

**STATE OF MISSOURI
MISSOURI PUBLIC SERVICE COMMISSION**

In the matter of Aquila, Inc. d/b/a)
Aquila Networks-L&P, for authority)
to file tariffs increasing steam) HR-2005-0450
rates for the service provided to)
customers in the Aquila Networks-)
L&P area.)

**AG PROCESSING INC'S OPPOSITION TO APPLICATION TO INTERVENE
BY EMPIRE DISTRICT ELECTRIC COMPANY**

COMES NOW Ag Processing Inc. (AGP) and objects to the Application to Intervene filed herein by Empire District Electric Company (Empire) in this proceeding. In support, AGP states:

1. On June 1, 2005, the Commission suspended the proposed steam tariffs that Aquila Networks, L&P (Aquila) filed on May 27, 2005.

2. On June 16, 2005, Empire sought to intervene in this steam rate proceeding. Empire states in its Application to Intervene that it is an **electric** corporation and that it has "interest" in the depreciation rates charged by Aquila as a part of Aquila's steam rates in the L&P division in St. Joseph -- far removed from Empire's "Commission-certificated service area in Southwest Missouri."^{1/}

3. Empire is not even a customer of Aquila, and it certainly is not a steam customer of Aquila. AGP, however, is the largest steam customer on Aquila's L&P system.

^{1/} Empire Application, paragraph 1, p. 1.

4. Empire has shown no interest that should entitle it to intervention in this proceeding. It is not currently paying steam rates charged by Aquila, nor does it assert that it will become a steam customer of Aquila in the future. Empire does not state that it will in any manner be affected by the outcome of this case.

5. We believe that an Application to Intervene is intended to indicate the nature of the interest that the proposed intervenor (or intervenor group) has in the proceeding in which they seek to intervene. The Commission may then evaluate whether the stated interest differs from that of the general public **and** deserves protection. Empire's Application does not state such an interest and must be denied.

6. In addressing the question of intervention in a proceeding, the Commission's Rules provide:

(2) An application to intervene **shall state** the proposed intervenor's interest **in the case** and reasons for seeking intervention
. . . .^{2/}

Under this provision, Applications to Intervene are required to state: (A) the proposed intervenor's interest in the specific case; and (B) the reasons it seeks intervention. These two requirements are conjunctive and they are not, given the directive "shall," optional. Again, Empire's Application to Intervene, as filed, does not comply with this requirement.

^{2/} 4 CSR 240-2.075(2) (emphasis added).

a. Empire's Application states that "Empire has a particular interest in this case in the Commission's treatment of depreciation of Aquila's plant, which includes both steam and electric utility plant."^{3/} Empire's Application continues by asserting that "As a Commission-regulated electric utility, Empire has a direct interest in this matter which is different from that of the general public."^{4/} The "general public" where? Empire's statement may well be true **with respect to its own service area**. But Empire has no interest that differs from that of the general public **with respect to Aquila's regulated steam system**. Neither of these conclusory statements even begins to explain why Empire, who is not a customer of Aquila, and cannot be directly affected by any decision in this proceeding, claims any interest in the rates, terms or conditions under which Aquila provides steam service to AGP. The applicant utility and its customers have direct interests; Empire does not. There is, for example: (A) no assertion that any change in Aquila's steam rates would have any direct effect whatever on Empire; (B) no assertion that Empire takes steam service from Aquila; (C) no assertion that Empire even operates a steam system anywhere; or (E) that any change to the terms and conditions of Aquila's steam service could have any effect whatever on Empire. Absent a factual showing that any interest that Empire may have that would be affected by any relief sought **in this case**, Empire's Applica-

^{3/} Empire Application to Intervene, paragraph 3, p. 1.

^{4/} *Id.* p. 2.

tion does not meet the Commission's requirements for intervention petitions.

b. Empire's Application also fails to address the requirement that the proposed intervenor state the reasons for seeking intervention. The Commission's requirement that an interest and reasons for intervention must be shown certainly suggests that a Commission proceeding, filed by a utility, is not intended to offer other entities, utilities or not, an unfettered forum to argue about matters that cannot be affected by the relief that is sought.

c. It is essentially unfair to parties with real and direct interests in matters to bear the annoyance and the costs resulting from the involvement of others who have no interest in the matter actually being litigated or the relief that is actually being sought. For example, in a given year there are doubtless many lawsuits filed involving Aquila. Regardless, courts do not permit entities that have no interest in those suits to interfere in them. For the same reason, interlopers lacking a real interest in the matter that is actually before the Commission should not be permitted to intervene in the Commission proceeding and cause delay or disruption so that they may extract some concession from the applicant utility or other parties to advance what is essentially a private interest having nothing to do with the relief that is being sought. A requirement that real interests and reasons for a proposed intervention be shown is salutary and defeats Empire's Application.

7. The Commission's intervention rule additionally requires applicants to state:

. . . . whether the proposed intervenor supports or opposes **the relief sought** or that the proposed intervenor is unsure of the position it will take.^{5/}

a. A proposed intervenor must, therefore, state whether it "supports or opposes" the relief that is sought in the case or state that it is unsure. Again, the statement is confined to **the relief sought**. The relief sought in this case is the increase in the rates for which Aquila charges AGP and five other steam customers for steam service. Empire's Application again fails to comply with this requirement.

b. Empire's Application is completely silent regarding its position **with respect to the relief sought**. At best, Empire's Application is a statement that it seeks a roving commission to "provide evidence and legal briefing on this important policy issue and any others that it may deem necessary,"^{6/} apparently because it has "experience as a Commission-regulated electric utility." Were that the test, any "rate regulated" utility in the United States, and possibly even in other countries, could justify intervention in this proceeding.

