

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 18th day  
of August, 2008.

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	)	<b><u>Case No. EO-2008-0415</u></b>
the Company's Approved Fuel and Purchased Power	)	<b>Tariff No. YE-2008-0789</b>
Cost Recovery Mechanism.	)	

**ORDER APPROVING TARIFF TO ESTABLISH RATE SCHEDULES  
FOR FUEL ADJUSTMENT CLAUSE  
AND DENYING MOTION TO REJECT TARIFFS**

Issue Date: August 18, 2008

Effective Date: August 29, 2008

On June 30, 2008, Aquila, Inc., d/b/a Aquila Networks–MPS and Aquila Networks–L&P,<sup>1</sup> submitted a tariff designed to establish rate schedules to make a semiannual adjustment related to Aquila's approved Fuel Adjustment Clause (FAC). The adjustment is based on an accumulation period of December 1, 2007, through May 31, 2008. The tariff carries an effective date of September 1, 2008. Aquila also filed a substitute tariff page on July 22, 2008, and a motion on July 29, 2008, to correct page 7(A)1.C(I-III) of its attached information.

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<sup>1</sup> Aquila recently merged with a subsidiary of Great Plains Energy Incorporated in Case No. EM-2007-0374. Following that merger, Aquila changed its fictitious name in Case No. EN-2009-0015, and is now doing business as KCP&L Greater Missouri Operations Company.

The Commission's rule regarding FACs requires the Commission to either approve or reject the company's tariff within 60 days of its filing.<sup>2</sup> To that end, the rule requires the Staff of the Missouri Public Service Commission to submit a recommendation within 30 days regarding its examination and analysis of whether the proposed FAC tariff complies with applicable statutes, regulations, and the company's approved FAC mechanism.<sup>3</sup>

Staff filed its recommendation on July 30, 2008. In its recommendation, Staff indicated that in its opinion, Aquila's filing meets the requirements of Section 386.266, RSMo, 4 CSR 240-20.090, and 4 CSR 240-3.161. Staff further recommended that the Commission approve Aquila's tariff subject to true-up and prudence reviews.

On August 8, 2008, AG Processing, Inc., and Sedalia Industrial Energy Users' Association jointly filed a motion urging the Commission to reject Aquila's proposed tariff. The Commission ordered that any party wishing to respond to the motion to reject Aquila's tariff do so no later than August 14, 2008. Aquila filed a response on August 14, 2008.

The motion asking the Commission to reject Aquila's tariff is based entirely on its objections to the tariffs in the previous Aquila FAC case, Case No. EO-2008-0216. In that case, AG Processing, Inc., and Sedalia Industrial Energy Users' Association argued that Aquila's first rate adjustment was premature because the time period for the adjustment was calculated beginning with the date of the rate case Report and Order<sup>4</sup> authorizing the

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<sup>2</sup> 4 CSR 240-20.090(4).

<sup>3</sup> Id.

<sup>4</sup> *Report and Order*, Case No. ER-2007-0004, issued May 17, 2007.

FAC and not the date of the order approving the implementing tariff.<sup>5</sup> Thus, AG Processing, Inc., and Sedalia Industrial Energy Users' Association argue that the current adjustment period is also incorrect as it follows the first case.

The issue of the appropriate adjustment period from Case No. EO-2008-0216 is currently on appeal at the Cole County Circuit Court. Thus, AG Processing, Inc., and Sedalia Industrial Energy Users' Association state in their motion that they "do not expect the Commission to reverse ground on this matter at this point. Nevertheless, in order to preserve their arguments as well as all of its [sic] rights in the event that they prevail on their appeal, [they] find it necessary to file"<sup>6</sup> the motion.

The Commission determined in Case No. EO-2008-0216 that:

[I]n considering the meaning of its regulation, the Commission must follow the guiding principles expressed in the statute that authorizes the use of an FAC. Section 386.266.4 states that the Commission may approve an FAC if it finds that "the adjustment mechanism set forth in the schedules: (1) Is reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity." Following that principle, the Commission must attempt to reach a resolution that is fair to both the utility and its ratepayers.

In its Report and Order, the Commission set out in detail the parameters of the FAC that Aquila would be allowed to implement. In that Report and Order, the Commission made difficult factual, legal, and policy decisions about the nature of an appropriate FAC. The subsequent submission and approval of tariffs consistent with that Report and Order is more or less a ministerial act of less significance. Therefore, it makes more sense to interpret the regulation to tie the beginning date of the cost accumulation period to the issuance of the Report and Order than to the issuance of the subsequent order approving a tariff in compliance with the Report and Order.

This interpretation of the definition in the regulation also allows Aquila to recover costs for two months that it would otherwise not be able to

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<sup>5</sup> *Order Granting Expedited Treatment and Approving Tariff Sheets*, Case No. ER-2007-0004, issued June 29, 2007.

<sup>6</sup> *Motion to Reject*, filed August 8, 2008, paragraph 8.

recover. That recovery is consistent with the decisions reached by the Commission in its Report and Order that allowed for the recovery of those costs to give Aquila a “sufficient opportunity to earn a fair return on equity.” This interpretation is also consistent with Aquila’s approved tariff, which sets an accumulation period beginning on June 1.

The Commission interprets its regulation as establishing an accumulation period beginning on the first day of the first month following the Report and Order, and not following the approval of the implementing tariff. The motion to suspend will be denied and the tariff will be approved.<sup>7</sup>

Consistent with the reasoning in its previous order, the Commission determines that the proposed tariffs contain the appropriate accumulation period of December 1, 2007, through May 31, 2008. In addition, the proposed tariff sheets comply with the Commission’s orders in Case No. ER-2007-0004 and with the requirements of Section 386.266, RSMo, 4 CSR 240-20.090, and 4 CSR 240-3.161. Therefore, the motion to reject will be denied and the tariff will be approved as amended on July 22, 2008, subject to true-up and prudence reviews.

**IT IS ORDERED THAT:**

1. The motion to substitute a corrected page filed by Aquila, Inc., d/b/a KCP&L Greater Missouri Operations Company, on July 29, 2008, is granted.
2. The Motion to Reject Tariffs filed by AG Processing, Inc., and Sedalia Energy Users’ Association on August 8, 2008, is denied.
3. The tariff issued on June 30, 2008, by Aquila, Inc., d/b/a Aquila Networks-MPS and Aquila Networks–L&P, now known as Aquila, Inc., d/b/a KCP&L

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<sup>7</sup> *Order Approving Tariff to Establish Rate Schedules for Fuel Adjustment Clause*, Case No. EO-2008-0216, issued Feb. 14, 2008, at pages 3-4, as corrected by *Order Clarifying Order Approving Tariff*, issued Feb. 26, 2008 (emphasis removed).

Greater Missouri Operations Company, and assigned Tariff No. YE-2008-0789, is approved as substituted on July 22, 2008, to be effective September 1, 2008, **as an interim rate adjustment order, subject to true-up and prudence reviews.** The tariff approved is:

**P.S.C. MO No 1**

**2<sup>nd</sup> Revised Sheet No. 127, Canceling 1<sup>st</sup> Revised Sheet No. 127**

4. This order shall become effective on August 29, 2008.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Jarrett,  
and Gunn, CC., concur.  
Clayton, C., dissents.

Dippell, Deputy Chief Regulatory Law Judge