

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

In the Matter of Aquila, Inc., d/b/a Aquila	)	
Networks-MPS and Aquila Networks-L&P	)	
for Authority to Implement Rate Adjustments	)	<b><u>Case No. EO-2008-0216</u></b>
Required By 4 CSR 240-20.090(4) and the	)	
Company's Approved Fuel and Purchased	)	
Power Cost Recovery Mechanism	)	

**APPLICATION FOR REHEARING AND REQUEST FOR STAY**

COMES NOW the Office of the Public Counsel and for its Application for Rehearing and Request for Stay states as follows:

1. On February 14, 2008, the Commission issued its Order Approving Tariff to Establish Rate Schedules for Fuel Adjustment Clause ("the Order") in this case. The Order is unjust, unreasonable, arbitrary and capricious, and unlawful for the following reasons.

2. On May 17, 2007, the Commission issued its Report and Order in Case No. ER-2007-0004. In that Report and Order, the Commission authorized Aquila to file tariffs in compliance with that Report and Order, including fuel adjustment clause tariffs. It specifically rejected the then-pending FAC tariffs. The tariffs or rate schedules implementing the FAC (FAC Rate Schedules) were approved in an order effective July 5, 2007.

3. There were more than a dozen pleadings concerning the FAC Rate Schedules filed between the Report and Order and the approval of the FAC Rate Schedules, including several FAC Rate Schedules that were rejected by the Commission. The Staff and Aquila spent countless hours fighting over how to develop FAC Rate Schedules that would comply with the Commission's FAC rules, the statutes, and the

Report and Order. Only after the Commission resolved some of the issues and Staff and Aquila resolved the rest were FAC Rate Schedules approved. In this instance at least the tariff approval process was not simply a “ministerial act.” It had the unusual, if not unprecedented, outcome of having the Commission initially approving only a portion of the utility’s compliance tariffs. The FAC Rate Schedules were not approved until more than a month later. If the Report and Order truly did all the heavy lifting in creating a Rate Adjustment Mechanism (RAM), all the post-Report and Order wrangling would not have been necessary. But in this instance, while the Commission generally authorized a fuel adjustment clause in the Report and Order, the particulars of the RAM were not established until the Commission approved the FAC Rate Schedules in its June 29, 2007 order. The Commission erred in characterizing the Report and Order as the point at which the RAM was approved and the tariff approval process as simply a “ministerial act.”

4. The Commission erred in approving an accumulation period beginning on June 1, 2007 because the FAC Rate Schedules were not approved until July 5, 2007. The Commission’s decision is contrary to both 4 CSR 240-20.090(1)(I) and the long-standing principle that the Commission’s decisions can only have prospective effect.

5. The Commission erred in finding that its “decision whether to approve or reject that [December 28, 2007] tariff must turn on an interpretation of the meaning of the Commission’s regulation [4 CSR 240-20.090(1)(I)].” While that regulation is certainly important, it is not the only consideration. The Commission’s approval, in addition to being contrary to the regulation, necessarily ascribes retroactive effect to the FAC Rate Schedules. The Commission has only those powers conferred upon it by the legislature,

and the legislature has not conferred the power to make rate schedules apply retroactively.

5. The Commission erred in concluding that the May 17, 2007 Report and Order was the point at which a RAM was approved. Such a conclusion is directly contrary to Sections 386.266.1 and 386.266.4 RSMo Cum. Supp. 2007 which condition the use of a RAM on the approval of “rate schedules.” The FAC Rate Schedules were not approved until July 5, 2007 and so Aquila’s use of a RAM must necessarily start at some point after July 5, 2007. If the legislature had intended a RAM to begin after the general approval in a Report and Order rather than after specific “rate schedules” were approved, the legislature could have so provided. But it did not.

