

**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)
Required by 4 CSR 240-20.090(4) and the)
Company's Approved Fuel and Purchased)
Power Cost Recovery Mechanism.)

Case No. EO-2008-0216

**STAFF RECOMMENDATION TO APPROVE TARIFF SHEET
AND MOTION FOR LEAVE TO FILE OUT OF TIME**

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through counsel, and for its *Recommendation to Approve Tariff Sheet* states the following to the Missouri Public Service Commission ("Commission"):

1. On *December* 28, 2007, Aquila, Inc. d/b/a Aquila Networks - MPS and Aquila Networks - L&P ("Aquila") filed a tariff sheet to establish rate schedules to make a semi-annual adjustment to customer rates based on Aquila's approved Fuel Adjustment Clause ("FAC"). The filing was pursuant to the Commission's *Report and Order* in Aquila's last general rate increase proceeding, Case No. ER-2007-0004, in which the Commission authorized the FAC. Included with Aquila's filing was a *Motion for Waiver* seeking relief from Commission Rule 4 CSR 240-3.161(5) because Aquila did not submit until December 2007 the monthly reports required by the rule.

2. Commission Rule 4 CSR 240-20.090(4) provides that the Staff "shall submit a recommendation regarding its examination and analysis to the Commission not later than thirty (30) days after the electric utility files its tariff schedules to adjust its FAC rates." Staff must determine if Aquila's proposed adjustment to the FAC is in accordance with 4 CSR 240-20.090, §386.266 RSMo, and the "FAC mechanism established in the most recent general rate proceeding." *Id.*

3. In the attached Memorandum (Appendix A), the Staff recommends that the Commission issue an interim rate adjustment order approving Aquila's Tariff Sheet, P.S.C. MO. No. 1, 1st Revised Sheet No. 127, as filed on December 28, 2007, to become effective on March 1, 2008, subject to true-up and prudence reviews. The Staff did not arrive at its recommendation without considerable deliberation.

4. As the Commission is aware, this is the first interim rate adjustment to a FAC in Missouri under §386.266 RSMo, and Commission Rules 4 CSR 240-20.090 and 3.161. Thus, this is the first time that the mechanics of the FAC, the FAC statute, the FAC tariffs and the FAC rules are being dealt with in a real world rather than a theoretical or conceptual situation.

5. Aquila's requested adjustment is based on an accumulation period (of eligible costs subject to subsequent recovery from or refund to customers) that commences on June 1, 2007. However, although the Staff herein recommends Commission approval of Aquila's request, a question arises as to whether June 1 is the proper accumulation period start date in this instance, or whether August 1, 2007 is proper. The Commission's rules may be susceptible of at least two interpretations.

6. The question of the accumulation start date relates to the contention that the rule language concerning the "true-up year" controls, and to which Commission order(s) approves a rate mechanism. Specifically, Commission Rules 4 CSR 240-3.161(1)(G) and 4 CSR 240-20.090(1)(I) provide the following definition:

True-up year means 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 unless the effective date is on the first day of the calendar month. If the effective date of the commission order approving a rate mechanism is on the first day of a calendar month, then the true-up year begins on the effective date of the commission order. The first annual true-up period shall end on the last day of the twelfth calendar month following the effective date of the commission order establishing the RAM. Subsequent true-up years shall be the

succeeding twelve (12)-month periods. If a general rate proceeding is concluded prior to the conclusion of a true-up year, the true-up year may be less than twelve (12) months.

