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January 13, 2005

**FILED<sup>2</sup>**

JAN 13 2005

Missouri Public  
Service Commission

The Honorable Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102-0360

Re: Case No. EO-2005-0156

Dear Judge Roberts:

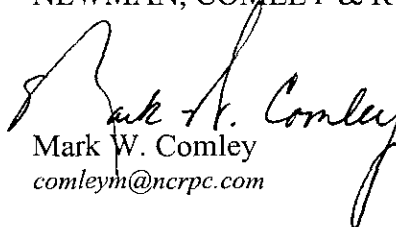
Please find enclosed for filing in the referenced matter the original and five copies of a Motion to Suspend Proceedings and Cass County's Response to Aquila's Suggestions Opposing Intervention.

Please contact me if you have any questions regarding this filing. Thank you.

Very truly yours,

NEWMAN, COMLEY & RUTH P.C.

By:

  
Mark W. Comley  
comleym@ncrpc.com

MWC:ab

Enclosure

cc: Office of Public Counsel  
General Counsel's Office  
Paul A. Boudreau  
Debra L. Moore

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

**FILED<sup>2</sup>**  
JAN 13 2005

In the Matter of the Application of Aquila, )  
Inc., for Authority to Acquire, Sell and )  
Lease Back Three Natural Gas-Fired )  
Combustion Turbine Power Generation )  
Units and Related Improvements to be )  
Installed and Operated in the City of )  
Peculiar, Missouri )

Case No. EO-2005-0156

Missouri Public  
Service Commission

**CASS COUNTY'S RESPONSE TO  
AQUILA'S SUGGESTIONS OPPOSING INTERVENTION**

COMES NOW the County of Cass, Missouri (hereinafter Cass County), by and through its attorneys, and in response to Aquila's Suggestions in Opposition to Application of Cass County, Missouri to Intervene submits the following to the Commission:

1. Cass County has sought to intervene under the provisions of 4 CSR 240-2.075, the provisions of which are quite broad. These provisions are consistent with the case authority on the subject. As stated in *State ex rel. Consumers Public Service Co. v. Public Service Commission*, 352 Mo. 905, 920-921, 180 S.W.2d 40, 46 (Mo.1944)

Considering the Public Service Commission Act as a whole, it seems apparent that parties to cases before the Commission, whether as complainants or intervenors are not required to have a pecuniary interest, or property or other rights, which will be directly or immediately affected by the order sought or even its enforcement. The reasonable construction seems to be that the interest necessary to authorize intervention [before the Public Service Commission] should be the same as that required to become a complainant upon whose complaint a case is commenced. Any local partisan interest in the situation involved, such as a customer, representative of the public in the locality or territory affected [is sufficient.]

2. As an instrumentality of the State of Missouri with authority over a specified county territory assigned and described by statute, with duties and responsibilities that directly affect the public within, and outside, its borders, Cass County is most assuredly a "representative

of the public in the locality or territory affected.” The power plant referred to in Aquila’s application is not located in Peculiar, Missouri, the entity which has ostensibly agreed to issue Chapter 100 bonds for this venture, but rather the plant site is in unincorporated Cass County. Not only does Cass County qualify for intervention in this matter on the ground above, but on the additional ground that it has interests which will be directly affected if the relief in the application is granted.

3. At paragraph 3 of its Suggestions, Aquila states that “The County is a political subdivision. [citation omitted]. Any interest it has in this case is not different of that of the general public.” There is no basis for this contention. Unlike the general public, Cass County is responsible for 1) the location, installation and maintenance of public roadways that serve the industrial, commercial and residential uses in unincorporated areas; 2) the hiring, equipping and dispatching of law enforcement and emergency personnel; and 3) regulation, with other agencies having jurisdiction, of the general welfare and environmental health of its citizens.<sup>1</sup> The Commission’s favorable ruling on the application may have a direct effect on the distribution of Cass County resources and therefore have direct pecuniary effects on the county fisc which a member of the “general public” will never incur.<sup>2</sup> To reiterate--although it seems redundant--Cass County’s interest in this proceeding is different from that of the general public. Its intervention is warranted under the rule and by statute.

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<sup>1</sup> Cass County notes that the City of Peculiar, which will have none of these concerns if the power plant is ever financed and constructed, is claimed by Aquila to be a “proper party in interest.” Suggestions at ¶ 5. Cass County is as much a proper party in interest as the municipality.

