

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

In the Matter of the tariff filing of The)	
Empire District Electric Company)	
to implement a general rate increase for)	Case No. ER-2006-0315
retail electric service provided to customers)	
in its Missouri service area)	

AQUILA’S RESPONSE TO NOTICE REQUIRING FILING

Comes now Aquila, Inc. (“Aquila”), by counsel, and files its Response to the Notice Requiring Filing issued by the Missouri Public Service Commission (the “Commission”) on September 14, 2006. Due to its limited involvement with this case, Aquila takes no position on the factual issues raised by the Commission’s Notice. With regard to the legal issue of the Commission’s ability to make changes to Empire’s existing IEC, Aquila respectfully states as follows to the Commission:

The parties to the Nonunanimous Stipulation and Agreement Regarding Fuel and Purchased Power Expense which was entered into in Case No. ER-2004-0570 (the “Agreement”) could not contract away the Commission’s inherent powers.¹ The fixing of reasonable rates is an exercise of the sovereign police power of the state, and this sovereign power cannot be contracted away. *Ex rel. City of Sedalia v. Public Service Commission*, 204 S.W. 497, 499 (1918).² As the Supreme Court of Missouri has held, “no contract as to rates will stand against the order of the Public Service Commission for reasonable rates . . .” *Ex rel. Kansas City Public Service Company v. Latshaw*, 30 S.W.2d 105, 108 (Mo. banc 1930).³

¹ In conformity with this legal principle, the Agreement does not contain a provision which attempts to limit the Commission’s ability to modify or terminate Empire’s existing IEC rider. In fact, the Agreement contains a provision which evidences the parties’ understanding of the fact that the Commission could, at any time, terminate the IEC rider, and the Agreement is silent on the issue of the modification of base rates.

² See also *City Water Company of Sedalia v. City of Sedalia*, 231 S.W. 942, 944-945 (1921); *Ex rel. Missouri Gas & Electric Service Company v. Trimble*, 271 S.W. 43 (Mo. banc 1925); *Ex rel. Kansas City Public Service Company v. Latshaw*, 30 S.W.2d 105, 108 (Mo. banc 1930); *Gaines v. Van Gibbs*, 709 S.W.2d 541, 544 (Mo. App. S.D. 1986).

³ See also *Bertha A. Mining Company v. The Empire District Electric Company*, 235 S.W. 508 (Mo.App. 1921).

Additionally, the Commission’s power to modify or terminate Empire’s existing IEC tariff was not abrogated by the enactment of RSMo. §386.266. Senate Bill 179 did not take effect and become law until after the Agreement was executed and approved by the Commission. Pursuant to Missouri case law, statutes are generally presumed to operate prospectively, and, absent an express intention to the contrary by the legislature, a substantive provision of a statute cannot be applied retroactively. *Dalba v. YMCA of Greater St. Louis*, 69 S.W.3d 137, 140 (Mo.App. E.D. 2002).⁴ In this regard, subsection 10 of the statute reads that nothing in the statute “shall be construed as affecting any existing adjustment mechanism, rate schedule, tariff, incentive plan, or other ratemaking mechanism currently approved and in effect.”

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was electronically transmitted, sent by U.S. Mail, postage prepaid, or hand-delivered, on this 20th day of September, 2006, to counsel of record for the parties hereto.

_____/s/ Diana C. Carter_____