

**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 County,)
Missouri, or, alternatively, for an Order)
Specifically Confirming that Aquila, Inc.)
Has the Requisite Authority Under its)
Existing Certificate(s).)

Case No. EO-2005-0293

AQUILA'S REPLY TO CALPINE CENTRAL, L.P.'S RESPONSE

COMES NOW Aquila, Inc. ("Aquila"), by counsel, and for its Reply to Calpine Central, L.P.'s ("Calpine") Response to Aquila's Objection to Calpine's Application to Intervene Out of Time, respectfully states to the Missouri Public Service Commission (the "Commission") as follows:

SUMMARY

Aquila opposes Calpine's intervention because the application was filed out of time, will likely prejudice Aquila's ability to process its Application which is the subject of this case by June 1, 2005, and because the application does not satisfy the Commission's intervention criteria. Additionally, and perhaps more importantly, Calpine's intervention creates serious concerns for Aquila and its customers. Calpine, as an independent power producer and merchant of electric power, is clearly distinguishable from the other entities which have been allowed to intervene in this proceeding. Calpine's intervention will afford Calpine, an independent power producer

and merchant, an unfair advantage in future bidding processes involving Aquila. This, in turn, may injure Aquila's customers through higher rates.

CALPINE'S APPLICATION SHOULD BE DENIED AS UNTIMELY

1. By Order of the Commission, April 1, 2005 was established as the deadline for Applications to Intervene in this proceeding. Calpine's Application to Intervene Out of Time was filed on April 15, 2005. In its Response to Aquila's Objection, Calpine points to the fact that it failed to retain "local counsel" until after the intervention deadline. Failure to timely retain counsel does not constitute good cause to excuse Calpine's violation of the Commission's order.

2. Additionally, allowing Calpine to intervene at this time will cause undue delay and prejudice. Calpine's assertion that it is impossible for its intervention to delay the process, because a procedural schedule has not been adopted by the Commission, is completely without merit. The parties to this matter have engaged in significant efforts to establish a means to process Aquila's Application in an expeditious fashion and meet what Aquila believes is a June 1, 2005 deadline. Three meetings have taken place between the parties, and the parties are working on the third draft of a settlement agreement. Allowing Calpine to intervene at this late date will likely forestall the process and bring the parties back to the drawing board.

**CALPINE'S APPLICATION SHOULD BE DENIED
FOR FAILURE TO SATISFY COMMISSION CRITERIA**

3. Aside from the untimeliness of Calpine's request and the prejudice it could cause to the processing and timely disposition of Aquila's Application, the Application to Intervene Out of Time also fails to meet the Commission's criteria for intervention. The standard for intervention in Commission proceedings is set forth at 4 CSR 240-2.075.

The Commission may authorize intervention on a showing that (a) the proposed intervenor has an interest different than that of the general public that may be adversely affected by a final order in the case; or (b) granting the proposed intervention would “serve the public interest.” Calpine’s proposed intervention does not meet either of the Commission’s criteria, and consequently Calpine’s Application to Intervene Out of Time should be denied.

4. Calpine simply asserts that it has a relationship with Aquila and is in a unique position to provide the Commission with a “historical and multi-state perspective.” The existing parties to this proceeding, including the Commission’s own Staff, are also aware of proceedings and actions taken in other states. Additionally, Aquila doubts that Calpine has any relevant facts vis-à-vis its relationship with Aquila which are unknown to Aquila and which Aquila would not provide to the Commission. Calpine’s assertions regarding having a relationship with Aquila and a “historical and multi-state perspective” do not establish that Calpine’s interest in the case is “different from that of the general public” or that the intervention would “serve the public interest” pursuant to 4 CSR 240-2.075(4)(A)–(B). The possibility for consultation and advice by a third party is not a sufficient basis for intervention in any case.

**CALPINE’S APPLICATION SHOULD BE DENIED
DUE TO POTENTIAL FOR HARM TO AQUILA AND ITS RATEPAYERS**

5. Calpine should not be allowed to intervene simply because other entities have been allowed to intervene in this proceeding. Calpine has failed to comply with the Commission’s order, and Calpine has failed to satisfy the Commission’s intervention criteria. Additionally, and most importantly, Calpine’s intervention in this proceeding has the potential to harm the public interest.

6. Calpine is not like the other parties to this case. Some of the parties, such as Staff and Public Counsel, fall under Missouri statutes providing for confidentiality. The other parties to this proceeding are customers of Aquila or are utility companies subject to the Commission's jurisdiction. As an independent power producer and merchant, Calpine is not subject to oversight by the Commission. No entity which is in the business of trying to sell non-regulated power to Aquila has been -- or should be -- allowed to intervene in this proceeding.

7. Calpine, a merchant of electric power, has in the past submitted bids in response to Aquila's requests for proposals to meet its purchased power needs, and Calpine currently provides services to Aquila under contract. As a potential bidder to meet Aquila's future power needs through purchased power contracts, permitting Calpine's intervention -- and thus allowing Calpine access to Highly Confidential and Proprietary materials and information concerning Aquila's power needs -- could result in Calpine being given an unfair advantage in the purchased power bidding process with respect to Aquila, the Protective Order notwithstanding.


8. Allowing Calpine's intervention could create the perception that Calpine has been given an unfair advantage. Calpine's mere participation in this case and access to information, even if limited, could chill the interest of other potential bidders for Aquila's purchased power needs. The Protective Order in place in this proceeding does not solve this perception problem. It is not a guaranty that higher purchased power costs for Aquila and its customers will not result. Perception is often reality, and it would be unfortunate in deed if Aquila could not get the best deal for its customers with

respect to purchased power because other merchants "perceived" that Calpine gained an advantage by participating in this proceeding.

9. Whether reality or just perception, Calpine's intervention could have a serious impact on the public interest. Calpine's participation in this case could result in Aquila not being able to secure the lowest possible purchased power contract price, which, in turn, would likely result in higher than necessary rates for Missouri ratepayers. The Commission should take steps to prevent this from happening by denying Calpine's intervention.

WHEREFORE, for the reasons aforesaid and for the reasons set forth in Aquila's Objection to Calpine's Application to Intervene Out of Time, Calpine's proposed intervention should be denied.

Respectfully submitted,



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ATTORNEYS FOR AQUILA, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by electronic transmission, first class mail, or by hand delivery, on this 4th day of May, 2005, to the following:

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