

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED⁴

JUN 04 2003

MISSOURI COALITION FOR FAIR COMPETITION)

Complainant)

vs.)

MISSOURI PUBLIC SERVICE, A DIVISION OF
UTILICORP UNITED, INC.)

Respondent)

Missouri Public
Service Commission

EC 2002-277 .

NOTICE OF DISMISSAL

Comes Now the Complainant and dismisses its Complaint in the above case based on the letter of settlement herewith accepted by the Complainant.

RESPECTIVELY SUBMITTED,



Terry C. Allen, Mo Bar No 19894
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ATTORNEY FOR COMPLAINANT

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Notice of Dismissal was sent first class mail postage pre paid to all attorneys of record at their addresses appearing in the file.

On June 2, 2003



Terry C. Allen

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May 23, 2003

PRIVILEGED AND CONFIDENTIAL
SETTLEMENT COMMUNICATION

Mr. Terry C. Allen
Allen & Holden Law Offices, LLC
102 E. High Street, Suite 200
P.O. Box 1702
Jefferson City, MO 65102

RE: MCFC v. UtiliCorp
Case Nos.: EC-2002-277 & EC-2002-278

Dear Mr. Allen:

In an effort to reach an amicable resolution of the Complaints referenced above, I have been authorized by my client, Aquila, Inc. (f/k/a UtiliCorp United, Inc.) to offer certain acknowledgements and proposals. At the outset, Aquila concurs with Staff's analysis of the PowerTechSM program that it is not an HVAC service but, rather, a special financing program to encourage the installation and use of energy efficient technologies (i.e. electric heat pumps) authorized in accordance with tariffs filed with and approved by the Missouri Public Service Commission. Aquila does not directly or through an affiliate provide HVAC services as that term is defined in §386.754(2) RSMo 2000. To the contrary, authorized PowerTechSM dealers are independent businesses to which customer leads are referred and that have agreed to participate in the PowerTechSM program pursuant to the terms of a letter of agreement. Given that it is Aquila's position that the PowerTechSM program does not constitute the provision of HVAC services, for settlement purposes, it concedes that the exemption contemplated by §386.756(7) RSMo 2000 is not applicable.

Because it is Aquila's position that the PowerTechSM program does not involve the provision of HVAC services, Aquila is of the view that there is no requirement under the HVAC Act¹ that it include a disclaimer in any advertisement of the program. Nevertheless, in consideration for a dismissal of the Complaints, Aquila will agree to include a disclaimer in future advertisements and brochures that authorized PowerTechSM dealers are not affiliates of Aquila Networks-MPS or Aquila Networks-L&P, Aquila's two operating divisions in the State of Missouri, provided that the disclaimer will not be required to be included in

¹ §§386.754 - .762 RSMo 2000

Mr. Terry C. Allen
May 23, 2003
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PowerTechSM program brochures until after January 1, 2004. As we discussed, this is an accommodation to permit Aquila to utilize its existing inventory of brochures which do not include disclaimer language.

This offer of settlement should not be construed as an admission that the PowerTechSM program has been conducted in any manner that is not in conformance with the HVAC Act. To the contrary, Aquila maintains that its PowerTechSM program has at all times been conducted in a lawful and reasonable manner. The foregoing proposal is being made as a compromise solely in furtherance of a settlement.

I appreciate your consideration of the foregoing.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND, P.C.

By: 

Paul A. Boudreau

PAB/ccp