BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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 Aquila Networks—MPS and Aquila Networks—L&P Missouri Service Areas.	)))))	**Case No. ER-2007-0004**

APPLICATION FOR REHEARING

COMES NOW the Office of the Public Counsel and for its Application for Rehearing states as follows:

1. On May 17, 2006, the Commission issued its Report and Order in this case. That order is unjust, unreasonable, arbitrary and capricious, and unlawful for the following reasons. The Report and Order is unlawful, unjust, unreasonable and unconstitutional in that it completely fails to separately and adequately identify conclusions of law and findings of fact. The Report and Order is unlawful, unjust, and unreasonable in that it is not based upon competent and substantial evidence of record. The Report and Order is unlawful, unjust and unreasonable in that it made not finding as to what total revenue requirement Aquila should be allowed, or what rates would be just and reasonable. The Commission erred in its decision on all three contested issues.

The Fuel Adjustment Clause

2. The Commission's Report and Order is unlawful and unreasonable in that it materially misinterprets Section 386.266.4(1) by stating that it requires that a fuel adjustment mechanism must be "reasonably designed **to help the company earn its allowed return on equity**." (Report and Order, page 11; emphasis added.) The statute says no such thing; it simply says that a fuel adjustment mechanism must be "reasonably

designed **to provide the utility with a sufficient opportunity to earn a fair return on equity**." (Section 386.266.4(1); emphasis added.) The difference between offering a utility an opportunity to earn a fair return and helping a utility to earn its allowed return is material, and the Commission's misinterpretation is an error of law.

3. The Commission's Report and Order is unjust and unreasonable and not based on competent and substantial evidence in that it erred in stating that Public Counsel did not argue in either its post-hearing or prehearing brief that Aquila was deficient in complying with the Commission's FAC filing rules. First, the statement is just wrong: Public Counsel addressed it at pages 24-25 of its post-hearing brief. Second, the Commission cannot avoid a contest issue in a contested case even if one party elected not to brief it. The Commission's rules set forth the FAC filing requirements, and the Commission must affirmatively determine whether Aquila's non-compliance with the FAC filing requirements has any impact on whether the Commission will approve Aquila's FAC application. The Commission's order is unjust and unreasonable and not supported by competent and substantial evidence because it fails to make findings of fact about how Aquila complied with 4 CSR 240-3.161(2)(O),(Q), and (R). The only reference to where Aquila attempted to satisfy these requirements is found in footnote 45 on page 22 of the Report and Order. That footnote does not constitute findings of fact, and indeed the citations in the footnote do not lead to information that would satisfy the filing requirements.

4. The Commission erred in stating that "no party was prejudiced by Aquila's failure to have conducted a line loss study within twenty-four months of filing a request for a fuel adjustment clause, and its failure to include line loss factors in its original

filing." Incorrect or outdated line loss factors will result in improper inter-class shifts. There is no evidence that the years-old line loss factors that the Commission adopts in its Report and Order are accurate. The Commission states that Aquila's failure to include line loss factors in its original filing is "reasonable." (Report and Order, page 25) But the proper question is not whether their omission was reasonable, but whether the ones the Commission uses are accurate and reliable enough to result in just and reasonable rates. There is no evidence that they are.

5. The Commission's determination to allow a 95% pass-through of changes in fuel and purchased power costs is arbitrary and capricious and not based on evidence in the record. The Commissioner who proposed the 95/5 split at the Commission's May 10 open meeting, when asked by another Commissioner where the 95% came from, responded, "I plucked that number out of the air." None of the experts testified that a mere 5% stake in fuel and purchased power cost changes would provide a meaningful incentive for Aquila to control such costs, and there is no evidence of record to show that it will.

6. The Commission mostly accepted an agreement offered by the Staff and Aquila with regard to heat rate testing that it refers to as the "242 Proposal." (Report and Order, page 46) But the Commission negated an important protection that caused parties other than Staff and Aquila (like Public Counsel) to not oppose the 242 Proposal: the provision that Aquila's testing plan must be agreeable to all parties. The Commission negated that provision because it made a finding of fact that "parties who believe a RAM is never appropriate could block adjustments under an approved RAM by opposing even reasonable procedures." But the Commission, as it does so often in the Report and Order,

failed to make the "basic findings" that lead to the conclusory finding quoted here. A necessary basic finding in this instance would be that there are some parties "who believe a RAM is never appropriate." The Commission made no such basic finding, and the record would not support it.

