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

| | | |
|---|---|---|
| In the Matter of the Consideration of Adoption of the PURPA §111(d)(11) Net Metering Standard as Required by §1251 Of the Energy Policy Act of 2005 | ) ) ) ) | Case No. EO-2006-0493 |

**THE RESPONSE OF AQUILA, INC.,TO STAFF'S SUGGESTIONS REGARDING FUTURE PROCEEDINGS**

Aquila, Inc. ("Aquila" or "Company"), through its undersigned counsel, hereby submits the following response to the *Suggestions Regarding Future Proceedings* filed by the Staff ("Staff") of the Missouri Public Service Commission ("Commission") on September 29, 2006. In that filing, Staff made the following proposals regarding this case and the net metering standard in 16 U.S.C. § 2621(d)(11) that is under consideration herein:

- That a rulemaking docket should be opened as soon as possible for the purpose of considering revisions to 4 CSR 240-20.065, "Net Metering," that can be made within the limitations imposed by Section 386.887, RSMo;
- That a workshop docket should be opened for the purpose of considering possible revisions to Section 386.887, RSMo; and
- That the current case should be held open pending a decision by the Commission in the proposed ratemaking docket as to whether any changes to 4 CSR 240-20.065 should be adopted.

## 1. Background of the Federal Net Metering Standard

When Congress enacted the "Energy Policy Act of 2005" ("EPAct 2005"), it included provisions that required each state utility regulatory authority to consider several standards related to electric energy and to determine if any or

all of the standards should be adopted for electric utilities over which the regulatory authority has jurisdiction.

> (a) Consideration and determination. Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated utility shall consider each standard established by subsection (d) and make a determination concerning whether or not it is appropriate to implement such standard to carry out the purposes of this title. . . Nothing in this subsection prohibits any State regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to implement any such standard, pursuant to its authority under otherwise applicable State law.

16 U.S.C. § 2621(a).

The Commission's obligations to consider and determine each of the standards enacted by Congress is set out in 16 U.S.C. §2621(c):

> (1) The State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility may, to the extent consistent with otherwise applicable State law:
>
> > (A) implement any such standard determined under subsection (a) to be appropriate to carry out the purposes of this title, or
> >
> > (B) decline to implement any such standard.
>
> (2) If a State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility declines to implement any standard established by subsection (d) . . . such authority or nonregulated electric utility shall state in writing the reasons therefore.

The language quoted above shows that although Congress required each state to consider the federal standards, it did not require each state to adopt those standards. For regulated electric utilities, that decision is left to the discretion of the utility regulatory authority in each state.

Among the standards adopted in EPAct 2005 was one pertaining to "net metering," which the statute describes as follows:

> Net metering. Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term "net metering service" means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.

16 U.S.C. § 2621(d)(11). The language of this section reflects a legislative intent to achieve a particular result from net metering: that, during each billing period, power delivered from a consumer to an electric utility be used to offset power delivered from the utility to the consumer. But the statute did not prescribe the use of any particular instrumentality or type of metering unit or the method that had to be used to achieve the desired result. It also did not prescribe the rate (e.g., the commercial rate) at which power delivered from the consumer to the utility would be credited to the consumer's bill.

**2. Net Metering in Missouri**

In 2002, the Missouri Legislature passed the Consumer Clean Energy Act, which required any "retail electric supplier"[1] operating in the state to offer net metering to any "customer-generator"[2] that operated a "qualified net metering unit."[3] The statute also established a cap for net metering service provided by retail electric suppliers: an electric supplier's obligation to provide net metering to additional customers ceases as soon as the total generating capacity of all net

[1] Section 386.887(6), RSMo.
[2] Section 386.887(2), RSMo.
[3] Section 386.887(5), RSMo.

metering units owned by customer-generators equals or is in excess of the lesser of 10,000 kWh or one-tenth of one percent of the capacity necessary to meet the electric supplier's aggregate peak demand for the previous year.[4]

The Commission adopted 4 CSR 240-20.065 in 2003 to implement the net metering requirement in Section 386.877, RSMo. The rule requires all electric suppliers to develop a tariff or rate schedule for net metering and to make that service available to qualified customers on a first-come, first-served basis subject to the cap included in the statute. Pursuant to the statute and in accordance with the Commission's rule, Aquila has implemented a tariff providing for net metering within its service territory and is currently providing that service.

**3. Further Action Suggested by Staff**

Staff proposes that the Commission take the following actions with respect to the net metering standard under consideration in this docket: 1) open a rulemaking proceeding as soon as possible to consider what changes can and should be made to 4 CSR 240-20.065; 2) open an EW docket for the purpose of proposing revisions to Section 386.887, RSMo.; and 3) hold the current case open pending completion of the rulemaking docket. Aquila believes that none of these actions is either required by EPAct 2005 or desirable.

Because the Commission has addressed the issue of net metering in a rulemaking proceeding within the recent past,[5] Aquila believes there is no need to re-plow the same ground with another rulemaking proceeding on the same issue. Under the "prior state action" provisions of the EPAct 2005, the

[4] Section 386.887(5), RSMo.
[5] 4 CSR 240-20.065 became effective in August 2003.