7. If 4 CSR 240-3.161(1)(G) and 4 CSR 240-20.090(1)(I) control and “the commission order approving a rate mechanism” refers to the *Report and Order* (effective May 27, 2007), even in combination with the subsequent *Order Granting Expedited Treatment, Approving Certain Tariff Sheets and Rejecting Certain Tariff Sheets* (effective May 31, 2007), by which the tariff sheets establishing base rates were approved, then the June 1, 2007 commencement of the accumulation period proposed by Aquila clearly does not violate the subject rule provision, since both orders became effective in May of 2007. However, if 4 CSR 240-3.161(1)(G) and 4 CSR 240-20.090(1)(I) control and the Commission order referenced in the rule is the order that approved the actual FAC tariff sheets,¹ then August 1, 2007 arguably would be the proper commencement date for the accumulation period, since the FAC tariff sheet rate order (and the tariff sheets themselves) did not become effective until July 5, 2007.

8. At times prior to its December 28, 2007 tariff filing seeking the June 1 commencement date, Aquila itself clearly entertained the latter interpretation, indicating first a July 1 commencement date if Tariff Sheet Nos. 124-127 became effective after June 1, 2007, and then an August 1 commencement date if Tariff Sheet Nos. 124-127 became effective after July 1, 2007. The Commissioners will recall that in Case No. ER-2007-0004, it authorized non-FAC tariff sheets for Aquila to go into effect for service rendered on and after May 31, 2007, but did not approve Aquila’s Tariff Sheet Nos. 124-127 at the same time it approved those other tariff sheets. Issues respecting Tariff Sheet Nos. 124-127 were being addressed beyond May 31, 2007. On May 24, 2007, Aquila filed *Supplemental Suggestions in Support of Aquila's Request for Expedited Treatment* wherein Aquila stated, at Paragraph 6, as follows:

¹ *Order Granting Expedited Treatment and Approving Tariff Sheets*, effective July 5, 2007.

In the definition of “True-up year,” which appears in 4 CSR 240-3.161(1)(G), the true-up period for a fuel adjustment clause begins on “the first day of the first calendar month following the effective date of the commission order approving a RAM unless the effective date is on the first day of the calendar month. If the effective date of the commission order approving a rate mechanism is on the first day of the calendar month, then the true-up year begins on the effective date of the commission order.” The import of this definition is this: if the Commission delays the effective date of the tariff sheets that relate to Aquila’s fuel adjustment clause beyond June 1, 2007, Aquila will not be able to accumulate costs during the month of June 2007 and recover those costs through its fuel adjustment clause. Because June falls within the air-conditioning season in the Company’s service area, usage and fuel and energy costs during this month likely will be higher than average. It will, therefore, be costly to Aquila’s shareholders if the Company is required to operate during the month of June without the benefit of the fuel adjustment clause that the Commission approved in its report and order.

9. On May 30, 2007, Aquila filed its *Response to Staff’s Recommendation to Reject Tariff Sheets, Motion for Clarification of Report and Order, and Motion for Expedited Treatment*, wherein Aquila stated in the Wherefore clause, in part, as follows:

b. If the Commission fails to approve tariff sheets that authorize Aquila to implement its FAC on or before June 1, 2007, the Company will be prohibited from accumulating and eventually collecting from customers fuel and purchased power costs incurred to provide service to customers for the entire month of June and continuing thereafter until such times as tariff sheets implementing the FAC are approved;

10. On June 14, 2007, based on a *Petition for Writ of Review* of Praxair, Inc. and Explorer Pipeline Company, the Circuit Court of Cole County issued a *Writ of Review* respecting Case No. ER-2007-0004, directing the Commission to take no further action in Case No. ER-2007-0004, save compliance with the *Writ of Review*. On June 18, 2007, Aquila filed in Case No. ER-2007-0004 its *Motion for Expedited Treatment and for Approval of Tariff Sheets Filed In Compliance with Commission Order*, wherein Aquila stated, without explanation, that “[i]f the revised sheets are not made effective on or before June 30, 2007, Aquila may be denied recovery of more than \$11 million in fuel and purchased power costs in the month of July 2007, alone.”

