

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

Cochran Development, Inc. d/b/a,	)	
Expressways Food Shops,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. EC-2005-0004
	)	
Aquila, Inc.,	)	
	)	
Respondent.	)	

**AQUILA’S ANSWER TO COMPLAINT  
AND MOTION TO DISMISS**

COMES NOW Aquila, Inc. (“Aquila”), by and through its counsel, and, pursuant to 4 CSR 240-2.070, respectfully states the following to the Missouri Public Service Commission (“Commission”) as its answer to the Complaint filed by Cochran Development, Inc. d/b/a Expressways Food Shops (“Expressway”) and motion to dismiss:

1. Aquila admits that Complainant is a Missouri corporation. Aquila further states that such corporation is not in good standing having been administratively dissolved as of June 24, 2004. Aquila is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in paragraph one (1), and therefore denies the same.

2. Aquila admits that it is a public utility subject to the jurisdiction of the Commission, as provided by law.

3. Aquila admits that it provided electric service to Expressway at 221 E. Young Avenue, Warrensburg, Missouri, during the period relevant to this Complaint. Aquila further states that Expressway is not a residential customer.

4. Aquila admits that its meter for electric service provided to 221 E. Young Avenue incorrectly registered usage during a fifteen month period from April 2002, through June 2003. During the disputed period, the meter for Expressway registered 34,560 Kwh of electricity usage. During the like fifteen month period that Aquila used to re-bill Expressway (April 2000, through June 2001), the meter registered 264,800 Kwh of electricity usage. Aquila used 95% of this like period usage (251,560 Kwh) to calculate Expressway's adjusted bill. Aquila admits that it has sought payment from Expressway for an underpayment in the amount of \$7,016.78. Aquila admits that it has utilized some of the collection procedures authorized by its approved tariffs, to include notice of possible discontinuance of electric service.

5. Aquila admits that Expressway has, through contact with an Aquila employee and an attorney on behalf of Aquila, offered to settle this matter by payment of approximately fifty percent (50%) of the amount sought by Aquila. Aquila admits that the parties have not agreed to a settlement of this matter.

6. Except as expressly admitted in this answer, Aquila denies each and every other allegation contained in Complainants' Complaint.

#### **FIRST AFFIRMATIVE DEFENSE**

7. Further answering and for its first affirmative defense, Respondent states that the Complaint fails to state a claim upon which relief may be granted in that Expressway fails to allege any violation of any provision of law, or of any rule or order or decision of the Commission and the Complaint therefore does not comply with Section 386.390, RSMo and does not invoke the Commission's jurisdiction.

## **SECOND AFFIRMATIVE DEFENSE**

8. Further answering, and for its second affirmative defense, Aquila states that it has acted in accordance with its tariffs and the law.

9. Section 5.04A(2) of Aquila's Electric Rules and Regulations (Prior to April 22, 2004, Sheet R-25; currently, Sheet R-33) states, in part, as follows as to customers other than residential:

In the event of an undercharge, an adjustment shall be made for the entire period that the undercharge can be shown to have existed not to exceed sixty (60) consecutive billing periods, calculated from the date of discovery, inquiry or actual notification [of Missouri Public Service] [of Company], which ever was first.

10. Section 5.04E of Aquila's Electric Rules and Regulations (Prior to April 22, 2004, Sheet R-25; currently, Sheet R-33) further states as follows:

When the customer has been undercharged, . . . and a billing adjustment is made, the customer may elect to pay the amount of the adjustment in equal installments over a period not to exceed the period for which the billing adjustment was applicable.

11. Commission Rule 4 CSR 240-10.040(5) states in relevant part that "each utility shall adjust customer's bills for incorrect meter readings or improper meter registration in a reasonable and equitable manner consistent with the rules which it has on file with the commission."

12. As stated above, during the fifteen month disputed period, April 2002, through June 2003, Expressway's meter registered 34,560 Kwh of electricity usage while it registered 264,800 Kwh of electricity usage during a like fifteen month period from April 2000, through June 2001. Aquila routinely calculates re-bills by taking like periods and then discounting the usage by 5%. This same method was applied to Expressway in that the 264,800 Kwh was reduced to 251,560 Kwh

(95%) for re-billing purposes. The 251,560 Kwh was then spread over the disputed months using trend tables that take into account weather for that particular service area. This use of historical data, discounting and trending is Aquila's normal practice for re-billing customers.

13. The amount Aquila has re-billed Expressway for the disputed period is approximately 85% of the amount paid by Expressway over the like time period described above. The amount paid by Expressway during the period April 2000, through June 2001 was \$16,905.59. The amount paid by Expressway during the disputed period was \$7,306.55. The re-bills for the disputed period total \$14,323.33, thereby, Aquila has billed Expressway for an undercharge of \$7,016.78. Aquila has offered to allow Expressway to pay for this undercharge over a fourteen month period, without interest.

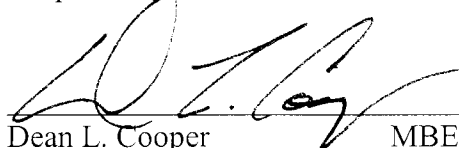
14. Aquila has computed this undercharge adjustment in a "reasonable and equitable manner" and has proposed payment terms that are in accordance with its tariff provisions. Aquila has therefore acted in accordance with its tariffs and the law.

#### **MOTION TO DISMISS**

15. Aquila moves the Commission to dismiss the Complaint upon the bases stated in the above affirmative defenses.

WHEREFORE, having fully answered and set forth its affirmative defenses, Respondent Aquila, Inc. prays the Commission dismiss Respondent's Complaint and enter such other orders and relief as the Commission deems reasonable and just.

Respectfully submitted,



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ATTORNEYS FOR AQUILA, INC.

### CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail or by U.S. Mail, postage prepaid, on August 6, 2004, to the following:

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