

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

In the Matter of the Tariffs of Aquila, Inc.,)	
d/b/a Aquila Networks - MPS and Aquila)	
Networks - L&P Increasing Electric Rates for)	Case No. ER-2007-0004
the Services Provided to Customers in the)	
Aquila Networks - MPS and Aquila)	
Networks - L&P Service Areas)	

**AQUILA’S SUGGESTIONS IN OPPOSITION TO
OFFICE OF THE PUBLIC COUNSEL’S MOTION TO AMEND ISSUES LIST**

COMES NOW Aquila, Inc. (“Aquila”), and for its Suggestions in Opposition to Office of the Public Counsel’s Motion to Amend Issues List, respectfully states to the Missouri Public Service Commission (the “Commission”) as follows:

1. In its Order of August 22, 2006, the Commission directed that the parties “shall agree upon and Staff shall file a list of the issues to be heard.” The parties worked on such a document, and the List of Issues was filed herein on March 22, 2007. In its Order of August 22, 2006, the Commission also directed that an “issue not contained in this list of issues will be viewed as uncontested and not requiring resolution by the Commission.”

2. The evidentiary hearings were set to begin in this matter on Monday, April 2, 2007, but were delayed one day upon the request of certain parties. The evidentiary hearings are now set to begin the morning of Tuesday, April 3, 2007.

3. At approximately 3:30 p.m. on April 2, 2007, Public Counsel filed its Motion to Amend Issues List, asserting that Public Counsel inadvertently left certain issues off of the List of Issues filed herein on March 22, 2007. Public Counsel now seeks to introduce evidence into the record of this proceeding regarding issues related to an ice storm Accounting Authority Order (“AAO”) from Commission Case No. EU-2002-1053. Only Public Counsel prepared pre-filed testimony on this issue (Ted Robertson, Direct and Rebuttal). Aquila considered this issue to be

resolved and part of a partial, “package” settlement. It appeared the other parties also believed this matter to be a non-issue, as evidenced by the fact that the matter was not enumerated in the List of Issues filed herein on March 22, 2007.¹

4. In a recent case involving Hickory Hills Water & Sewer Company, Commission Case No. WR-2006-0250, a witness for the company began to testify regarding legal fees and expenses. Public Counsel Lewis Mills objected as follows:

I’m going to object to this question as going beyond the list of issues that the parties agreed to in this case. There is no issue with regard to rate case expense. . . . The parties did not list rate case expense as an issue for the Commission to decide in this case.

This objection was sustained by the Administrative Law Judge presiding over the evidentiary hearing. Two more questions on the topic were posed later in the hearing. Mr. Mills objected to each such question for the reason that the topic was not an item listed as an issue, and each objection was sustained by the Judge. The relevant portions of the Hickory Hills transcript are attached hereto.

5. Public Counsel should not be allowed to have it both ways. Public Counsel participated in the drafting of the List of Issues filed herein, and Public Counsel did not identify the expense amortization of the ice storm AAO as an issue to be decided by the Commission.

6. Prehearing briefs were due to be filed on March 29, 2007. Public Counsel filed its prehearing brief herein on March 30, 2007, and again did not substantively address the ice storm AAO.

¹ Public Counsel also seeks to amend the List of Issues with regard to the treatment of deferred income taxes associated with the Sibley AAOs. Aquila management thought this sub-issue was part of the larger issue defined as “Accounting Authority Orders -- Should the unamortized balance of the accounting authority orders the Commission issued for the Rebuild and Western Coal Conversion of Aquila's Sibley generating facility be included in Aquila Networks-MPS's rate base?” As such, Aquila does not object to Public Counsel addressing this issue at the evidentiary hearing.

7. In its Order of August 22, 2006, the Commission directed each party to file a prehearing brief and in addition “a simple and concise statement summarizing its position on each disputed issue.” Public Counsel made no such filing with regard to the ice storm AAO.

8. In Public Counsel’s motion asking leave of the Commission to file Public Counsel’s pre-hearing brief after the deadline, Public Counsel stated that the delay in filing its prehearing brief was not designed to cause undue delay to the proceedings or to burden any party. Public Counsel further stated that the one day delay would not prejudice or harm any party. As all parties to this case and the Commission are well aware, a large number of rate cases are currently pending before the Commission, and this has put a strain on the resources of Staff, Public Counsel, and the other parties and their counsel. To allow Public Counsel to add to the List of Issues at this time or otherwise present evidence regarding the ice storm AAO will unduly burden and prejudice the other parties to this proceeding.

9. When a utility company attempted to stray from the list of issues, Public Counsel objected, and the Judge sustained each such objection. Aquila urges the Commission to act with fairness and equality in this case and issue its order prohibiting Public Counsel from introducing evidence on an issue which is not set forth on the filed List of Issues.

WHEREFORE, Aquila respectfully requests an order of this Commission denying Public Counsel’s Motion to Amend Issues List and directing that Public Counsel may not introduce into the record in this proceeding any evidence regarding the ice storm AAO of Commission Case No. EU-2002-1053 or any other issue not set forth in the List of Issues filed herein. In the event Public Counsel is permitted leave to present evidence on this issue, Aquila requests leave pursuant to 4 CSR 240-2.130(8) to present “live” testimony on this issue at the evidentiary

hearings herein. Aquila requests such other and further relief as the Commission deems just and proper under the circumstances.

Respectfully submitted,

/s/ Diana C. Carter
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Attorneys for Aquila, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on all counsel of record by electronic transmission on this 2nd day of April, 2007.

/s/ Diana C. Carter