

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Tariff Revisions Filed by Aquila, Inc.,)	
d/b/a Aquila Network – L&P Designed to Continue)	<u>Case No. EO-2007-0427</u>
and Expand its Fixed Bill Pilot Program)	Tariff No. YE-2007-0794

ORDER APPROVING TARIFF

Issue Date: May 14, 2007

Effective Date: June 1, 2007

On May 3, 2007, Aquila, Inc., d/b/a Aquila Network – L&P, filed tariff sheets to continue the effective date of its Fixed Bill Pilot Program from May 31, 2007 to May 31, 2008. If approved, these tariffs would continue the program for current customers while the Commission considers Aquila's proposed modification of the program in Case No. EO-2007-0395.

The tariffs bear an effective date of June 2, 2007; however, Aquila requests that the Commission issue an order no later than May 16, allowing the sheets to become effective on June 1. As to good cause, Aquila states that it needs an order dated May 16 or earlier to allow for sufficient time to contact subscribers and determine program participation without creating undue hardship on those subscribers. Further, Aquila states it filed its tariff sheets as soon as possible after ascertaining the necessity to avoid an unintended program lapse.

On May 9, the Staff of the Commission filed its Recommendation. Staff recommends that the Commission approve the tariff sheets, and agrees that continuation of the existing program is good cause to allow the tariff sheets to become effective on less than 30 days' notice. Both Aquila and Staff point out that the good-cause treatment Aquila seeks is for the tariff sheets to become effective on 29 days' notice.

Section 393.140 RSMo states that the Commission “for good cause shown” may approve changes in rates without the customary 30 days’ notice. The language of the statute makes two things plain – and both are discretionary determinations. First, the movant must show good cause, which “lies largely in the discretion of the officer or court to which the decision is committed” and “depends upon the circumstances of the individual case.”¹ Second, even if the movant makes such a showing, the Commission still may or may not grant the requested relief.²

Although the term “good cause” is frequently used in the law,³ the statute does not define it. Therefore, it is appropriate to resort to the dictionary to determine its ordinary meaning.⁴ As used in Section 393.140, good cause means a “[l]egally sufficient ground or reason.”⁵ Thus, to constitute good cause, the ground or reason given “must be real not imaginary, substantial not trifling, and reasonable not whimsical.”⁶ And some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.⁷

Applying these principles, the Commission finds good cause to approve the tariff sheets on less than 30 days’ notice. Aquila filed its tariff sheets as soon as possible after ascertaining the necessity to avoid an unintended program lapse, and had the opportunity

¹ *Wilson v. Morris*, 369 S.W.2d 402, 407 (Mo. 1963); *Matter of Seiser*, 604 S.W.2d 644, 646 (Mo. App. E.D. 1980).

² See *Torrington Co. v. U.S.*, 832 F.Supp. 379, 385 (Ct. Int’l Trade 1993) (existence of one or more factors constituting “good cause” does not compel grant of requested relief).

³ *State v. Davis*, 469 S.W.2d 1, 5 (Mo. 1971).

⁴ See *State ex rel. Hall v. Wolf*, 710 S.W.2d 302, 303 (Mo. App. E.D. 1986) (in absence of legislative definition, court used dictionary to ascertain the ordinary meaning of the term “good cause” as used in a Missouri statute); *Davis*, 469 S.W.2d at 4-5 (same).

⁵ *Black’s Law Dictionary* 692 (6th ed. 1990).

⁶ *Belle State Bank v. Indus. Comm’n*, 547 S.W.2d 841, 846 (Mo. App. S.D. 1977). See also *Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).

⁷ See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975); *Havrisko v. U.S.*, 68 F.Supp. 771, 772 (E.D.N.Y. 1946); *The Kegums*, 73 F.Supp. 831, 832 (S.D.N.Y. 1947).

to discuss the sheets with Staff before filing them. The sheets would simply continue an existing program. Staff does not object to the good-cause approval. Finally, Aquila is asking for approval of the sheets on 29 days' notice rather than 30 days, a mere one day earlier than would be allowed without a good-cause finding.

The Commission has reviewed the tariff sheets and the Staff Recommendation. The Commission will approve the tariff sheets and allow them to become effective June 1, 2007.

IT IS ORDERED THAT:

1. The following tariff sheets in Tariff No. YE-2007-0794 issued May 3, 2007, are hereby approved to become effective on June 1, 2007:

P.S.C. MO. No. 1

2nd Revised Sheet No. 37, Canceling 1st Revised Sheet No. 37
2nd Revised Sheet No. 38, Canceling 1st Revised Sheet No. 38
2nd Revised Sheet No. 39, Canceling 1st Revised Sheet No. 39

2. This order shall become effective on June 1, 2007.
3. This case may be closed on June 2, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Ronald D. Pridgin, Senior Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 14th day of May, 2007.