Commission need not take any further or additional action regarding the net metering standard if, prior to the enactment of the statute in August 2005:

> (1) the State has implemented for such [electric] utility the standard concerned (or a comparable standard);
>
> (2) the State regulatory authority for such State . . . has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard); or
>
> (3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility.[6]

Both Section 386.887 and the Commission's rule implementing that statute qualify under these provisions. The Commission, therefore, is free to declare that, because a comparable net metering standard already exists in Missouri, no further action is necessary regarding the federal net metering standard in EPAct 2005.

As noted earlier, the federal standard prescribes an objective – providing a means for qualifying customers to have the value of electricity that they generate and deliver back to the utility credited to their monthly bill – but leaves to the states the details of how best to achieve that objective. Missouri's net metering standard, as embodied both in Section 386.877, RSMo, and the Commission's rule, accomplishes that objective. It requires that net metering customers receive a credit to their respective monthly electric bills in amounts that reflect the net value of power the customer-generators delivered to their electric power suppliers. The rates, terms, and conditions that govern net billing transactions are to be established on a company by company basis through tariff filings.

---

[6] 16 U.S.C. § 2622(d).

The Commission's net metering rule requires that the flows of electricity between the electric power supplier and the customer-generator be measured "using metering capable of such function – either by a single meter capable of registering the flow of electricity in two (2) directions or by using two (2) meters."[7] Some parties to this case have argued that the ability to use two meters somehow transforms net metering into "net billing," which violates the spirit, if not the letter, of the federal standard.[8] But that argument elevates form over substance and ignores the fact that the federal net metering standard does not mandate the use of any particular kind of metering equipment or that one meter be used instead of two.

Some of the parties to this proceeding also have argued that further action in this case is required because neither the current statute nor the Commission's rule is broad enough. But, again, the parties confuse what they want with the requirements of the federal standard. The net metering standard adopted by Congress requires that net metering service be provided only "upon request." The Missouri net metering standard includes that requirement. Although the Missouri standard does not require that net metering be made available to all customers, none of the parties to this case has suggested that there is an unmet demand for such service, and Aquila certainly has no evidence of such an unmet demand in its service area. The lack of a current requirement that net metering service be universally available is not sufficient to warrant either a change in Section 386.887, RSMo, or the Commission's net metering rule. The state

[7] 4 CSR 240-20.065(5)(A)(1)(B).

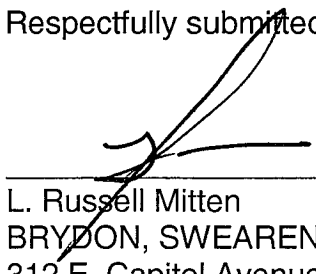
[8] See *Department of Natural Resources' Responses to Questions Posed in the August 17, 2006, Commission Order*, Case No. EO-2006-0493, at p. 3.

statute, the Commission's rule, and Aquila's net metering tariff fully meet the needs of customers within the Company's service area. And because Missouri's net metering standard is comparable to the federal standard, the requirements of EPAct 2005 are fully satisfied, as well. Any party that believes otherwise has the opportunity to make their views known and to propose alternatives either by intervening in an Aquila rate case or by filing a formal complaint with the Commission.

As for changes to Section 386.877, RSMo, any party that believes the statue must be or should be amended is free at any time to present those views to the state legislature. There is no need for a formal docket, involving multiple parties, to consider such views or for the Commission to sponsor or put its imprimatur on a request for any such amendment.

WHEREFORE, for the reasons stated above, Aquila strongly urges the Commission to: 1) reject the Staff's suggestion that a rulemaking docket be opened for the purpose of considering changes to 4 CSR 240-20.065; 2) reject Staff's suggestion that an EW docket be opened to consider possible amendments to Section 386.887, RSMo.; and 3) reject Staff's suggestion that this case be held open pending completion of the aforementioned rulemaking docket. Instead, the Commission should terminate the current case, pursuant to the authority granted by 16 U.S.C. §§ 2621(a) and 2622(d), by issuing an order declaring that a comparable standard already exists in Missouri and that no further action regarding the federal standard is, therefore, warranted.

Respectfully submitted,



L. Russell Mitten MBE #27881
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
(573) 635-7166 voice
(573) 635-3847 facsimile
Email: rmitten@brydonlaw.com

ATTORNEYS FOR AQUILA INC.