<sup>2</sup> Aquila suggests that Cass County is intervening on behalf of the ratepayers of Cass County. It has cited *State ex rel Missouri Power & Light Company v. Riley*, 546 S.W.2d 792 (Mo.App. W.D. 1977) for the proposition that counties cannot represent the public interest before the Commission. The cited case concerned the authority of the Office of Public Counsel to represent, and then take appeals on behalf of, the public at large. To the contrary, Cass County intervenes for a discrete set of reasons particular to its governance position over the territory in which Aquila seeks to build a major industrial concern. The advocacy of those interests does not inhibit Public Counsel or the General Counsel of the Commission in the exercise of their duties.

4. It should also be emphasized that Cass County has not intervened in this case to have a second forum within which to litigate the issues raised in the Circuit Court of Cass County, Case No. CV104-1443CC (the Circuit Court Case). Rather, and assuming this matter will proceed,<sup>3</sup> Cass County will insist that none of the issues involved in the Circuit Court Case see any treatment before the Missouri Public Service Commission, and as an intervener, Cass County will object to any change, alteration or modification of the instant application by any party that might involve an overlap of the two contests. In particular, Aquila has the right to amend this application, and because of the judgment entered against it in Cass County Circuit Court (discussed subsequently), it might seek to convert this proceeding to one for specific authority to construct the power plant at the root of its application. Cass County should be granted status as a party intervener to protect its interests if Aquila should file a motion to so amend its application.

5. Aquila adds arguments that Cass County's claims in the Circuit Court Case are impermissible collateral attacks on the Commission's orders in other previous cases involving the utility. The Commission may ignore these arguments for they have already been resolved against Aquila. On January 11, 2005, judgment was entered in Cass County's favor on its petition for permanent injunctive relief against Aquila,<sup>4</sup>

6. Aquila argues that Cass County will not be prejudiced if it is denied intervention. This of course cannot be guaranteed. Absent a separate voice for Cass County, its distinctive position in this matter will not be represented, all to its prejudice.

7. So it is clear, Cass County is opposed to the construction of the power plant in violation of Section 64.235 RSMo 2000 and in turn could not be in favor of any of the means by

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<sup>3</sup> See Cass County's Motion to Stay Proceedings filed separately with this Response.

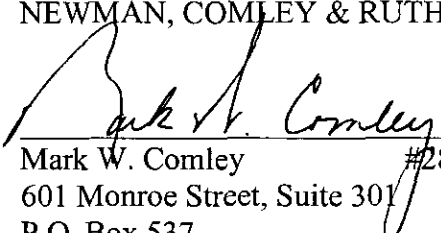
which such a plant might be constructed including the form of financing proposed in the application.

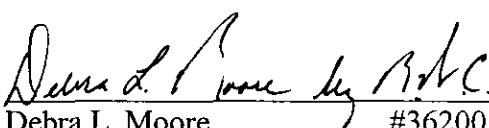
WHEREFORE, for the foregoing reasons, Cass County, Missouri, respectfully requests that the Commission grant its Application to Intervene in this matter, and thereby entitle the County to have notice and to appear at the taking of testimony, to produce and cross-examine witnesses and to be heard on the argument, and in all other respects fully participate in this proceeding.

Respectfully submitted,

NEWMAN, COMLEY & RUTH P.C.

By:

  
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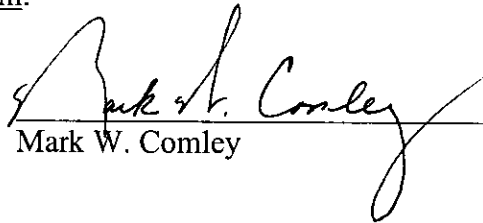
ATTORNEYS FOR CASS COUNTY, MISSOURI

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<sup>4</sup> See also Cass County's Motion to Stay Proceedings. A copy of Judge Dandarand's final judgment is attached to the Motion.

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 3<sup>rd</sup> day of January, 2005, to the Office of General Counsel at gencounsel@psc.state.mo.us; Office of Public Counsel at opcservice@ded.state.mo.us; and Paul A. Boudreau at paulb@brydonloaw.com.

  
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Mark W. Comley