

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

In The Matter of the Application of)
Aquila, Inc. for Approval of its)
Experimental Regulatory Plan and)
for a Certificate of Convenience)
and Necessity Authorizing it to)
Participate in the Construction,)
Ownership, Operation, Maintenance,)
Removal, Replacement, Control and)
Management of a Steam Electric)
Generating Station in Platte Coun-)
ty, Missouri, or alternatively for)
an Order specifically confirming)
that Aquila, Inc. has the requisite)
authority for said Generating Sta-)
tion Under its Existing Certifi-)
cate(s))

EO-2005-0293

**APPLICATION TO INTERVENE OF
SEDALIA INDUSTRIAL ENERGY USERS' ASSOCIATION**

COMES NOW SEDALIA INDUSTRIAL ENERGY USERS' ASSOCIATION
(hereinafter SIEUA) and pursuant to 4 C.S.R. 240-2.075 and
applies to intervene herein and become a party hereto for all
purposes in respect to the filing by Aquila, Inc. on March 2,
2005. In support of this motion, SIEUA respectfully shows the
following:

1. SIEUA is an unincorporated voluntary association
consisting of large commercial and industrial users of natural
gas and electricity in the Sedalia, Missouri and the surrounding
area. SIEUA was formed for the purpose of economical representa-
tion of its members' interests through intervention and other
activities in regulatory and other appropriate proceedings.

2. Current members of SIEUA are as follows: **Pittsburgh Corning Corporation**, a manufacturer of cellular glass insulation at its manufacturing facility in Sedalia, Missouri where roughly 160 workers are employed; **Waterloo Industries**, a manufacturer of tool storage equipment and employer of approximately 650 workers at its manufacturing facility in Sedalia, Missouri; **Hayes Lemmerz International** employs roughly 800 workers at its Sedalia, Missouri facility where it manufactures automobile wheels; **EnerSys Inc.** employs approximately 500 persons in its industrial battery manufacturing facility in nearby Warrensburg, Missouri; **Alcan Cable Co.** manufactures aluminum electrical conductors and employs 250 persons in its Sedalia, Missouri operation; **Gardner Denver Corporation** employs 320 workers at its Sedalia works where it makes industrial compressors and blowers; **American Compressed Steel Corporation** employs 35 workers in scrap metal recycling at its facility near Sedalia, Missouri; and **ThyssenKrupp Stahl Company**, a major United States manufacturer of specialty and precision aluminum castings at facilities located in Warrensburg and Kingsville, Missouri, where approximately 1,100 workers are employed. Collectively, these SIEUA members provide gainful employment for approximately 3,815 workers in central Missouri. All are large industrial customers of Aquila, Inc.

3. SIEUA's interests in proceedings affecting the rates, terms and conditions of electric service from Aquila have

been previously recognized by the Missouri Public Service Commission in permitting SIEUA's intervention in numerous rate design and electric rate proceedings concerning Aquila and its predecessor UtiliCorp, including without limitation the last series of Missouri Public Service Co. and Aquila, Inc. rate increase cases and Aquila's ongoing load research and class cost of service case, No. EO-2002-384.

4. Correspondence or communications regarding this application, including service of all notices and orders of this Commission, should be addressed to:

Stuart W. Conrad, Esq.
FINNEGAN, CONRAD & PETERSON, L.C.
1209 Penntower Office Center
3100 Broadway
Kansas City, Missouri 64111
Voice: (816) 753-1122
Fax: (816) 756-0373
E-mail: stucon@fcplaw.com

5. On March 2, 2005, Aquila filed seeking Commission approval of a proposed "Experimental Regulatory Plan" with the Commission. Aquila seeks various authorizations from the Commission including a certificate of convenience and necessity or a confirmation that such certificate was not needed. These requests are in connection with ongoing discussions with Kansas City Power & Light concerning a potential electric generating station in Platte County, Missouri.^{1/} The specifics of this

^{1/} On February 1, 2005, Aquila had also filed a similar Application seeking similar approval of a regulatory plan as Case (continued...)

proposed "regulatory plan" remain only vaguely defined by Aquila. However, it appears that Aquila seeks, among other things, a "pre-establishing [of] certain regulatory principles for Aquila's proposed undertakings"^{2/} Aquila's Application also discusses the expected "drivers" for a May, 2005 rate filing.

6. SIEUA members are vitally interested in this proposed "regulatory plan," vague though it be at this point, and in its terms and conditions, its impact on ratepayers generally and upon their specific operations. As major electric customers of Aquila, SIEUA members are in a position to be directly affected by the proposed increases or predeterminations sought and may be bound or adversely affected by any Commission order issued in this proceeding. Because Aquila provides electricity to SIEUA members under separate contracts or rate schedules and because of SIEUA members' size and load factors, these companies are in the special and unique position of representing an interest which will not and cannot be represented adequately by any other party and which interest is direct and immediate and differs from that of the general public. Therefore, it will aid the Commission and

^{1/}(...continued)
No. EO-2005-0257. However, the Commission found that plan "vague" and refused to issue a notice of intervention or set an intervention deadline. The Commission also directed Aquila to clarify its plan. Rather than clarify that plan, Aquila withdrew it and filed the current Application. SIEUA had also submitted an application to intervene in the earlier case, but SIEUA's application was mooted by Aquila's withdrawal of the application.

