

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 23rd day
of August, 2005.

In the Matter of an Examination of Class Cost)
of Service and Rate Design in the Missouri)
Jurisdictional Electric Service Operations of)
Aquila, Inc., formerly known as UtiliCorp)
United Inc.)

Case No. EO-2002-384

In the Matter of the Tariff Filing of Aquila, Inc.,)
to Implement a General Rate Increase for)
Retail Electric Service Provided to Customers)
in its MPS and L&P Missouri Service Areas.)

Case No. ER-2005-0436
Tariff No. YE-2005-1045

**ORDER REGARDING CONSOLIDATION
AND PROCEDURAL SCHEDULE**

Issue Date: August 23, 2005

Effective Date: August 23, 2005

Procedural History and Positions of the Parties:

Case No. EO-2002-384 was opened on February 21, 2002, as a "spin-off docket" in which to examine class-cost-of-service and rate design in the Missouri service areas of UtiliCorp United Inc., as Aquila was then known.¹ At that time, UtiliCorp had only one Missouri service area and operated there as "Missouri Public Service." UtiliCorp has since changed its name to Aquila,² purchased St. Joseph Light and Power Company, and now

¹ *In the Matter of the Tariff Filing of Missouri Public Service (MPS), a Division of UtiliCorp United Inc., to Implement a General Rate Increase for Retail Electric Service Provided to Customers in the Missouri Service Area of MPS*, Case No. ER-2001-672 (*Order Approving Stipulation and Agreement*, issued Feb. 21, 2002).

² *In the Matter of the Application of UtiliCorp United Inc., a Delaware Corporation, for Authority to Merge to Effect a Name Change*, Case No. EM-2002-297 (*Order Approving Merger*, issued February 21, 2002); *In the Matter of the Name Change of Aquila, Inc. (f/k/a UtiliCorp United Inc.), d/b/a Aquila Networks - MPS (f/k/a Missouri Public Service)*, Case No. EO-2002-450 (*Order Recognizing Change of Corporate Name and Order Approving Adoption Notices*, issued on April 16, 2002).

operates in two Missouri service areas.³ A subsequent rate case was filed, determined and closed,⁴ and now another rate case is pending, Case No. ER-2005-0436.⁵

On July 8, 2005, Intervenor the Sedalia Industrial Energy Users Association ("SIEUA") and the Federal Executive Agencies ("FEA") moved for the establishment of a procedural schedule in Case No. EO-2002-384.⁶ On the same day, Aquila concurred in the motion. The stated purpose of the motion filed by SIEUA and FEA is to "permit the results and Commission determinations to be incorporated into the tariffs resulting from [Aquila's now-pending rate case, Case No. ER-2005-0436,] in a timely fashion so that revenue-neutral-class shifts can first be identified and then combined with any revenue changes ordered by the Commission from the rate case proceedings and implemented consistent with the operation of law date for the pending rate case." The movants assert that a class-cost-of-service study is best conducted "independent of the contentious issues and press of time that often accompanies a rate case and that tend to deflect attention from class cost issues and prevent full consideration of them." The movants propose an

³ *In the Matter of the Joint Application of UtiliCorp United Inc. and St. Joseph Light & Power Company for Authority to Merge St. Joseph Light & Power Company with and into UtiliCorp United Inc., and, in Connection Therewith, Certain Other Related Transactions*, Case No. EM-2000-292 (*Report & Order*, issued December 14, 2000). This decision was reversed and remanded by the Missouri Supreme Court on October 28, 2003, *St. ex rel. AG Processing, Inc. v. Pub. Serv. Comm'n of the State of Missouri*, 120 S.W.3d 732 (banc 2003). Aquila acquired SJL&P prior to the effective date of the order in Case No. ER-2001-672, but originally operated each service area separately as a "stand-alone" utility.

⁴ *In the Matter of the Request of Aquila, Inc., d/b/a Aquila Networks – L&P and Aquila Networks – MPS, to implement a General Rate Increase in Electric Rates*, Case No. ER-2004-0034; closed, December 6, 2004. This case was settled by Stipulation & Agreement in April 2004.

⁵ *In the Matter of the Tariff Filing of Aquila, Inc., to Implement a General Rate Increase for Retail Electric Service Provided to Customers in its MPS and L&P Missouri Service Areas*, Case No. ER-2005-0436; filed, May 24, 2005.