## Certificate of Service

The undersigned hereby certifies that a true copy of the foregoing document was served upon the following by electronic mail, facsimile or U.S. mail, postage prepaid, this 13th day of October, 2006:

General Counsel Office
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Fax: 573-751-1928
GenCounsel@psc.mo.gov

Mills Lewis
Office Of Public Counsel
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
Fax: 573-751-1556
opcservice@ded.mo.gov

Frey Dennis
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Denny.Frey@psc.mo.gov

Woodsmall David
AG Processing, Inc
428 E. Capitol Ave., Suite 300
Jefferson City, MO 65102
Fax: 573-635-5699
dwoodsmall@fcplaw.com

Conrad W Stuart
AG Processing, Inc
3100 Broadway, Suite 1209
Kansas City, MO 64111
Fax: 816-756-6037
stucon@fcplaw.com

Kurtz M David
AmerenUE
111 S. Ninth St., Suite 200
P.O. Box 918
Columbia, MO 65205-0918
Fax: 573-442-2668
kurtz@smithlewis.com

Lowery B James
AmerenUE
111 South Ninth St., Suite 200
P.O. Box 918
Columbia, MO 65202-0918
Fax: 573-448-8668
lowery@smithlewis.com

Byrne M Thomas
AmerenUE
1901 Chouteau Avenue
P.O. Box 66149 (MC 1310)
St. Louis, MO 63166-6149
Fax: 314-554-4401
tbyrne@ameren.com

Mitten L Russell
Aquila Networks
312 E. Capitol Ave
P.O. Box 456
Jefferson City, MO 65102
Fax: 573-635-5384
rmitten@brydonlaw.com

Robertson B Henry
Audubon Missouri
705 Olive Street
Suite 614
St. Louis, MO 63101
Fax: nul-l
hrobertson@greatriverslaw.org

Henry G Kathleen
Audubon Missouri
705 Olive Street, Suite 614
St. Louis, MO 63101
Fax: 314-231-1418
khenry@greatriverslaw.org

Henry Kathleen
Concerned Citizens of Platte County
705 Olive Street, Suite 614
St. Louis, MO 63101
Fax: 314-231-1418
khenry@greatriverslaw.org

Robertson B Henry
Concerned Citizens of Platte County
705 Olive Street
Suite 614
St. Louis, MO 63101
Fax: nul-l
hrobertson@greatriverslaw.org

Mitten L Russell
Empire District Electric Company, The
312 E. Capitol Ave
P.O. Box 456
Jefferson City, MO 65102
Fax: 573-635-5384
rmitten@brydonlaw.com

Robertson B Henry
Heartland Renewable Energy Society
705 Olive Street
Suite 614
St. Louis, MO 63101
Fax: nul-l
hrobertson@greatriverslaw.org

Henry G Kathleen
Heartland Renewable Energy Society
705 Olive Street, Suite 614
St. Louis, MO 63101
Fax: 314-231-1418
khenry@greatriverslaw.org

Fischer M James
Kansas City Power & Light Company
101 Madison--Suite 400
Jefferson City, MO 65101
Fax: 573-636-6038
jfischerpc@aol.com

Blanc D Curtis
Kansas City Power & Light Company
1201 Walnut, 20th Floor
Kansas City, MO 64106
Fax: 816-556-6278
Curtis.Blanc@kcpl.com

Robertson B Henry
Mid-Missouri Peaceworks
705 Olive Street, Suite 614
St. Louis, MO 63101
Fax: nul-l
hrobertson@greatriverslaw.org

Henry G Kathleen
Mid-Missouri Peaceworks
705 Olive Street, Suite 614
St. Louis, MO 63101
Fax: 314-231-1418
khenry@greatriverslaw.org

Woods Shelley
Missouri Department of Natural Resources
P.O. Box 899
Jefferson City, MO 65102-0899
shelley.woods@ago.mo.gov

Vuylsteke M Diana
Missouri Industrial Energy Consumers
211 N. Broadway, Suite 3600
St. Louis, MO 63102
Fax: 314-259-9202
dmvuylsteke@bryancave.com

Robertson B Henry
Ozark Energy Services
705 Olive Street
Suite 614
St. Louis, MO 63101
Fax: nul-l
hrobertson@greatriverslaw.org

Henry G Kathleen
Ozark Energy Services
705 Olive Street, Suite 614
St. Louis, MO 63101
Fax: 314-231-1418
khenry@greatriverslaw.org

Woodsmall David
Praxair, Inc.
428 E. Capitol Ave., Suite 300
Jefferson City, MO 65102
Fax: 573-635-5699
dwoodsmall@fcplaw.com

Conrad W Stuart
Praxair, Inc.
3100 Broadway, Suite 1209
Kansas City, MO 64111
Fax: 816-756-6037
stucon@fcplaw.com

Woodsmall David
Sedalia Industrial Energy Users Association
428 E. Capitol Ave., Suite 300
Jefferson City, MO 65102
Fax: 573-635-5699
dwoodsmall@fcplaw.com

Conrad W Stuart
Sedalia Industrial Energy Users Association
3100 Broadway, Suite 1209
Kansas City, MO 64111
Fax: 816-756-6037
stucon@fcplaw.com

Robertson B Henry
Sierra Club
705 Olive Street, Suite 614
St. Louis, MO 63101
Fax: nul-l
hrobertson@greatriverslaw.org

Henry G Kathleen
Sierra Club
705 Olive Street, Suite 614
St. Louis, MO 63101
Fax: 314-231-1418
khenry@greatriverslaw.org

L. Russell Mitten