

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

In the Matter of the Tariffs of Aquila, Inc.,     )  
d/b/a Aquila Networks - MPS and Aquila     )  
Networks - L&P Increasing Electric Rates     ) Case No. ER-2007-0004  
for the Services Provided to Customers     )  
in the Aquila Networks - MPS and Aquila     )  
Networks - L&P Service Areas                 )

**SUGGESTIONS OF AQUILA, INC. IN OPPOSITION TO THE SEDALIA  
INDUSTRIAL ENERGY USERS ASSOCIATION AND AG PROCESSING,  
INC.'S APPLICATION FOR REHEARING AND MOTION TO STAY  
EFFECTIVENESS OF RATES AND MOTION FOR EXPEDITED  
TREATMENT**

COMES NOW Aquila, Inc. ("Aquila" or the "Company") and offers the following suggestions in opposition to an Application for Rehearing and a separate Motion to Stay Effectiveness of Rates and Motion for Expedited Treatment ("Motion") filed on May 30, 2007, by the Sedalia Industrial Energy Users Association ("SIEUA") and AG Processing, Inc. ("AGP").

**The Application For Rehearing Should Be Denied**

1. The Application for Rehearing provides no basis for reconsideration of the Commission's May 25, 2007, Order Granting Expedited Treatment, Approving Certain Tariff Sheets and Rejecting Certain Tariff Sheets (the "Order"). The claim that the Order was issued under an unauthorized delegation of authority by the Commission is legally flawed. SIEUA/AGP selectively mentions several rules granting specific powers to the Commission's Administrative Law Judges (ALJs) in footnote no. 1 of the Application for Rehearing but fails to mention that Commission rule 4 CSR 240-2.120 grants to its presiding officers broad general authority to carry out

the discharge of the Commission's responsibilities. Among other things, it provides that:

The presiding officer may take action as may be necessary and appropriate to the discharge of duties, consistent with the statutory authority or other authorities under which the Commission functions and with the rules and policies of the Commission.

This rule is sufficient express authority under § 386.240 RSMo for the Administrative Law Judge assigned to the case to issue a ministerial order approving tariffs in compliance with the Commission's Report and Order. Certainly, approval of compliance tariffs is an action that is both "necessary and appropriate to the discharge of the duties" of the Commission.

2. The claim that the Order contains insufficient findings of fact is just simply incorrect. The Order contains nearly five (5) pages of factual and legal findings relevant to the question of whether the tariffs filed by Aquila on May 21, 2007, comply with the Commission's Report and Order. Among other things, the Commission notes that the Staff recommends approval of certain tariff sheets and rejection of others. The Order also notes that the Commission has reviewed the proposed tariff sheets and has concluded that many of the tariff sheets "are consistent with the Commission's Report and Order and Order Approving Stipulation and should be approved and become effective for service rendered on and after May 31, 2007."<sup>1</sup> These findings are more than sufficient to support the validity and sufficiency of the Order.

3. SIEUA/AGP also are incorrect to the extent that they suggest there needs to be an independent evidentiary basis for the issuance of the

---

<sup>1</sup> Order, pp. 4-5.

Order. As noted in the Company's Suggestions filed on May 24, 2007<sup>2</sup>, tariffs filed in this case do not institute a contested case with respect to which a hearing was required in order to assess the merits of the proposed rate case.<sup>3</sup> Also, the suggestion that the rate case is a contested case simply because the Commission developed a record by holding an evidentiary hearing is simply wrong.<sup>4</sup> No hearing is required by § 393.140(11) RSMo. As such, a tariff filing for any purpose is an uncontested case. § 536.010(4) RSMo.

#### The Motion Should Be Denied

4. Because the Application for Rehearing is without merit, the Motion, too, should be denied. Simply put, SIEUA/AGP have provided no compelling basis to stay the effectiveness of rates that have been determined by the Commission in the Report and Order to be just and reasonable for service rendered on and after May 31, 2007. The Motion is little more than another effort by a party whose positions did not prevail at hearing to delay with procedural maneuverings the implementation of the terms of the Commission's Report and Order such that the operation of law date is rendered meaningless.

5. Significantly, SIEAU/AGP have no legally cognizable interest in the existing rates being charged by Aquila so there is no "harm" they will suffer if new rates go into effect. *State ex rel. Jackson County v. Public*

---

<sup>2</sup> EFIS Document No. 381

<sup>3</sup> *State ex rel. Laclede Gas Company v. Public Service Commission*, 535 S.W.2d 561, 566 (Mo. App 1976); *State ex rel. Utility Consumers Council of Missouri, Inc.*, 585 S.W.2d 41, 49 (Mo. banc 1979).

<sup>4</sup> See, *State ex rel. Leggett v. Jensen*, 318 S.W.2d 353, 355 (Mo. banc. 1958); *Yarber v. McHenry*, 915 S.W.2d 325, 328 (Mo. banc 1995); *State ex rel. Valentine v. Board of Police Commissioners of Kansas City*, 813 S.W.2d 955, 957 (Mo. App 1991).