⁶ The other parties to Case No. EO-2002-384, in addition to the Commission's Staff, the Public Counsel and Aquila itself, are AG Processing, Inc., the City of Kansas City and Jackson County.

expedited procedural schedule culminating in an evidentiary hearing in the first half of November 2005:

Procedural Schedule Proposed by SIEUA and FEA	
Date	Activity
08-29-05	Aquila provides proposed rate structure changes, billing units and related proof of revenue to all parties.
09-16-05	Direct Testimony, all parties.
09-26-05 through 09-28-05	Settlement Conference.
09-30-05	Preliminary List of Issues, filed.
10-14-05	Rebuttal Testimony, all parties.
10-28-05	Surrebuttal and Cross-Surrebuttal, all parties.
11-04-05	Prehearing Briefs, Position Statements, Order of Witnesses and Order of Cross-Examination, filed.
11-07-05 through 11-11-05	Evidentiary Hearing.
To Be Determined	Briefing Schedule.

On July 21, Staff filed its Motion for Procedural Schedule, Motion to Consolidate Case Nos. EO-2002-384 and ER-2005-0436, and Response to SIEUA's and FEA's Joint Motion for Procedural Schedule. Therein, Staff states:

Rate design proposals based on the results of detailed class cost-of-service studies and rate structure analysis are not usually included in general rate increase, or decrease, cases. In fact, they are not a part of Aquila's initial filing in Case No. ER-2005-0436, and were not included in its direct filings in at least its last two general electric rate increase cases - Case Nos. ER-2001-672 and ER-2004-0034. Aquila does not routinely develop the load data or perform the special cost studies that are required to develop detailed class cost-of-service studies. Nor does it develop the billing unit data required to analyze rate structure changes. Unlike those prior cases, this data is now, or shortly will be, available for Aquila's customers. The Staff believes it most economical for the parties and the Commission to consider class cost-of-service and rate structure recommendations in the context of Aquila's pending general electric rate case, Case No. ER-2005-0436, not separately.

Staff proposes to consolidate Cases EO-2002-384 and ER-2005-0436, and proposes a combined procedural schedule, as follows:

Procedural Schedule Proposed by Staff		
Date	Case	Activity
10-14-05	0436	Direct Testimony, filed – Revenue Requirement (all Parties except Aquila).
10-20-05	0436	Reconciliation circulated to Parties.
10-28-05	0436 & 384	Direct Testimony, filed – Class-Cost-of-Service and Rate Design (All Parties).
10-31-05 through 11-04-05	0436 & 384	Settlement Conference.
11-04-05	0436 & 384	Preliminary List of Issues, filed.
11-07-05	0436 & 384	Local Public Hearing – Raytown.
11-09-05	0436 & 384	Local Public Hearing – St. Joseph.
11-18-05	0436 & 384	Rebuttal Testimony, filed (all Parties; 7 calendar day DR turnaround begins).
12-13-05	0436 & 384	Surrebuttal Testimony, filed (all Parties).
12-14-05	0436 & 384	List of Issues, filed.
12-16-05	0436 & 384	Reconciliation, filed. Prehearing Briefs, filed.
01-09-06 through 02-10-06	0436 & 384	Evidentiary Hearing.
To Be Determined	0436 & 384	Initial Briefs, filed.
02-23-06 through 02-24-06	0436 & 384	True-up Hearing.
To Be Determined	0436 & 384	Reply Briefs, filed.
To Be Determined	0436 & 384	Proposed Findings of Fact and Conclusions of Law, filed.
04-21-06	0436	Operation of Law Date.

In response to the motion filed by SIEUA and FEA, Staff states that their proposed procedural schedule does not allow Staff sufficient time to analyze Aquila's billing

determinants. Staff contends that it advised the parties on July 5 that it requires a minimum of 30 days to analyze Aquila's billing determinants and prepare direct testimony on rate design. Staff further states that one of the reasons that SIEUA and FEA desire to keep the two cases separate seems to be in order to exclude those intervenors in Case No. ER-2005-0436 that are not also parties to Case No. EO-2002-384 from any participation in the class-cost-of-service determination. Staff explains that keeping the cases separate would not achieve that goal because the parties in Case No. ER-2005-0436 have every right to challenge the class-cost-of-service study and the rate design proposals based on it. Thus, in Staff's view, the proposal of SIEUA and FEA would result in wasteful re-litigation of certain issues.

On July 26, Public Counsel concurred in Staff's proposal, stating:

Public Counsel supports Staff's motion to consolidate. Case No. EO-2002-384 has as its goal identifying needed or desirable rate design changes, including shifts in the relative responsibilities of various rate classes for Aquila's revenue requirement and changes in the make-up of rate classes. Case No. ER-2005-0436 is a general rate case, and as such necessarily encompasses an evaluation of all factors relevant to a determination of just and reasonable rates, including class costs of service and rate design. Both of these cases have the goal of establishing just and reasonable rates for all classes of customers. It is patently inefficient to consider class costs of service and rate design issues in EO-2002-384, and then do it over again in ER-2005-0436.

