

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

In the Matter of the Application of)	
Aquila, Inc., Heat Rate Testing and)	
Scheduling Proposal Pursuant to its)	Case No. EO-2008-0156
Authorized Rate Adjustment Mechanism)	

**RESPONSE OF AQUILA, INC., TO THE CONDITIONAL
AND LATE-FILED APPLICATION TO INTERVENE
BY AG PROCESSING, INC., A COOPERATIVE, AND
SEDALIA INDUSTRIAL ENERGY USERS ASSOCIATION**

Aquila, Inc. ("Aquila" or "Company"), by and through its undersigned counsel, hereby responds as follows to the "Conditional and Late-Filed Application to Intervene by Ag Processing, Inc., A Cooperative, and Sedalia Industrial Energy Users Association" ("Intervention Application").

1. On November 14, 2007, the Missouri Public Service Commission ("Commission") issued its "Order Providing Notice and Establishing Intervention Deadline" in Case No. EO-2008-0156. That order was issued in response to a proposed heat rate and/or efficiency schedule and testing plan that Aquila filed on November 9, 2007, which the Company filed to fulfill a requirement established by the Commission in its May 17, 2007, Report and Order in Case No. ER-2007-0004.

2. The November 14th order, *inter alia*, stated that "any proper person wishing to intervene in this matter shall file an application to do so no later than December 5, 2007." In addition, the order directed the Commission's Data Center to mail a copy of the November 14th order to all parties to Case No. ER-2007-

0004. Ag Processing and SIEUA (jointly, the “Applicants”) were among the parties to that case.

3. As of December 5th, no parties had sought to intervene; so on December 7th the Commission issued its “Order Directing Filing of Staff Recommendation,” which requires the Commission Staff to file its recommendation on the Company’s proposed heat rate schedule and testing plan on or before January 3, 2008.

4. Applicants had actual notice of the commencement of the case by Aquila. There have been multiple communications concerning this filing and no one can fairly claim surprise. Prior to filing its motion to establish docket, Aquila’s counsel corresponded with all counsel of record in the ER-2007-0004 case about the proposed heat rate testing procedures with the conscious object of soliciting feedback and stating the company’s intention to file a pleading to place the matter before the Commission for a resolution absent an agreement. Thereafter, Aquila sent a copy of its November 9th motion to establish docket to Applicants counsel via email that noted the case number assigned to the filing by the Commission.¹ Finally, in their late-filed Intervention Application, Applicants acknowledge that the Data Center duly sent a copy of the Commission’s November 14th order to Applicants’ counsel, but allege that counsel did not receive that order “until the week during which counsel was in Jefferson City at the hearing in Case No. EM-2007-0374. Upon his return to his office on the

¹ Counsel for Aquila sent a copy of the pleading to counsel for all parties of record in Case No. ER-2007-0004 and one would be safe in assuming that a party with an interest in the subject matter of the filing would carefully monitor the case for developments of interest.

afternoon of December 7th, counsel discovered the order in his mail, whereupon he drafted the Application and put his pleading “before the Commission as soon as possible.” This seems implausible in that the evidentiary hearings in Case No. EM-2007-0374 commenced on December 3, 2007. It is difficult to believe the Commission’s November 14th order in the present case did not arrive at the office of Applicant’s counsel until sometime on or after December 3rd – nearly 3 weeks after the order was issued and the Data Center was ordered to mail it out.

5. Because Aquila had expected that the Applicants might want to participate in this docket, the Company sent Applicants’ counsel a copy of its November 9th pleading initiating this docket as noted above. But the Company is now concerned that, by their intervention, the Applicants may be trying to expand the scope of this docket beyond the single issue that has been presented to the Commission for decision. Aquila is also concerned that Applicants are not willing to take the case as they find it from a procedural perspective.

6. In paragraph 11 of the Intervention Application, among the reasons stated by Applicants for granting their intervention is the following: “it is important that appropriate performance standards be developed so that ratepayers are not made unwilling insurers of the operations of the utility.” But “performance standards,” *per se*, are neither at issue in the current docket nor germane to it. The only issue for decision by the Commission in this case is whether the heat rate testing procedures developed by Aquila in response to the Report and Order in Case No. ER-2007-0004 are acceptable – nothing more. Any attempt by Applicants to change that focus to a broader consideration of performance

standards will both expand the scope of the docket and delay the Commission's final order.

7. The Commission will recall that in Case No. ER-2007-0004 the Applicants tried – and lost – the issue of whether a comprehensive set of performance standards should be adopted as part of Aquila's Fuel Adjustment Clause.² Applicants, through their intervention in this case, should not be allowed to resurrect that issue.

8. It is customary practice for parties who intervene out of time to commit that their intervention will not cause procedural complications or delays. Applicants, however, specifically request hearings, to present evidence and cross-examine witnesses. They state their intervention “will not result in delay or complication of the proceeding” when the truth of the matter is that delay and complication clearly *will* result as a direct consequence. The Commission already has directed its Staff to file a recommendation *without* the necessity for a hearing, a procedure routinely utilized in a non-contested case. An evidentiary hearing is an entirely different and more involved proceeding.

9. Aquila does not object to Applicants being allowed to intervene so *long as* that intervention does not (1) expand the scope of this proceeding or (2) delay the Commission's resolution of the single issue that has been presented herein for decision. If Applicants can assure the Commission that they are willing

² The Commission decided that “it has sufficient remedies available to deter imprudent action by Aquila and regular performance reviews are required under the law to detect imprudent action. *The Commission finds no performance standards shall be included in the fuel adjustment clause.*” Report and Order, p. 51. (emphasis added)

to limit their participation to the issue at hand – heat rate testing procedures – consistent with the procedure now in place then the Company does not object to the Commission granting Applicant’s intervention request. This will ensure that Aquila’s interests are not prejudiced by the late intervention request. Otherwise, Applicant’s request should be denied as untimely.

WHEREFORE, Aquila prays the Commission act on Applicant’s Intervention Application as outlined above: 1) grant the late-filed Intervention Application if Applicant’s provide assurance that they will neither expand the scope of the current docket nor seek to delay it, or 2) deny the Intervention Application as untimely if Applicants are unwilling or unable to provide such assurances.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, electronic mail or hand delivery, on the 13th day of December, 2007, to the following:

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