^{2/} Application, p. 9.

protect and advance the public interest that SIEUA be permitted to intervene in this proceeding to protect its members' interest which no other party is in a position properly to protect and adequately represent.

7. For purposes of 4 C.S.R. 240-2.075(2), SIEUA opposes discriminatory pricing of electricity and related utility services, opposes unreasonable increases that are unrelated to prudent costs incurred by the utility in providing utility service. SIEUA is concerned with an apparent rush of filings by several Missouri utilities of "regulatory plans" which seem at base intended somehow to evade or diminish public and regulatory scrutiny of such construction plans may result in the inclusion of generating capacity that may not be needed or at imprudent and excessive costs to ratepayers. Because Aquila's proposed plan is not fully articulated at this point regarding the relief that Aquila is seeking, SIEUA is unable to state with greater specificity its precise position on such relief as may be requested. SIEUA does state that it does not favor alternative rate mechanisms that frustrate ratepayer and regulatory review, seek to obtain predetermination, or other actions that shift the risk of proper utility operations to the shoulders of ratepayers.

8. In paragraph 12 of its Application, Aquila states that it seeks an "Experimental Regulatory Plan" that would "maintain investment grade metrics for the Company's Missouri operations." SIEUA confesses that it does not understand how

Aquila proposes to "maintain" something that it does not have. At present, our information is that Aquila's debt rating is well below "investment grade." Moreover, Aquila also states that it seeks a "reasonable return to shareholders." While not objectionable in itself, the continuing concern of these ratepayers is that Missouri ratepayers be completely and effectively shielded from the improvident forays into unregulated activities the effects of which continue to plague Aquila. As ratepayers we are concerned that with Aquila's divisional structure, increases in revenue and cash flow simply go to pay off unregulated and imprudently incurred debt and benefit neither shareholders nor ratepayers. Accordingly the provisions of this "Experimental Regulatory Plan" must be scrupulously investigated.

9. Aquila also asserts that certain "regulatory principles" should be "pre-established" so that it can move forward with an investment in new plant Aquila contends is needed. The Application then moves forward with a list of "findings" that Aquila seeks, however, it is not clear whether those "findings" are sought in the context of this case or in the context of the expected May, 2005 rate filing. Assuming that they are sought in the context of this case, such findings are inappropriate and have no support in the pleadings or evidence in this matter and there would be no record that would support a Commission order.

10. The proposed "assigned" capital structure of 47.5% equity and 52.5% debt is inappropriate. Moreover no information is communicated as to how this ratio was "assigned." Given past Aquila divisional behavior, such ratios are "assigned" to suit the exigencies perceived at the moment and likely bear no relationship either to an actual capitalization ratio or an appropriate capitalization ratio.

11. Buried in the list of requested "findings" at page 11 of the Application, is a request for Commission authorization to mortgage Aquila's Missouri properties for the purpose of providing capital for its Missouri construction program. There are at least two problems with this request. *First*, given Aquila's current divisional structure, ratepayers need absolute assurance that any proceeds of such loans are not simply diverted to pay down Aquila's considerable unregulated debt or used to "offload" other Aquila obligations generated by its improvident business activities. Accordingly, a component of this "Experimental Regulatory Plan" should at a minimum require the establishment of a separate Missouri corporate entity for the current operating divisions so that the watchful eye of the Commission can more easily follow the path ratepayer-supplied funds take. *Second*, even if additional generating plant is added, there is ample opportunity to obtain Commission authorization to place a construction or purchase money mortgage on the plant to be constructed without encumbering nearly \$1 billion of rate base in

Missouri to support a borrowing for a participation share in the construction of a proposed Iatan II generating station.

12. In general, considerably more information is needed regarding Aquila's plans for this case and its integrated resource plan before any prudent response can be made to such a plan. Aquila indicates that parts of its integrated resource plan will not be filed until March 31, 2005. Presumably Aquila will have no objection to other interested parties participating in such meetings on that date and receiving a copy of the plan for review, since this plan is apparently to be a critical component of the "Experimental Regulatory Plan" here sought.

WHEREFORE, SIEUA prays (without prejudice to later requests for relief as the specifics of Aquila's requests are clarified): (a) that SIEUA be permitted to intervene herein and be made a party hereto with all rights to have notice of and participate in hearings, to present evidence, cross-examine

witnesses, file briefs and participate in argument, should any be had; and (b) for all other needful and proper relief appropriate in the premises.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.

A handwritten signature in dark ink, appearing to read "Stuart W. Conrad", is written over a horizontal line.

Stuart W. Conrad MBE #23966
3100 Broadway, Suite 1209
Kansas City, Missouri 64111
(816) 753-1122
Facsimile (816) 756-0373
Internet: stucon@fcplaw.com

ATTORNEYS FOR SEDALIA INDUSTRIAL
ENERGY USERS' ASSOCIATION

March 14, 2005

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by electronic means or by U.S. mail, postage prepaid addressed to all parties by their attorneys of record as provided in the records maintained by the Secretary of the Commission.



Stuart W. Conrad

Dated: March 14, 2005