Also on July 26, Aquila responded to Staff's proposal. Aquila states that it opposes Staff's motion to consolidate because "the balancing of rate relationships and the elimination of any subsidies through a revenue neutral process is best handled in a proceeding which is independent of a rate proceeding." Aquila also opposes Staff's proposed procedural schedule and proposes a modified procedural schedule intended to

provide Staff with the 30-day interval it needs to analyze Aquila's billing determinants (modified dates shown in bold):

Procedural Schedule Proposed by Aquila	
Date	Activity
08-19-05	Aquila provides proposed rate structure changes, billing units and related proof of revenue to all parties.
09-19-05	Direct Testimony, all parties.
09-26-05 through 09-28-05	Settlement Conference.
09-30-05	Preliminary List of Issues, filed.
10-14-05	Rebuttal Testimony, all parties.
10-28-05	Surrebuttal and Cross-Surrebuttal, all parties.
11-04-05	Prehearing Briefs, Position Statements, Order of Witnesses and Order of Cross-Examination, filed.
11-07-05 through 11-11-05	Evidentiary Hearing.
To Be Determined	Briefing Schedule.

The original movants, SIEUA and FEA, replied to Staff on August 1. They state that they endorse the modified procedural schedule proposed by Aquila and continue to oppose Staff's motion to consolidate for the reasons already set out.

On August 19, Aquila filed its Notice and Renewal of Request to Establish Procedural Schedule. Therein, Aquila states that it has provided its billing determinants, proposed rate structure changes and related proof of revenue to all parties on August 19 as called for in its proposed procedural schedule filed on July 26.

Discussion:

Case No. EO-2002-384 has been pending for a long time, since February 21, 2002. Efforts to push it to an earlier resolution were fruitless.⁷ Its purpose is a comprehensive examination of the costs involved in serving Aquila's various electric service customer classes and identifying any adjustments necessary to match costs with revenues and eliminate any subsidies. The centerpiece of this effort is the class-cost-of-service study, in which the Company's historical billing data and operating costs are mathematically analyzed. A class-cost-of-service study is an equitable, mathematically-based method of determining the percentage of operating costs which each utility customer must pay through rates on the principle of matching costs to the customers who cause those costs. Utility customers are generally grouped into classes based on shared characteristics and the utility's operating costs are then either directly assigned to a class, where possible, or allocated using reasonable methods to reflect class responsibility. The process is complex and can be contentious.

Having considered the points raised by the parties, the Commission agrees with SIEUA, FEA and Aquila that the best course would be to resolve this class-cost-of-service case separately from the rate case now pending. That will permit the class-cost-of-service issues and rate design issues to be resolved separately from the revenue requirement issues that generally receive most of the attention in a rate case. It will also reduce the number of issues to be presented and determined in the rate case. For these reasons, the Commission will deny Staff's motion to consolidate Cases EO-2002-384 and ER-2005-0436

⁷ These are summarized in this order, *In the Matter of an Examination of Class Cost of Service and Rate Design in the Missouri Jurisdictional Electric Service Operations of Aquila, Inc., formerly known as UtiliCorp United, Inc.*, Case No. EO-2002-384 (Order Directing Filing, issued March 18, 2005).

and will adopt a somewhat modified version of the procedural schedule proposed by Aquila on July 26.⁸

The parties have raised the possibility of the re-litigation in the rate case of issues determined in Case EO-2002-384. To address that possibility, and as a matter of simple fairness, the Commission will simply add all of the parties to Case No. ER-2005-0436 – the rate case – to Case EO-2002-384. They will thus have an opportunity to litigate any class-cost-of-service and rate design issues that they care to and they will be bound by the result.

Conditions:

The Commission finds that the following conditions should be applied to the procedural schedule:

(A) All testimony, pleadings and other formal case papers filed by any party must also be provided directly to the Regulatory Law Judge. The filing party must provide one (1) paper copy of each filed item to the Regulatory Law Judge for his use, as well as an editable electronic copy in Word or Word Perfect format. The electronic copy should be e-mailed directly to the Regulatory Law Judge at kevin.thompson@psc.mo.gov. Every item filed that is longer than five (5) pages in length must be prefaced with a succinct executive summary that fairly summarizes its contents. All pleadings, briefs and amendments shall be filed in accordance with Rule 4 CSR 240-2.080.

(B) The Commission will require the prefiling of testimony as defined in 4 CSR 240-2.130. All parties shall comply with this rule, including the requirement that testimony be filed on line-numbered pages. The practice of prefiling testimony is designed to give parties notice of the claims, contentions and evidence in issue and to avoid unnecessary

⁸ This resolution will require a modification to the procedural schedule already established in Case No. ER-2005-0436, because it will not be possible to hold the Local Public Hearings on November 7 and 9.

objections and delays caused by allegations of unfair surprise at the hearing. Copies of the work papers of each witness must be served on every party within three (3) working days of the filing of the prefiled testimony of the witness.

