



Praxair and Explorer, according to MEUA, should be automatically granted intervention because these entities are signatories to a Stipulation Agreement filed in Case No. EO-2005-0263, a provision of which states:

Each of the Signatory Parties shall be considered as having sought intervenor status in any rate case or rate filing without the necessity of filing an application to intervene and Empire consents in advance to such interventions.

The Commission, however, is not a party to this Stipulation and is not contractually bound to its terms.

### **Empire's Objection**

On October 25, Empire filed suggestions in opposition to the intervention request. Empire first observes that, pursuant to the Stipulation in EO-2005-0263, it has waived any objection to Praxair's or Explorer's intervention. Empire adds that it would have no objection to intervention by Enbridge. What Empire objects to is the intervention of MEUA as an association.

Empire argues that MEUA is an unincorporated association lacking legal status apart from its members, and as such, it is not a legal entity capable of suing or being sued in its own name.<sup>2</sup> Empire further argues that if MEUA is allowed to intervene without a set and definite member list, the Commission's intervention rule requiring that list will have been circumvented.<sup>3</sup>

### **MEUA's Response**

MEUA argues that the Commission's rules permit intervention of informal associations and such associations need not be a legally recognized entity. MEUA further

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<sup>2</sup> Empire cites to: *State ex rel. Automobile Club Inter-Insurance Exchange v. Gaertner*, 636 S.W.2d 68 (Mo banc 1982) and *The Executive Board of the Missouri Baptist Convention v. Carnahan*, 170 S.W.3d 437 (Mo. App. 2005).

<sup>3</sup> Commission Rule 4 CSR 240-2.075.

claims that it has identified the entities that currently form its association at the time of its intervention request and that any subsequently added member would be bound by the actions of the association in this case.

### **Analysis and Decision**

The Commission's intervention rule does contemplate applications from associations. "Association" is not defined in the Commission's rules, but Black's Law Dictionary defines "association" as:

The act of a number of persons in uniting together for some special purpose or business. It is a term of vague meaning used to indicate a collection or organization of persons who have joined together for a certain or common object.<sup>4</sup>

Similarly, the American Heritage College Dictionary defines "association" as:

The act of associating or the state of being associated. An organized body of people who have an interest in common; a society.<sup>5</sup>

MEUA identifies itself as an "ad hoc" association, and consistent with the apparent impromptu nature of such an organization, MEUA expects it will be identifying additional members in the future. MEUA, currently composed of Praxair, Explorer and Enbridge, is not incorporated or otherwise legally organized and it lacks formal legal status.

MEUA affirmatively pleads that it will identify any new members as they join and that all of its members will be bound by the actions of MEUA in this case. The interest identified by MEUA as its uniting purpose for intervening is the affect any electric rate increase will have upon its industrial members. Any new members to the association will presumably have its interests aligned with that of the other members of MEUA or it would not be joining the association.

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<sup>4</sup> Black's Law Dictionary (6<sup>th</sup> Ed.), West Publishing Company, 1990, p. 121.

<sup>5</sup> American Heritage College Dictionary (3<sup>rd</sup> Ed.), Houghton Mifflin Company, 1997, p. 83.

Commission Rule 4 CSR 240-2.075(3) requires an association filing an application to intervene to list all of its members, and MEUA has listed all of its current members. Empire has waived objection to the intervention of Praxair and Explorer pursuant to the terms of a Stipulation and Agreement entered into in File No. EO-2005-0263. And Empire states that it has no objection to the intervention of Enbridge. What Empire appears to really be objecting to is the uncertain future members to MEUA – members whose identity and interests are unknown.

Empire has a valid concern because the addition of new members may bring in new issues or disputes to the case without the Commission's formal approval, thereby circumventing the application process designed specifically to identify all of the potential parties and their interests and positions.<sup>6</sup> Indeed, granting intervention to an unincorporated association is a grant of intervention to the association's individual members – its current members.<sup>7</sup>

The Commission believes in transparency and full disclosure. Indeed these principles are built into the intervention rules for obvious reasons. While the Commission will grant intervention to MEUA's current members, it will also require MEUA to timely file a motion to add any new members when they join the association. That motion shall include an explanation for the new member seeking intervention beyond the intervention deadline. Additionally, each time a new member is identified and seeks intervention the new member must affirmatively plead that its interests are aligned with the association's and that the new member will be bound by the actions of the collective organization. If another industrial

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<sup>6</sup> See Commission Rule 4 CSR 240-2.075(2) & (4).

<sup>7</sup> An unincorporated association has no legal entity distinct from its membership. *State ex rel. Auto. Club Inter-Insurance Exchange v. Gaertner*, 636 S.W.2d 68, 70 (Mo. banc 1982).

It is also paramount for the Commission to identify all of the parties to ensure proper compliance with the Commission's standard of conduct rules.

entity has interests diverging from that of MEUA, it must seek intervention as a separate entity.

**THE COMMISSION ORDERS THAT:**

1. Praxair, Inc., Explorer Pipeline Company, and Enbridge Energy, L.L.P. are granted intervention appearing as The Midwest Energy Users' Association, an unincorporated association.
2. The Midwest Energy Users' Association, and its members, shall comply with the directions in the body of this order for adding any new members to its association.
3. This order shall become effective immediately upon issuance.

**BY THE COMMISSION**



Steven C. Reed  
Secretary

( S E A L )

Davis, Jarrett, Gunn, and Kenney, CC., concur.  
Clayton, Chm., absent.

Stearley, Senior Regulatory Law Judge