

**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
Tariff No. YE-2007-0001

**RESPONSE TO MOTION FOR EXPEDITED CONSIDERATION AND
APPROVAL OF TARIFF SHEETS FILED IN COMPLIANCE WITH
COMMISSION REPORT AND ORDER AND MOTION FOR CLARIFICATION**

COMES NOW the Office of the Public Counsel and for its Response to Motion for Expedited Consideration and Approval of Tariff Sheets Filed in Compliance with Commission Report and Order and Motion for Clarification states as follows:

1. On May 17, 2007¹ the Commission issued its Report and Order, in which it, *inter alia*, rejected the tariff sheets requesting a general rate increase filed by Aquila, Inc. to initiate this case. The Commission also ordered Aquila to file – before midnight on May 20 – new tariff sheets that would produce a very substantial increase, albeit somewhat less than Aquila originally requested.

2. On May 18, Aquila filed new tariff sheets that bear an effective date of May 31. On May 21, Aquila filed new tariff sheets that bear an effective date of June 20. The May 21 tariff sheets necessarily supersede and replace the May 18 tariffs. As such, they do not comply with the Commission’s order which required filing by midnight on May 20.

¹ Unless otherwise noted, all dates refer to calendar year 2007.

3. With both the May 18 tariffs and the May 21 tariffs, Aquila requested expedited treatment. Aquila argues that the Commission will violate Section 393.150 RSMo 2000 if it does not “approve [] the revised tariff sheets filed by Aquila to be effective on May 30, 2007.”²

4. On May 21, before Aquila even filed its replacement tariff sheets and amended and supplemented motion for expedited treatment, the Commission ordered parties to respond by May 22. Public Counsel files this pleading in response to that order. At the outset, Public Counsel notes that the Commission’s shortened time for response does not allow for a detailed response.

5. Public Counsel does not concur in the analysis and legal conclusions contained in Aquila’s motion and so opposes the motion. Aquila argues that Section 393.150 RSMo 2000 **requires** the Commission to approve the tariffs it filed on May 21 no later than May 31. This is a strained and incorrect reading of that statute. Section 393.190 allows the Commission approximately eleven months to act on a tariff filing that initiates a general rate case. By issuing its Report and Order on May 17 that rejected Aquila’s tariffs, the Commission satisfied the requirements of that statute.

6. Aquila’s tariff filings on May 18 and May 21 were new tariffs, and the Commission could suspend the new tariffs – if it deemed it necessary to fully investigate them – for a period of time up to approximately eleven months in accordance with 393.190. Of course, having just ordered the filing of the tariffs, the Commission should not need eleven months to ensure that they comply with the Report and Order, but it

² In its May 18 motion, Aquila refers several times to a May 30 requested effective date, and several other times to a May 31 requested effective date. The May 21 motion appears to more consistently refer to a May 31 requested effective date.

should not be forced to approve them in just a few days under a misguided reading of 393.150.

7. If the Commission's Report and Order contained illustrative tariffs, verifying compliance would be simple. But there were no tariffs included with the Report and Order, and so the tariffs filed on May 21 are just Aquila's interpretation of how to comply with the Report and Order. Rushing the tariffs through without sufficient time for review essentially amounts to giving Aquila the authority to self-certify compliance with the Commission's Report and Order. The Commission must allow other parties sufficient time to verify whether the tariffs actually comply.

8. Having the Staff perform a cursory review in just a few days may be better than the Commission simply relying on Aquila, but it does not satisfy due process. First, the Commission has not allowed Staff time to adequately analyze and review the tariff filing. Second, the Staff is a party to this case, and has actively advocated positions on contested issues. While Public Counsel has the utmost respect for Staff's impartiality, due process does not allow any party – even the Staff – to stop being an advocate and become an advisor to the Commission during the course of a case. By asking the Staff to stop advocating as a party and instead advise the Commission as to the tariff's compliance with the Report and Order, that is exactly what the Commission is doing.

9. In addition to its ill-founded argument that 393.150 requires approval by May 31, Aquila also argues that “good cause” exists to expedite approval. Aquila's good cause argument is flawed in a number of respects. First, Aquila states that the tariffs were filed in compliance with the Commission's Report and Order; they were not. They were filed after the deadline set by the Commission. Second, Aquila states that the

Commission has been aware of the rate increase request for almost a year. While this is true, it is not relevant; the relevant question is whether these new post-Report and Order tariffs can be approved in less than thirty days without trampling on the parties' due process rights and the public's right to notice. Third, Aquila argues that all aspects of its rate increase request have been considered during the rate case. This is irrelevant for the same reasons as Aquila's second argument. Fourth, and finally, Aquila argues that good cause exists to approve the tariffs in less than thirty days because it would be illegal to take longer. As discussed above, Aquila's interpretation of 393.150 as requiring approval of compliance tariffs within the suspension period of rejected tariffs is simply wrong.

10. Aquila requests expedited treatment, but almost completely failed to comply with 4 CSR 240-2.080(16), the Commission's rule on requests for expedited treatment. The only part of the rule that Aquila even came close to complying with is the part that requires the words "Motion for Expedited Treatment" in the title of a pleading requesting expedited treatment – the least substantive part of the rule.

11. In its May 18 filing, Aquila also requested clarification of the Commission's Report and Order. In the Commission's May 21 order shortening the time to respond to Aquila's May 18 filing, the Commission ordered:

1. Any party wishing to respond to Aquila, Inc. d/b/a Aquila Networks – MPS and Aquila Networks – L&P's Motion for Expedited Consideration and Approval of Tariff Sheets Filed in Compliance with Commission Report and Order **or its Motion for Clarification**, shall do so on or before 5:00 p.m., May 22, 2007. [Emphasis added.]

Despite allowing parties until May 22 at 5:00 P.M. to respond to the motion for clarification, the Commission granted it by order issued on May 22 well before the

Commission's response deadline. Since the Commission has already granted the motion *ex parte*, Public Counsel will not respond here.

12. It appears that the Commission has established or is in the process of establishing procedures by which it can very quickly approve compliance tariffs at the conclusion of rate cases. Public Counsel does not oppose relatively quick approval of compliance tariffs so long as the procedures for doing so are consistent with due process and applicable statutes and rules. It would be best to establish these procedures with input from all stakeholders either through a rulemaking or a roundtable process or both. The Commission's current approach appears to be to try different procedures and see whether they will be successfully challenged in court. A more open and fair process of establishing these procedures is both more fitting to the Commission's role as protector of the public and also likely to be more efficient.

WHEREFORE, Public Counsel respectfully requests that the Commission deny Aquila's Motion for Expedited Consideration and Approval of Tariff Sheets Filed in Compliance with Commission Report and Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties this 22nd day of May 2007.

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