

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

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In The Matter Of Aquila, Inc. D/B/A	)	
Aquila Networks-MPS	)	
And Aquila Networks-L&P, For Authority	)	
To File Tariffs Increasing Electric Rates For	)	<b><u>Case No. ER-2005-0436</u></b>
The Service Provided To Customers In The	)	
Aquila Networks-MPS	)	
And Aquila Networks-L&P Area.	)	

**SIEUA, AGP AND FEDERAL EXECUTIVE AGENCIES ALTERNATIVE  
MOTION TO STRIKE SURREBUTTAL TESTIMONY OF JAMES WATKINS  
OR POSTPONE HEARING SHOULD THIS AND PRIOR MOTIONS TO STRIKE  
NOT BE GRANTED**

SIEUA, AGP and FEA have filed a series of Motions to Strike cost-of –service testimony in this case. The following motions have been filed: November 8, 2005 Motion to Strike Direct Testimony of James Watkins, James Busch and Barb Meisenheimer; November 22, 2005 Reply to Staff and OPC Response to Motion to Strike; and November 23, 2005 Motion to Strike Rebuttal Testimony of OPC Witness Barb Meisenheimer. On November 9, 2005 we also filed a Motion for Expedited Treatment. OPC and Staff responded to that motion indicating that they would be able to respond in less than the 10-day period otherwise provided. Despite that, no ruling has yet been received on the Motion of November 8, the Motion of November 23, or on the November 9 Motion for Expedited Treatment. The original motion has been pending for more than a month and well in excess of the 10-day period for response. On November 15 and November 30, Aquila submitted responses in support of the Motions to Strike.

We are moving today to strike the cost-of-service Surrebuttal Testimony of James Watkins for the same reasons stated in our prior motions. Specifically beginning at line

2, page 2 and continuing through line 18, page 7 and the attached Schedule 1 inclusive. Alternatively, we are requesting that the hearing that is presently scheduled to commence on January 9 be postponed at least four weeks to provide time for discovery and responsive testimony in the event that the Motions to Strike are not granted.

Our November 8, 2005 Motion to Strike pointed out that the Staff class-cost-of service study filed in this case would require extensive discovery and effort in order to prepare an adequate response. In Case No. EO-2002-384 that process took several months and several rounds of testimony. We will need to evaluate Staff's study, submit data requests which will require time for a response, and prepare responsive testimony. In his direct testimony Mr. Watkins stated that he did not even understand or know the reason(s) for the significant discrepancies between Staff's cost-of –service results in EO-2002-384 and it's cost-of –service study in this case. Most assuredly we do not know for certain either. Yet if this issue is to be tried – or more accurately, retried – in this proceeding, in contravention of the Commission's Order of August 23, 2005, as discussed in our November 8 Motion to Strike, the task of determining the reason(s) for these admitted discrepancies will fall on us. That task will take time. Although we still believe our Motions to Strike are well-founded, if they are denied, we estimate four weeks after that denial will be needed keeping in mind the approaching the holidays and preparation for appropriate issues of concern in the currently scheduled hearing.

This issue was presented to the Commission resulting in the August 23, 2005 Order issued both in the "384" case and this rate case. Staff and OPC did not prevail on their requests to consolidate the "384" case with the rate case, yet have conspicuously ignore the clear ruling of that August 23 Order that the issue of class cost-of-service was

to be litigated in the “384” case. It bears repeating that both Staff and OPC stipulated to the “spin-off” of the “384” case and the separate consideration of the issue of appropriate class cost of service for Aquila. The Commission’s August 23 Order well articulates the importance of having these complex issues resolved in a separate proceeding. That stipulation was accepted as a means of avoiding the controversy in the rate case from which the CCOSS case was “spun off.” It is disingenuous now for either Staff or OPC to attempt to retrade or renege from their earlier bargain by claiming that that the famous phrase “all relevant factors” precludes the Commission’s August 23 Order so that the Commission must re-litigate these issues in the current rate case.

These movants have sought to be candid with the Commission in their November 8th and subsequent motions concerning the relitigation of these issues. Those motions, at base, are simply seeking enforcement of the Commission’s own decision embodied in the August 23 Order. These parties also have reasonably relied both upon the agreement of Staff and OPC to the spin-off and separate treatment of the “384” case and the Commission’s August 23 Order. We have not ignored that order, indeed the Commission was apparently so concerned to forestall exactly the argument that Staff and OPC are now making that it directed that all parties to this rate case were to be made parties to the “384” case and that they would there have their opportunity to litigate class cost of service issues in that proceeding.

These movants are entitled to a timely ruling on their motions. The Commission may believe that it can avoid the problem by “taking them with the case,” but this is like telling a criminal defendant that their motion to quash an indictment will be ruled upon after the jury’s verdict has been received. Either the Commission meant what it said in

its August 23 Order, or it did not. Much is made of Commission orders not having precedential effect, but we are not aware of any such argument being made regarding a procedural order in a pending case (the August 23 Order was issued in both cases) in which the Commission determines that a prior order on which parties have reasonably relied upon should be disregarded without providing them with sufficient time to prepare their opposing cases and assure that they are provided due process. Notably neither Staff nor OPC cites such a case.

Wherefore we request that the Commission grant this Motion to Strike the surrebuttal testimony of James Watkins and also grant the previously filed motions to strike or grant a four week delay in the proceeding to allow adequate time to for us to respond to Staff's and OPC's testimony on class cost of service issues.

Respectfully submitted,

/s/ Craig Paulson

CRAIG PAULSON, Major, USAF  
Utility Litigation and Negotiation Attorney  
For Federal Executive Agencies  
Telephone: (850) 283-6350  
FAX: (850) 283-6219  
e-mail: [craig.paulson@tyndall.af.mil](mailto:craig.paulson@tyndall.af.mil)  
TX Atty #24030340  
MN Atty# 0164823

FINNEGAN, CONRAD & PETERSON, L.C.

/s/ Stuart W. Conrad

Stuart W. Conrad Mo. Bar #23966  
3100 Broadway, Suite 1209

Kansas City, Missouri 64111  
(816) 753-1122  
Facsimile (816)756-0373  
Internet: stucon@fcplaw.com  
ATTORNEY FOR SEDALIA INDUSTRIAL  
ENERGY USERS' ASSOCIATION and AGP

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