7. In its Report and Order at page 44, the Commission states:

> The Commission concludes it would be improper to allow Aquila to flow hedging costs or demand costs associated with any purchased power contract through its adjustment clause. The Commission concludes Aquila will only be allowed to flow variable fuel and purchased power costs, including variable transportation costs, through its fuel adjustment clause.

At least one interpretation of this language (and the one taken by the Commission Staff in a pleading filed on May 22) is that the Commission intended to exclude revenues from off-system sales from flowing through the fuel adjustment clause. In his rebuttal testimony, Public Counsel witness Trippensee recommended that revenues from off-system sales be flowed-through the fuel adjustment clause without sharing. (Trippensee Rebuttal Testimony, pages 17-21) In his surrebuttal testimony, Aquila witness Williams agreed with this position. (Williams Surrebuttal, page 5) There is no competent and substantial evidence upon which a determination to exclude off-system sales revenues can be based. Furthermore, the Commission failed to make findings on the basic facts that would make clear the basis for this determination.

8. The Commission erred in concluding that: "…Aquila does not have contracts in place to cover the bulk of its future fuel and purchased power needs." (Report and Order, page 35, citing Transcript pages 656 and 659, and Ex. 415) There is no basis in the record to support this conclusion, and no findings of basic fact that would allow a reviewer to understand how the Commission reached the conclusion. The

transcript, at page 656, lines 13-17, which the Commission cites as support for this conclusion, does actually contradicts this conclusion. Beginning on page 655 and continuing 656 is a recitation from Aquila's 2006 10-K report that shows that Aquila has 100% of its coal needs under contract for 2007 and 62% under contract for 2008. Aquila witness Williams testified that these percentages were accurate. (Transcript, page 656) Aquila witness Williams testified that, but for the proposed merger with Great Plains Energy, Aquila would lock in even higher percentages under contract for 2008 as 2008 approaches. (Transcript, page 656) Mr. Williams also testified that the potential for volatility in prices for natural gas is hedged as well, with "approximately 75 percent of our expected on-peak natural gas and natural gas equivalent purchased power price exposure for 2007." (Transcript, page 659) Again, the record contradicts the Commission's conclusion Aquila does not have price protection for the "bulk of its fuel and purchased power needs"

9. Furthermore, the Commission made many other errors about the record evidence with respect to this issue:

A. The Commission, at page 21 of the Report and Order, states that Aquila provided information about the filing requirements in response to a Public Counsel data request. The information was actually provided in response to an AGP/SIEUA data request.

B. The Commission cites "Kind Direct, Ex. 401, pages 15-16" as a source in the record for information about Mr. Kind's rebuttal testimony. (Report and Order, page 21, footnote 42)

C. The Commission "finds the testimony of Aquila witnesses Dennis Williams and H. Davis Rooney contain all the information" required by sections 4 CSR 240-3.161(2)(O),(Q) and (R) of the Commission's FAC filing rules. (Report and Order, page 22) This is another misstatement of the record evidence. Neither of these witnesses provide testimony about 4 CSR 240-3.161(2)(R); Aquila witness Block Andrews provided testimony about that section.

D. The Commission refers to "Aquila's waiver request" for a waiver from the provisions of 4 CSR 240-20.090(9), but does not acknowledge that Aquila failed to file a pleading requesting a waiver. (Report and Order, page 26)

E. The Commission states, with respect to 4 CSR 240-3.161(2)(P), that no witnesses aside from Aquila witness Rooney and Staff witness Taylor provided testimony. Public Counsel witness Kind provided testimony at pages 901-902 of the transcript.

Taken together, all these errors show that the Commission did not understand the record and did not properly rely on the record evidence in reaching its decision on this issue.

