

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 14<sup>th</sup> day of  
February, 2008.

In the Matter of Aquila, Inc., d/b/a Aquila	)	
Networks – MPS and Aquila Networks – L&P for	)	
Authority to Implement Rate Adjustments Required	)	<b><u>Case No. EO-2008-0216</u></b>
By 4 CSR 240-20.090(4) and the Company's	)	Tariff No. YE-2008-0402
Approved Fuel and Purchased Power Cost	)	
Recovery Mechanism	)	

**ORDER APPROVING TARIFF TO ESTABLISH RATE SCHEDULES FOR  
FUEL ADJUSTMENT CLAUSE**

Issue Date: February 14, 2008

Effective Date: March 1, 2008

On December 28, 2007, Aquila, Inc., d/b/a Aquila Networks-MPS and Aquila Networks-L&P, submitted a tariff designed to establish rate schedules related to Aquila's approved Fuel Adjustment Clause (FAC). That tariff carries an effective date of March 1, 2008. The Commission's rule regarding FACs requires the Commission to either approve or reject the company's tariff within 60 days of its filing.<sup>1</sup> To that end, the rule requires the Commission's Staff to submit a recommendation within 30 days regarding its examination and analysis of whether the proposed FAC tariff complies with applicable statutes, regulations, and the company's approved FAC mechanism.<sup>2</sup> On January 29, Staff filed its recommendation advising the Commission to approve Aquila's tariff.

On February 8, the Office of the Public Counsel, AG Processing, Inc., and Sedalia Industrial Energy Users' Association jointly filed a motion urging the Commission to reject

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<sup>1</sup> 4 CSR 240-20.090(4).

<sup>2</sup> Id.

Aquila's proposed tariff. The Commission ordered that any party wishing to respond to the motion to reject Aquila's tariff do so no later than February 13. Aquila and Staff filed responses on February 13.

The motion asking the Commission to reject Aquila's tariff is based entirely on an interpretation of a section of the Commission's rule that implements the statutory provision that permits consideration of an FAC. The Commission Rule regarding FAC mechanisms defines a True-Up Year as "the twelve (12) month period beginning on the first day of the first calendar month following the effective date of the commission order approving a RAM ...."<sup>3</sup> Aquila's tariff uses an initial fuel and purchased power cost accumulation period of six months, beginning on June 1, 2007, and running through November 30, 2007.

Aquila's use of a June 1 beginning date for accumulating costs assumes the controlling Commission order approving the company's FAC is the Report and Order that resolved Aquila's rate case and defined the parameters of the FAC that the Commission would allow Aquila to include in its tariffs.<sup>4</sup> That Report and Order became effective on May 27, 2007, so the first day of the first calendar month following would be June 1, 2007.

The parties that urge the Commission to reject Aquila's tariff contend the Commission order establishing the date for beginning the accumulation of costs is not the Report and Order, but rather the order approving Aquila's tariff describing the details of its FAC.<sup>5</sup> That order became effective on July 5, 2007, so the first day of the first calendar month following would be August 1, 2007. On that basis, the moving parties contend

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<sup>3</sup> 4 CSR 240-20.090(1)(I). A RAM, or rate adjustment mechanism, as used in the rule, refers to either a FAC or an interim energy charge. The Commission's rule detailing the filing and submission requirements for a utility's submission of an FAC, 4 CSR 240-3.161(1)(G), includes the same definition of True-Up Year.

<sup>4</sup> *Report and Order*, Case No. ER-2007-0004, issued May 17, 2007.

<sup>5</sup> *Order Granting Expedited Treatment and Approving Tariff Sheets*, Case No. ER-2007-0004, issued June 29, 2007.

Aquila's tariff improperly attempts to recover costs incurred in June and July 2007, and should be rejected.

There is no factual dispute between the parties about Aquila's tariff. Essentially, the Commission's decision whether to approve or reject that tariff must turn on an interpretation of the meaning of the Commission's regulation. As previously indicated, the key regulatory provision is the definition of True-Up Year which states that the true-up year, meaning the period for which the company can accumulate costs, begins on the first day of the first month following the effective date of the commission order that approves the FAC. If Aquila and Staff are correct, Aquila will be able to recover costs accumulated in June and July 2007. If the parties that oppose the tariffs are correct, the accumulation and recovery of costs cannot begin until August 1.

This is the first interim rate adjustment to a FAC under these regulations so the Commission has no prior decisions to guide it. However, in considering the meaning of its regulation, the Commission must follow the guiding principles expressed in the statute that authorizes the use of an FAC. Section 386.266.4 states that the Commission may approve an FAC if it finds that "the adjustment mechanism set forth in the schedules: (1) Is reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity." Following that principle, the Commission must attempt to reach a resolution that is fair to both the utility and its ratepayers.

In its Report and Order, the Commission set out in detail the parameters of the FAC that Aquila would be allowed to implement. In that Report and Order, the Commission made difficult factual, legal, and policy decisions about the nature of an appropriate FAC. The subsequent submission and approval of tariffs consistent with that Report and Order is

more or less a ministerial act of less significance. Therefore, it makes more sense to interpret the regulation to tie the beginning date of the cost accumulation period to the issuance of the Report and Order than to the issuance of the subsequent order approving a tariff in compliance with the Report and Order.

This interpretation of the definition in the regulation also allows Aquila to recover costs for two months that it would otherwise not be able to recover. That recovery is consistent with the decisions reached by the Commission in its Report and Order that allowed for the recovery of those costs to give Aquila a “sufficient opportunity to earn a fair return on equity.” This interpretation is also consistent with Aquila’s approved tariff, which sets a recovery period beginning on June 1.

The Commission interprets its regulation as establishing a recovery period beginning on the first day of the first month following the Report and Order, and not following the approval of the implementing tariff. The motion to suspend will be denied and the tariff will be approved.

**IT IS ORDERED THAT:**

1. The Motion to Reject Tariffs filed by the Office of the Public Counsel, AG Processing, Inc. and Sedalia Energy Users’ Association is denied.
2. The tariff issued on December 28, 2007, by Aquila, Inc., d/b/a Aquila Networks-MPS and Aquila Networks-L&P, and assigned Tariff No. YE-2008-0402, is approved to be effective March 1, 2008. The tariff approved is:

**P.S.C. MO No 1**

1<sup>st</sup> Revised Sheet No. 127, Canceling Original Sheet No. 127

3. This order shall become effective on March 1, 2008.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale  
Secretary

(S E A L)

Davis, Chm., Murray, Appling, and  
Jarrett, CC., concur.  
Clayton, C., dissents.

Woodruff, Deputy Chief Regulatory Law Judge