16).

(H) Transition Period Applicable Only to Initial RAM Rules. This section on procedures during a transitional period only applies to the

initial rules adopted by the commission to implement S.B. No. 179, L. 2005, codified as section 386.266, RSMo.

AUTHORITY: sections 386.250 and 393.140, RSMo 2000 and 386.266, RSMo Supp. 2005. Original rule filed June 15, 2006.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule may or may not cost private entities more than five hundred dollars (\$500) in the aggregate. Please see the attached fiscal note.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Colleen M. Dale, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before September 7, 2006, and should include a reference to commission Case No. EX-2006-0472. If comments are submitted via a paper filing, a single copy is required. Comments may also be submitted via a filing using the commission's electronic filing and information system at <<http://www.psc.mo.gov/efis.asp>>. Public hearings regarding this proposed rule are scheduled for August 22, 2006, 11:00-3:00 p.m., Kansas City Missouri Library, Helzberg Auditorium, 14 W. 10th Street, Kansas City, Missouri; August 22, 2006, 6:30-10:00 p.m., Grandview High School Library, 13015 10th Street, Grandview, Missouri; August 23, 2006, 12:00-3:00 p.m., Eric P. Newman Education Center, Seminar Room A, 660 S. Euclid Ave, St. Louis, Missouri; August 23, 2006, 6:30-10:00 p.m., St. Louis County Library, 8400 Delport Dr., Overland, Missouri; August 29, 2006, Southeast Missouri University, 6:30-10:00 p.m., John Glenn Auditorium, Dempster Hall, Corner of Henderson and New Madrid, Cape Girardeau, Missouri; September 6, 2006, 6:30-10:00 p.m., Missouri Southern State University, Webster Hall, 3950 E. Newman Road, Joplin, Missouri; and for September 7, 2006, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at these hearings to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.