10. On May 23, 2007, AG Processing, Inc. and the Sedalia Industrial Energy Users Association filed an Application for Rehearing. Public Counsel concurs with the arguments raised in Paragraphs 6, 7, and 14 of that application and incorporates them as though fully set out herein.

Return on Equity

11. The Commission erred in not adequately analyzing and explaining its analysis of the testimony provided by the rate of return witnesses. The Commission states that "[D]espite their best efforts to educate, the experts have managed to create a

thicket of conflicting opinions. If the Commission were to attempt to force its way through the tangle it could easily lose its way or even become ensnared." (Report and Order, page 57) It is the Commission's job to force its way through "thickets[s] of conflicting opinions." The Commission was created to be an expert administrative body to deal with the sometimes-complex field of utility regulation. It cannot, as it does here, simply throw up its hands and say, "Golly, this stuff is too hard. We'll find a way to decide the issue other than figuring out the testimony." Because the Commission states that it cannot or will not rely on the expert testimony, its Report and Order is necessarily not based on competent and substantial evidence.

12. On May 23, 2007, AG Processing, Inc. and the Sedalia Industrial Energy Users Association filed an Application for Rehearing. Public Counsel concurs with the arguments raised in Paragraphs 20-25 of that application and incorporates them as though fully set out herein.

Unamortized Balance of Accounting Authority Orders

13. The Commission's brief discussion of this issue in the Report and Order makes clear that the Commission did not understand what the issue was about, and the Commission entirely fails to make findings with respect to the basic facts that lead to its determination on this issue.

14. At page 66 of the Report and Order, the Commission states that, in three prior cases, "the Commission allowed the amortization of the expense over a 20 year period, **plus the inclusion of the unamortized amount in rate base**." [Emphasis added.] The Report and Order cites to "Tr. Page 94, lines 21-23" as support for this statement. Nothing on that page of the transcript supports a finding that prior Commission decisions

included the unamortized balance in rate base. And nothing in the record in this case supports such a finding.[1]

15. The Commission's discussion of this issue at pages 64 through the first partial paragraph on page 66 simply talks about the history of the Sibley AAOs, and whether deferral was appropriate. It does not make any findings with respect to the issue of whether the unamortized balance should be included in rate base, nor does it make any basic findings of the facts that would show how it made its determination of the issue. The Commission then, in two paragraphs on pages 66-67, briefly summarizes the testimony of the parties about the unamortized balance issue, but does not make any findings with respect to the issue. The two full paragraphs on page 67 do not discuss at all the issue of inclusion of the unamortized balances in rate base, except for the bare statement that "The Commission finds the unamortized balances of the Sibley AAOs should be included in Aquila's rate base in this case." That statement is not a finding, but rather the ultimate conclusion with respect to this issue, and none of the findings that show how that conclusion was reached are recited in the Report and Order.

The "Conclusions of Law" section on page 68 again talks about AAOs in general, rather than about the unamortized balance issue, until the last phrase of the last sentence. There the Commission states, "the deferred costs included in the unamortized balances of the Sibley AAOs, represent major capital additions to plant in service, and should be included in Aquila's rate base in this case." This is wording similar to the previously quoted sentence, and it is a bare conclusion unsupported by any finding of basic facts

[1] In fact, only one of the three decisions which the Commission discusses even mentions the word "unamortized." That case is EO-90-114, the very first Sibley AAO case, in which there were not yet any unamortized balances. The Commission, in that order, simply stated its intent to allow their inclusion in the future.

with respect to this issue. In fact, the evidence does not support the conclusion that the unamortized balances "represent major capital additions to plant" but rather the evidence shows that the unamortized balance consists only of interest **expense** (by far the largest portion), depreciation **expense**, and property tax **expense** on the associated plant investment for the lag period between when the plant investment was placed in service and when its cost was included in rates. The **capital cost** of the plant investment upon which the AAO deferred costs are calculated **is and has been included** in plant in service since its finalization and no party in this case has proposed to disallow those costs.

WHEREFORE, Public Counsel respectfully requests that the Commission grant rehearing of its May 17, 2007, Report and Order.

Respectfully submitted,

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By:_____

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties this 25th day of May 2007.

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