(C) The parties shall provide a copy of each Data Request propounded to every other party. Beginning on the effective date of this order, and continuing until this case is finally resolved, a party shall have only seven (7) calendar days after receipt to respond to a Data Request, and only seven (7) calendar days from receipt to serve all of the objections or reasons for its inability to answer in writing upon the requesting party.

(D) The parties shall agree on and file a list of issues to be determined herein by the Commission. Staff shall be responsible for actually drafting and filing the list of issues and the other parties shall cooperate with Staff in the development thereof. Any issue not included in the issues list will be presumed to not require determination by the Commission.

(E) Each party shall file a list of the witnesses to appear on each day of the hearing and the order in which they shall be called. The parties shall establish the order of cross-examination and opening statements and shall file a joint pleading indicating the same.

(F) All pleadings, briefs and amendments shall be filed in accordance with 4 CSR 240-2.080.

(G) All parties are required to bring an adequate number of copies of exhibits which they intend to offer into evidence at the hearing. If an exhibit has been prefiled, only one copy of the exhibit is necessary for the court reporter. If an exhibit has not been prefiled, the party offering it should bring, in addition to the copy for the court reporter, copies for the five Commissioners, the Regulatory Law Judge, and all counsel.

(H) Each party shall prepare and file Proposed Findings of Fact and Conclusions of Law as directed by the procedural schedule adopted by this order or by a subsequent briefing schedule. Each proposed finding of fact shall be supported by citations to the pertinent portion of the record. Each proposed conclusion of law shall be supported by citations to pertinent authorities.

(I) Because much of the evidence will have been filed before the hearing, the Commission will require prehearing briefs that address all the issues in dispute and all the relevant prefiled testimony. The briefs to be submitted by the parties shall follow the same list of issues as filed in the case. The briefs must set forth and cite the proper portions of the record concerning the remaining unresolved issues that are to be decided by the Commission.

(J) Since the prehearing briefs will cover most of the record, posthearing briefs need not be lengthy and will be limited to ten pages. Posthearing briefs will update the prehearing briefs for new evidence adduced at the hearing.

(K) "Friendly" cross-examination shall not be permitted.

IT IS THEREFORE ORDERED:

1. That the Motion to Establish Procedural Schedule filed on July 8, 2005, by the Sedalia Industrial Energy Users' Association and the Federal Executive Agencies is granted as modified below.

2. That Staff's Motion for Procedural Schedule and Motion to Consolidate Case Nos. ER-2005-0436 and EO-2002-384, filed on July 21, 2005, is denied.

3. That the following entities, parties to Case No. ER-2005-0436, are made parties to Case No. EO-2002-384: AARP, Calpine Central, L.P., City of St. Joseph, The Empire District Electric Company, and the Missouri Department of Natural Resources.

The Commission's Data Center shall add their counsel, as shown on the service list maintained in Case No. ER-2005-0436, to the service list maintained in this case.

4. That the conditions set out above are adopted and the parties are directed to comply with them.

5. That the following procedural schedule is adopted:

Distribution of proposed rate structure changes, billing units and related proof of revenue to all parties Aquila	August 19, 2005 5:00 p.m.
Direct Testimony All Parties	September 19, 2005 4:00 p.m.
Settlement Conference All Parties	September 26 – September 28, 2005 10:00 a.m., GOB 305
List of Issues All Parties	September 30, 2005 4:00 p.m.
Rebuttal Testimony All Parties	October 14, 2005 4:00 p.m.
Surrebuttal and Cross-Surrebuttal Testimony All Parties	October 28, 2005 4:00 p.m.
Statements of Position, Witness List, Order of Cross-examination All Parties	November 4, 2005 4:00 p.m.
Prehearing Briefs All Parties	November 4, 2005 4:00 p.m.
Evidentiary Hearing All Parties	November 7 – November 10, 2005 9:00 a.m.

6. That Aquila, Inc., is directed to make all necessary arrangements for Local Public Hearings in Case No. ER-2005-0436 to be held in Raytown, Missouri, and St. Joseph, Missouri, between November 17, 2005, and November 23, 2005, inclusive,

preferably on Monday, Wednesday or Friday of that week. Aquila shall file a report of the arrangements in Case No. ER-2005-0436 when they are complete.

7. That this order shall become effective on August 23, 2005.

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, Clayton,
and Appling, CC., concur.
Gaw, C., dissents.

Thompson, Deputy Chief Regulatory Law Judge