WHEREFORE, Public Counsel respectfully requests that the Commission grant rehearing of its February 14, 2008, Order Approving Tariff to Establish Rate Schedules for Fuel Adjustment Clause.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

**/s/ Lewis R. Mills, Jr.**

By:\_\_\_\_\_

Lewis R. Mills, Jr. (#35275)

Public Counsel

P O Box 2230

Jefferson City, MO 65102

(573) 751-1304

(573) 751-5562 FAX

[lewis.mills@ded.mo.gov](mailto:lewis.mills@ded.mo.gov)

## **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been emailed to all parties this 29th day of February 2008.

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

Shelley Syler  
Missouri Public Service Commission  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
shelley.syler@psc.mo.gov

John B Coffman  
AARP  
871 Tuxedo Blvd.  
St. Louis, MO 63119-2044  
john@johncoffman.net

David Woodsmall  
AG Processing, Inc  
428 E. Capitol Ave., Suite 300  
Jefferson City, MO 65102  
dwoodsmall@fcplaw.com

Stuart Conrad  
AG Processing, Inc  
3100 Broadway, Suite 1209  
Kansas City, MO 64111  
stucon@fcplaw.com

James B Lowery  
AmerenUE  
111 South Ninth St., Suite 200  
P.O. Box 918  
Columbia, MO 65205-0918  
lowery@smithlewis.com

Renee Parsons  
Aquila Networks  
20 West 9th Street  
Kansas City, MO 64105  
renee.parsons@aquila.com

Dean L Cooper  
Aquila Networks  
312 East Capitol  
P.O. Box 456  
Jefferson City, MO 65102  
dcooper@brydonlaw.com

Diana C Carter  
Aquila Networks  
312 E. Capitol Avenue  
P.O. Box 456  
Jefferson City, MO 65102  
DCarter@brydonlaw.com

James C Swearengen  
Aquila Networks  
312 East Capitol Avenue  
P.O. Box 456  
Jefferson City, MO 65102  
LRackers@brydonlaw.com

Paul A Boudreau  
Aquila Networks  
312 East Capitol Avenue  
P.O. Box 456  
Jefferson City, MO 65102  
PaulB@brydonlaw.com

Russell L Mitten  
Aquila Networks  
312 E. Capitol Ave  
P.O. Box 456  
Jefferson City, MO 65102  
rmitten@brydonlaw.com

Mark W Comley  
City of Kansas City, Missouri  
601 Monroe Street., Suite 301  
P.O. Box 537  
Jefferson City, MO 65102-0537  
comley@ncrpc.com

Mary Ann Young  
City of St. Joseph, Missouri  
2031 Tower Drive  
P.O. Box 104595  
Jefferson City, MO 65110-4595  
myoung@wdspsc.com

William D Steinmeier  
City of St. Joseph, Missouri  
2031 Tower Drive  
P.O. Box 104595  
Jefferson City, MO 65110-4595  
wds@wdspsc.com

Jeremiah D Finnegan  
County of Jackson, Missouri  
3100 Broadway, Suite 1209  
Kansas City, MO 64111  
jfinnegan@fcplaw.com

Major Frank Hollifield  
Federal Executive Agencies  
AFCEA/ULT  
139 Barnes Drive, Suite 1  
Tyndall Air Force Base, FL 32403-5319  
frank.hollifield@tyndall.af.mil

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

David Woodsmall  
Sedalia Industrial Energy Users Association  
428 E. Capitol Ave., Suite 300  
Jefferson City, MO 65102  
dwoodsmall@fcplaw.com

Stuart Conrad  
Sedalia Industrial Energy Users Association  
3100 Broadway, Suite 1209  
Kansas City, MO 64111  
stucon@fcplaw.com

Koriambanya S Carew  
The Commercial Group  
2400 Pershing Road, Suite 500  
Crown Center  
Kansas City, MO 64108  
carew@bscr-law.com

Rick D Chamberlain  
The Commercial Group  
6 NE 63rd Street, Ste. 400  
Oklahoma City, OK 73105  
rdc\_law@swbell.net

**/s/ Lewis R. Mills, Jr.**

By: \_\_\_\_\_