

**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 MPS and )  
L&P Missouri Service Areas. )

Case No. ER-2005-0436

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

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

1. Aquila objects to Calpine's intervention in this rate case proceeding, because there is no legitimate basis for said intervention. Calpine's intervention will not add factually to this case. Calpine will not be impacted by any policy established by the Commission in this case. The public interest will not be promoted and in all likelihood will be harmed by Calpine's intervention. The bottom line is that Calpine's intervention is designed to promote its own agenda and can only serve to frustrate and delay the rate case process.

2. Calpine's failure to satisfy the intervention requirements set forth at 4 CSR 240-2.075 has been discussed in Aquila's Response and Objection to Calpine's Application to Intervene. It is Calpine's responsibility to show to the Commission that intervention is warranted, and Calpine has not fulfilled that responsibility. Calpine has asserted many times that it will "provide facts and expertise" to the Commission, but Calpine has failed to support this claim with anything other than conclusory statements. Contrary to Calpine's assertion, the Commission should not be required to determine if

Calpine possesses unique and relevant facts *after* intervention is permitted and Calpine is afforded with all rights of a party hereto.

3. The existing parties to this proceeding, including Aquila, the Office of the Public Counsel, and the Commission's Staff, are aware of the facts relevant to this rate case. The existing parties are well-versed in the energy market and will provide the Commission with sufficient expertise.

4. Calpine's real motive and agenda were revealed when Calpine representatives, on June 16, 2005, met with the Commissioners individually – and not at an agenda meeting – purportedly to discuss Calpine's future plans. As a result of this meeting, a Notice of *Ex Parte* Contact was filed in this case by Commissioner Davis and Commissioner Appling. According to the Notice, Calpine's presentation to the Commissioners apparently raised prudency issues regarding the construction of Aquila's South Harper peaking facility. Calpine's presentation was apparently designed to convince the Commissioners that ratepayers will be better served if Aquila contracts with Calpine to use the Aries plant for its power needs instead of using the South Harper facility.<sup>1</sup> Calpine showed its true colors by contacting the Commissioners and making its presentation. It is obvious that Calpine's own commercial interest in promoting Aries is the real basis for Calpine's request to intervene in Aquila's rate case.

5. Additionally, and as was discussed previously, Calpine, an independent power producer and merchant of electric power, is a potential bidder to meet Aquila's

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<sup>1</sup> Units two and three of the South Harper plant have been synchronized into the grid. Unit one is scheduled to be synchronized into the grid in early July, 2005.

future power needs through purchased power contracts.<sup>2</sup> Permitting Calpine's intervention – and thus allowing Calpine access to highly confidential and proprietary materials and information concerning Aquila's finances and power needs – could result in Calpine being given an unfair advantage in the purchased power bidding process with respect to Aquila. Moreover, simply allowing Calpine to intervene could create the perception that Calpine is being given an unfair advantage. The Commission's standard Protective Order is not adequate protection against this potential harm, nor is it a guaranty that higher purchased power costs for Aquila and its customers will not result.

6. Calpine's intervention will not add factually to this case, Calpine's intervention will not serve the public interest, and Calpine's intervention very well may harm the public interest. The possibility for consultation and advice by a third party is not a sufficient basis for intervention in any case. Calpine should not be permitted to intervene in this proceeding, obtain all rights of a party hereto, and possibly delay and frustrate the process, simply so Calpine may serve its own commercial interests. Calpine has failed to demonstrate any legitimate interest in this proceeding and has failed to comply with the requirements of 4 CSR 240-2.075.

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

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<sup>2</sup> Calpine does not currently sell power to Aquila under contract. Aquila does make spot purchases from one of Calpine's Entergy plants at market just as Aquila makes spot purchases from any number of other suppliers.

Respectfully submitted,

          /s/ James C. Swearengen            
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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 first class mail, hand delivery, or electronic transmission, on this 27<sup>th</sup> day of June, 2005, to all counsel of record.

          /s/ Diana C. Carter