

**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&P Service Areas. |) | |

**AQUILA, INC.'S, RESPONSE TO REQUEST FOR ORDER
SETTING DATE FOR RESPONSE TO MOTION
REGARDING TRANSITIONAL PROCEDURES**

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 responds in opposition to the "Request for Order Setting Date for Responses to Aquila's Motion Regarding 'Transitional Procedures'" that was filed by counsel for intervenor AARP on August 22, 2006.¹ In support of its response, Aquila states as follows:

1. On August 11, 2006, Aquila filed a motion seeking an order to apply in the current case the transitional procedures that were included in 4 CSR 240-20.090, which are rules proposed by the Commission to govern applications by Missouri utilities for fuel and purchased power cost recovery mechanisms. In accordance with the Commission's Rules of Practice and Procedure, Aquila duly served copies of that motion on all parties to the current case, including AARP, on the date the Company filed its motion.

¹ AARP's request was filed electronically on August 21, 2006, at 6:46 p.m., CDST. Because the pleading was filed after 4:00 p.m., under the provisions of 4 CSR-240-2.080(11) the official filing date of the request is August 22, 2006.

2. The transitional procedures that the Commission proposed and included in 4 CSR 240-20.090(16) were intended to deal with applications for fuel and purchased power cost recovery mechanisms that are filed prior to the adoption of final rules. Aquila's motion sought nothing more than an order applying those transitional procedures to the current case, and the Company believes such an order is required because the transitional procedures do not have the force and effect of law. Aquila's request for a fuel and purchased power cost recovery mechanism at this time is authorized by Section 386.266, RSMo, which, in addition to authorizing fuel and purchased power cost recovery mechanisms generally, specifically authorizes an electric utility to request such a mechanism before the Commission has adopted final rules.² The transitional procedures that were included in the proposed rules were designed to effectuate that part of the enabling statute, and their application to this case is appropriate and desirable to allow for an orderly consideration of Aquila's request until such time as the Commission adopts final rules.

3. The Rules of Practice and Procedure that govern Commission proceedings include provisions specifying the timeframe within which parties are allowed to respond to pleadings. Under 4 CSR 240-2.080(15), "[p]arties shall be allowed not more than ten (10) days from the date of filing in which to respond to any pleading unless otherwise ordered by the commission."

4. Under the Commission's rules, AARP was required to file its response to Aquila's motion on or before August 21, 2006. It failed to do so. In addition, AARP failed to file a request for an extension of time in which to file its response. Instead, on the eleventh day after Aquila filed its motion, AARP filed a request that purports to seek an

² See §386.266(9), RSMo.

order setting a date for a response to Aquila's motion. But no such order was necessary because the date for AARP's response was fixed by the Commission's rules. In reality, therefore, AARP's request is nothing more than a request for additional time to file a response and, accordingly, that request should be rejected.

5. Parties are allowed to seek a waiver of the Commission's rules pursuant to 4 CSR 240-2.015, but waivers may be granted only upon a showing of good cause. If good cause exists for AARP's failure to timely file a response to Aquila's motion then AARP should be required to so state in a properly filed request for a waiver. The request that AARP filed on August 22nd is not a request for a waiver and does not satisfy the requirement for a showing of good cause.

WHEREFORE, for the reasons stated above, Aquila prays that the Commission deny AARP's request for an order setting a date for responses to Aquila's motion. That denial can be with leave for AARP to file, within a reasonable time period, an appropriate request for a waiver of the Commission's rules, which should be granted only if AARP is able to show good cause why it failed to timely respond to Aquila's motion. Otherwise, Aquila's motion should stand unopposed and should be decided on that basis.

Respectfully submitted,

/s/ L. Russell Mitten

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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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