11. On June 29, 2007, the Court dissolved its *Writ of Review* and on that same day the Commission issued an *Order Granting Expedited Treatment and Approving Tariff Sheets* effective July 5, 2007. That same day Aquila filed a *Request for Reconsideration and Post-Circuit Court Judgment Scenario* wherein Aquila stated, at Paragraph 5, as follows:

Unless the order approving the FAC tariff sheets bears an effective date of Sunday, July 1, 2007 (or an earlier date), Aquila risks losing the ability to recover its fuel costs for the month of July. See 4 CSR 240-20.090(2)(I). [sic] Accordingly, Aquila respectfully requests that the Commission reconsider its Order Granting Expedited Treatment and Approving Tariff Sheets, and, on this same date, issue a new order approving the tariff sheets, effective Sunday, July 1, 2007.

12. Notwithstanding Aquila's suggestions in its earlier pleadings, as set forth above, the Staff notes that an August 1, 2007 commencement of the accumulation period is inconsistent with Tariff Sheet No. 124, which is currently in effect, and which provides for a six-month accumulation period of June through November. The Staff's decision to recommend approval of Aquila's now-proposed June 1 start date for cost accumulation is based on the Staff's view that the tariff provision controls in this instance. That position is bolstered by the fact that, as discussed above, even if one holds the view that the rule definition of "true-up year" is controlling, June 1 is nonetheless appropriate under a reasonable interpretation of that definition (*i.e.*, both the *Report and Order* granting Aquila an FAC and the order establishing base rates were effective prior to June 1).

13. Aquila filed its *Motion for Waiver* requesting a variance from 4 CSR 240-3.161(5) because, as Aquila discloses in its motion, Aquila inaccurately "believed that its first monthly report did not have to be submitted until after the Company's initial, FAC-related rate adjustment had occurred." The language of 4 CSR 240-3.161(5) sets out that these reports shall be submitted within 60 days after the end of the first complete month after the recovery

adjustment mechanism (or FAC) goes into effect. In December 2007, Aquila submitted all outstanding reports listed in 4 CSR 240-3.161(5). Therefore, Staff recommends that the Commission grant Aquila's variance request.

14. The Staff's Memorandum also notes that 4 CSR 240-3.161(6) requires each electric utility with a fuel adjustment clause to submit a Surveillance Monitoring Report. Commission Rule 4 CSR 240-20.090(10) states that a utility shall submit the Surveillance Monitoring Reports within 15 days of the utility's submission of its 10-Q and 10-K reports to the U.S. Securities and Exchange Commission. The Company submitted this report in its December 28, 2007 filing. The Staff points out that these filings are to be made in accordance with the applicable rules.

15. The Staff's evaluation shows Aquila's filing is in compliance with §386.266 RSMo, 4 CSR 240-20.090 and 4CSR 240-3.161, subject to the Commission granting Aquila's variance request. The Staff recommends that the Commission issue an interim rate adjustment order approving Aquila's proposed tariff sheet, subject to true-up and prudence reviews.

Motion For Leave To File Out Of Time

16. The matter of the proper start date for the accumulation period surfaced near the end of the time period allotted for the Staff's review. The importance and the nature of the issue are such that considerable time and resources were required for Staff deliberations on the matter. As a result, the Staff was unable to timely file its Recommendation.

17. The Staff apologizes for the slight delay in filing and suggests that no party is adversely affected thereby.

WHEREFORE, the Staff recommends that the Commission issue an interim rate adjustment Order: a) approving Aquila's Tariff Sheet, P.S.C. MO. No. 1, 1st Revised Sheet No. 127, as filed on December 28, 2007, to become effective on March 1, 2008, subject to true-up

and prudence reviews; and b) granting the requested variance from Commission Rule 4 CSR 240-3.161(5), while clarifying that these reports are to be submitted, pursuant to rule 4 CSR 240-3.161(5), starting 60 days after the end of the first month of the approved FAC. Further, the Staff respectfully requests that the Commission accept its Recommendation out of time.

Respectfully Submitted,

/s/ **Dennis L. Frey**

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 29th day of January 2008.

/s/ **Dennis L. Frey**