

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 27th day
of December, 2007.

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

ORDER GRANTING INTERVENTION

Issue Date: December 27, 2007

Effective Date: December 27, 2007

In its May 17, 2007 Report and Order in Case No. ER-2007-0004, the Commission directed Aquila to complete a heat rate and/or efficiency schedule and testing plan.¹ On November 9, 2007, Aquila filed a Motion to Establish a Docket for Approval of Heat Rate Schedule and Testing Plan, which resulted in the opening of this case. Aquila asks the Commission to approve the proposed heat rate and/or efficiency schedule and testing plan with written procedures Aquila submitted in conjunction with its motion. The Commission sent notice regarding Aquila's application to media serving and members of the general Assembly representing Aquila's service area. Notice was also sent to all parties to Case No. ER-2007-0004. The Commission also provided an opportunity for interested parties to intervene, and set a December 5 deadline for intervention requests.

On December 7, AG Processing Inc., a Cooperative, ("AGP") and the Sedalia Industrial Energy Users' Association ("SIEUA") filed a Conditional and Late-Filed

¹ The Commission's May 17, 2007 Report and Order in Case No. ER-2007-0004 is currently the subject of an appellate action before the Circuit Court of Cole County, Missouri in Case No. 07AC-CC00630.

Application to Intervene. AGP is an agricultural cooperative and a major industrial electrical customer of Aquila. SIEUA is an unincorporated voluntary association consisting of large commercial and industrial users of natural gas and electricity.² The members of SIEUA are large industrial and commercial customers of Aquila. Both AGP and SIEUA were active parties in Case No. ER-2007-0004.

In support of their application to intervene AGP and SIEUA stated that they were under the impression that, because of the nature of this proceeding, their intervention in Case No. ER-2007-0004 was continued to this case. AGP and SIEUA offered no legal argument that supported this position. AGP and SIEUA further contend that their counsel did not receive the Commission's November 14, 2007 Order Providing Notice and Establishing Intervention Deadline until the week of December 3rd. Because their counsel was in hearings at the Commission in another case that week, he did not find the order in his inbox until December 7th. Upon receipt of the November 14th order, AGP and SIEUA's counsel immediately drafted his late-intervention request.

First, regarding AGP and SIEUA's contention they believed their intervention in Case No. ER-2007-0004 was continued to this case, no individual, legal entity or group is automatically a party in any proceeding before the Commission absent an express statutory provision making them a party. While the Commission can issue an order making all parties in one case parties to a subsequent case, intervenor status is not something that would be automatically "continued." In the Commission's November 14, 2007 Order Providing Notice and Establishing Intervention Deadline the Commission gave all parties of

² Current members of SIEUA are as follows: Pittsburgh Corning Corporation, Waterloo Industries, Hayes-Lemmerz International, EnerSys Inc., Alcan Cable Co., Gardner Denver Corporation, American Compressed Steel Corporation, and Stahl Manufacturing Company.

record in Case No. ER-2007-0004 notice of this case and afforded them an opportunity to intervene in this case. Nothing in that order indicated the Commission was making all parties to Case No. ER-2007-0004 parties in the present action.

On December 13, 2007, Aquila filed its response to AGP and SIEUA's conditional and late-filed application to intervene. Aquila argues that AGP and SIEUA fail to state good cause for their untimely application.

Next, Aquila states that it does not object to AGP and SIEUA being granted intervention provided they will not expand the scope of this proceeding or delay the Commission's resolution of the single issue presented in this case. Aquila argues that allowing AGP or SIEUA to request a hearing or to cross-examine witnesses in this case would constitute such a delay. Aquila further comments that "the Commission has already directed its Staff to file a recommendation *without* the necessity for a hearing, a procedure routinely utilized in a non-contested case." Staff filed its recommendation in support of Aquila's proposal on December 19, 2007; however, Aquila cannot say that, but for the prospective intervention of AGP and SIEUA, the filing would be uncontested. The other current party to this case, the Office of the Public Counsel, may file a response objecting to Staff's recommendation and request a hearing. It is also pertinent to note that AGP and SIEUA's application was filed only two days out of time.

Additionally, Aquila's use of the term "non-contested case" is inaccurate. Section 536.010(4) of the Revised Statutes of Missouri (Cum. Supp. 2006) states that a contested case is "a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing." A case remains a "contested case" irrespective of whether the case involves a dispute among its parties. For the foregoing reasons, the Commission does not find Aquila's argument that it would be

detrimentally affected if the Commission were to allow AGP and SIEUA to fully intervene in this case persuasive.

Commission Rule 4 CSR 240-2.075(5) allows the Commission to grant untimely intervention requests upon a showing of good cause. The Commission finds that AGP and SIEUA have shown good cause for their failure to timely seek intervention in this case, in that the delay was due to their counsel's excusable neglect. The Commission further finds that AGP and SIEUA's application substantially complies with Commission rules regarding intervention. The Commission further finds that AGP and SIEUA have an interest in this matter different from that of the general public, and that granting the intervention would serve the public interest. The Commission concludes that it shall grant the request.

IT IS ORDERED THAT:

1. The Conditional and Late-Filed Application to Intervene by AG Processing Inc., a Cooperative, and the Sedalia Industrial Energy Users' Association is granted.
2. This order shall become effective on December 27, 2007.

BY THE COMMISSION



Colleen M. Dale
Chief Regulatory Law Judge

(S E A L)

Davis, Chm., Murray, Clayton,
Appling, and Jarrett, CC., concur.

Voss, Regulatory Law Judge