

**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 OBJECTION TO APPLICATION
OF CALPINE TO INTERVENE OUT OF TIME**

COMES NOW Aquila, Inc. (hereinafter "Aquila"), by counsel, and offers the following Objection in Opposition to the Application to Intervene Out of Time filed by Calpine Central, L.P. (hereinafter "Calpine") in the captioned matter:

SUMMARY

Aquila opposes Calpine's intervention because the application is out of time, does not satisfy the Commission's intervention criteria, and will likely prejudice Aquila's ability to process its Application which is the subject of this case by June 1, 2005.¹ Calpine's intervention will also create serious commercial concerns as it will give Calpine, a potential supplier of power to Aquila, an unfair advantage in the bidding process with the real possibility of ultimately injuring the public through higher rates.

¹ There is some urgency, from Aquila's standpoint, in the expeditious approval of the Application. The terms of the Stipulation and Agreement in Kansas City Power & Light Company's pending Commission Case No. EO-2005-0329, if approved by the Commission, will require Aquila, by August 1, 2005, to demonstrate that it has a commercially feasible financing plan for meeting its financial commitments to participate in the ownership of Iatan Unit 2. Aquila's financing plan is addressed in its Application in this

1. The Commission, by its Order issued in this case on March 8, 2005, established April 1, 2005, as the deadline for Applications to Intervene in this proceeding. Calpine's Application to Intervene Out of Time was filed on April 15, 2005, and is therefore untimely. No good cause has been cited by Calpine to excuse this violation of the Commission's order.

2. In addition, allowing Calpine to intervene, at this late date, would unduly burden the proceedings because the parties to this matter have already 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. These efforts have included a meeting among the parties which took place on April 19, 2005 at which time Aquila made a presentation and the parties reviewed Aquila's Application to determine the general categories of subject matters for subsequent meetings. Future meetings were scheduled by the parties to address these subject matters all with the goal of reaching resolution to Aquila's Application, if possible, by the June 1, 2005 deadline. Allowing Calpine to intervene at this stage in the proceedings could prejudice the ability of the parties to meet this schedule.

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. Subsection (4) of that rule states that the Commission may authorize intervention on a showing that (A) the proposed intervenor has an interest different than that of the

case. It is anticipated that the Commission would like to have at least sixty (60) days to consider Aquila's Application before issuing its order.

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, in its Application to Intervene, simply suggests that allowing it intervention would ensure the Commission an increased knowledge base by expanding on the “relevant facts” available to the Commission. However Calpine fails to set forth what exactly those “relevant facts” are, or how these “relevant facts” establish that its interest in the case is “different from that of the general public” or that the availability of these “relevant facts” would “serve the public interest” pursuant to 4 CSR 240-2.075(4)(A) – (B). Calpine’s Application suggests that it’s expertise would “serve the public interest.” However this proposition, if accepted would seem to suggest that intervention for the purposes of “consultation and advice by a third party” is a sufficient basis for intervention in any case. On this point, the Commission not only employs personnel to provide “expertise in the areas being investigated,” but each Commissioner also has at his or her disposal technical advisors who are in a position to fulfill the role which Calpine states for itself as the basis for its intervention. Moreover, the responsibility to represent the interests of the general public is statutorily vested in the Office of the Public Counsel (“OPC”), and not Calpine.

5. Furthermore, and most importantly, Calpine’s intervention in this proceeding has the potential to actually harm the public interest in ways other than simply delaying the processing of this case. Calpine, a merchant of electric power, has in the past submitted bids in response to Aquila’s requests for proposal to meet its

purchased power needs. In that Calpine is a potential bidder to supply power to Aquila through purchased power contracts, permitting Calpine's intervention and thus 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. Furthermore, Calpine's intervention, even with limited access to Highly Confidential materials under the Commissions standard protective order, could have a serious impact on the public interest. This is so because Calpine's mere participation in this case and access to information, even if limited, could in any event chill the interest of other potential bidders for Aquila's purchased power needs. All of this could result in Aquila not being able to secure the lowest possible purchased power contract price, which would likely result in higher than necessary rates. The Commission has been reluctant in the past to permit parties to intervene in its cases to pursue private advantage. This case is an example of that type of situation. Calpine's participation to pursue its own private advantage could not only provide it access to materials and information which would give it a bidding advantage, but its mere involvement in this case, in and of itself, could further discourage others from participating in Aquila's subsequent purchased power bidding.

WHEREFORE, for the reasons aforesaid, Calpine's proposed intervention should be denied.

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 electronic transmission, first class mail or by hand delivery, on this 22nd day of April, 2005 to the following:

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