8. The Commission's intervention rule also requires, as an alternative, that it may permit intervention "on a showing that --"

^{5/} 4 CSR 240-2.075(2) (emphasis added).

^{6/} Empire Application to Intervene, paragraph 3, p. 2.

(A) The proposed intervenor has an interest which is different from that of the general public **and which may be adversely affected** by a final order arising **from the case**; or

(B) Granting the proposed intervention would serve the public interest.^{7/}

On both these points the Empire Application also falls short.

a. Although Empire seeks to position itself as having some interest that differs from the general public, it fails to show any adverse effect that would or could arise from any final order "from the case" that permits, rejects or authorizes different rates for a steam service that Empire does not take in a service area where it does not serve, even with electricity.^{8/}

^{7/} 4 CSR 240-2.075(2) (emphasis added).

^{8/} In *In the Matter of the Application of CenturyTel Solutions, LLC, for Certificate of Service Authority to Provide Basic Local Exchange, Interexchange and Local Exchange Telecommunications Services in the State of Missouri and for Competitive Classification*, Case No. LA-2004-0105, 2003 Mo. PSC LEXIS 1618, the Commission denied an application to intervene where there had been no showing of "an interest different from that of the general public, and allowing MITG to intervene would not serve the public interest." In denying this application, the Commission also made clear that the role of the Public Counsel was intended to take care of the concerns voiced by the intervenor. "To the extent that MITG fears CTS might engage in fraud or self-dealing, Staff and the Office of the Public Counsel are able to protect MITG's interests, if any." *Id.* See, also, *In the Matter of the Application of The Pager Company for Designation as a Telecommunications Carrier Eligible for Federal Universal Service Support Pursuant to Section 254 of the Telecommunications Act of 1996*, Case No. CO-2003-00942003 Mo. PSC LEXIS 95; *In the Matter of the Application of AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc., and TCG Kansas City, Inc., for Compulsory Arbitration of Unresolved Issues With Southwestern Bell Telephone Company pursuant to Section 252(b) of the Telecommunications Act of 1996*, Case No. TO-2001-455, 2001 Mo. PSC LEXIS 1252.

b. While Empire suggests that its involvement in this case may benefit the public interest, it is not a self-evident truth that an **electric** utility that has no steam system itself has vast expertise to offer toward the development of a record in this **steam** rate case where Empire has articulated no pecuniary interest whatsoever.^{9/} The existing parties to this proceeding including Aquila, Office of the Public Counsel, the Commission's Staff and certainly AGP, are well aware of facts relevant to this steam rate case. Moreover, the requirement is conjunctive: Empire cannot show any potential adverse effect from a final order in this case and also fails the second prong of the test.

c. The applicability of Empire's claims that the "public interest would be served" may be tested by considering whether a Kansas industrial customer that is provided electric service by another utility, would be permitted to intervene on a

^{9/} In other cases the Commission has enforced this requirement strictly and has not been persuaded by conclusory assertions of record development when no real interest in the relief sought has been demonstrated. Indeed, in one recent case, AmerenUE's Application to Intervene was rejected.

AmerenUE does not allege that it has an interest which may be adversely affected by the outcome of this proceeding, nor does AmerenUE allege that granting the proposed intervention would serve the public interest. Because AmerenUE's application fails to comply with the Commission's rule governing intervention, the Commission will deny AmerenUE's request for intervention.

In the Matter of the Application of Aquila, Inc., for an Accounting Authority Order Concerning Fuel Purchases, Case No. EU-2005-0041, 2004 Mo. PSC LEXIS 1461.

conclusory statement that its expertise was needed to inform the Commission and the other parties in a steam heat case how to set steam rates. We think that would not be permitted, nor should it.

9. The possibility for consultation and advice by a third party is not a sufficient basis for intervention in any case. Pursuant to 4 CSR 240-2.075(B) Empire may request leave to file a brief as *amicus curiae*, without being allowed access to potentially confidential information and without being afforded all rights of a party to this proceeding. Moreover, upon entry of a dispositional order by the Commission in this proceeding, if Empire can demonstrate that it is aggrieved by that order, Empire is certainly free to file an application for rehearing and seek any judicial review it believes it can sustain given its demonstrated lack of direct interest.

10. Public utility rate cases are best litigated by parties that are shown to have real interests that will be affected by any Commission decision in the subject proceeding. Empire has not done this, nor can it.

WHEREFORE, for the reasons stated, Empire's proposed intervention should be denied.

Respectfully submitted,

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ATTORNEYS FOR AG PROCESSING INC.

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing Application to Intervene on each of the persons on the attached sheet either by postage-paid U.S. mail, by e-mail or by facsimile and on the petitioner for intervention to which this objection relates.

Dated: June 23, 2005



Stuart W. Conrad, an attorney for
Ag Processing Inc.

Missouri Public Service Commission

Service List for Case No. **HR-2005-0450** Last Updated: **06/16/2005**

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