*Service Commission*, 532 S.W.2d 20, 31 (Mo. banc. 1976). Aquila, on the other hand, has a constitutional right to receive just compensation for property it has dedicated to the public service. *State ex rel. Missouri Public Service v. Fraas*, 627 S.W.2d 882, 886 (Mo. App. 1981) Clearly, the law and equities in this situation favor Aquila.

6. To grant the Motion would be to frustrate the very purpose of the Report and Order with respect to which the Commission has dedicated such energy and effort. SIEUA/AGP have alleged a number legal deficiencies with the Report and Order, none of which have any merit, but with respect to which they are free to seek judicial review in due course as provided by law.<sup>5</sup> SIEUA/AGP will not be harmed by paying rates for service that the Commission has determined are just and reasonable under applicable provisions of the Missouri Public Service Commission Act. To the contrary, the rates are *prima facie* lawful and reasonable. § 386.270 RSMo. As such, there is no basis for staying the effectiveness of the compliance tariffs approved by the Commission on May 25, 2007.

---

<sup>5</sup> As the Commission previously has noted, “[t]he appropriate place to question and/or challenge the Commission’s determination that the tariff complies with the Report and Order is through rehearing and/or appellate review of the underlying Report and Order.” Order, p. 4.

WHEREFORE, Aquila requests that the Commission deny the Application for Rehearing and Motion for the reasons aforesaid.

Respectfully submitted,  
BRYDON SWEARENGEN & ENGLAND

By:

/s/ Paul A. Boudreau  
Paul A. Boudreau #33155  
BRYDON, SWEARENGEN & ENGLAND  
312 East Capitol Avenue  
P. O. Box 456  
Jefferson City, Missouri 65102-0456  
Phone: (573) 635-7166  
Fax: (573) 635-0427  
Email: [paulb@brydonlaw.com](mailto:paulb@brydonlaw.com)

#### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, electronic mail or hand delivery, on the 31st day of May, 2007, to the following:

Nathan Williams  
Deputy Counsel  
Missouri Public Service Commission  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
[nathan.williams@psc.mo.gov](mailto:nathan.williams@psc.mo.gov)

Mike Dandino  
Office of the Public Counsel  
Governor Office Building  
200 Madison Street, Suite 650  
P.O. Box 2230  
Jefferson City, MO 65102  
[mike.dandino@ded.mo.gov](mailto:mike.dandino@ded.mo.gov)

Mary Ann Young  
William D. Steinmeier  
P.O. Box 104595  
2031 Tower Drive  
Jefferson City, MO 65102  
[myoung0654@aol.com](mailto:myoung0654@aol.com)

[wds@wdspsc.com](mailto:wds@wdspsc.com)  
For the City of St. Joseph, MO

Stuart W. Conrad  
3100 Broadway, Suite 1209  
Kansas City, MO 64111  
[Stucon@fcplaw.com](mailto:Stucon@fcplaw.com)  
For SIEUA and AG Processing, Inc.

John Coffman  
871 Tuxedo Blvd.  
St. Louis, MO 63119  
[john@johncoffman.net](mailto:john@johncoffman.net)  
For AARP

Thomas M. Byrne  
AmerenUE  
1901 Chouteau Ave.  
P.O. Box 66149 (MC 1310)  
St. Louis, MO 63166  
[tbyrne@ameren.com](mailto:tbyrne@ameren.com)

Mark W. Comley  
601 Monroe Street, Suite 301  
P.O. Box 537  
Jefferson City, MO 65102  
[comley@ncrpc.com](mailto:comley@ncrpc.com)  
For the City of Kansas City, MO

James B. Lowery  
David M. Kurtz  
Smith Lewis, LLP  
111 South Ninth St., Suite 200  
P.O. Box 918  
Columbia, MO 65202  
[lowery@smithlewis.com](mailto:lowery@smithlewis.com)  
[Kurtz@smithlewis.com](mailto:Kurtz@smithlewis.com)  
For AmerenUE

Jeremiah D. Finnegan  
City of Kansas City, Missouri  
3100 Broadway, Suite 1209  
Kansas City, MO 64111  
[jfinnegan@fcplaw.com](mailto:jfinnegan@fcplaw.com)

Captain Frank Hollifield  
AFCEA/ULT  
139 Barnes Drive, Ste. 1  
Tyndall Air Force Base, FL 32406

Koriambanya S. Carew  
The Commercial Group  
2400 Pershing Road  
Crown Center  
Kansas City, MO 64108  
[carew@bscr-law.com](mailto:carew@bscr-law.com)

Shelley Woods  
Missouri Department of Natural  
Resources  
P.O. Box 899  
Jefferson City, MO 65102  
[Shelley.woods@ago.mo.gov](mailto:Shelley.woods@ago.mo.gov)  
Missouri Department of Natural  
Resources

David Woodsmall  
Sedalia Industrial Energy Users  
Association  
428 E. Capitol Ave., Suite 300  
Jefferson City, MO 65102  
[dwoodsmall@fcplaw.com](mailto:dwoodsmall@fcplaw.com)

/s/ Paul A. Boudreau  
Paul A. Boudreau