

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 12th day
of July, 2005.

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| In the Matter of the Tariff Filing of Aquila, Inc., |) | |
| to Implement a General Rate Increase for |) | <u>Case No. ER-2005-0436</u> |
| Retail Electric Service Provided to Customers |) | Tariff No. YE-2005-1045 |
| in its MPS and L&P Missouri Service Areas. |) | |

ORDER GRANTING INTERVENTION

Issued Date: July 12, 2005

Effective Date: July 12, 2005

Procedural History and Positions of the Parties:

On May 24, 2005, Aquila, Inc., which does business as Aquila Networks - MPS and as Aquila Networks - L&P, submitted to the Missouri Public Service Commission certain proposed tariff sheets, Tariff File No. YE-2005-1045. The purpose of the filing, according to Aquila, is to implement a general rate increase for retail electric service provided by the Company in its MPS and L&P service areas. Aquila states that the new retail electric service rates are designed to produce an additional \$69.2 million in gross annual electric revenues excluding gross receipts, sales, franchise, and occupational taxes in its MPS service area, a 20.3% increase over existing revenues, and \$9.4 million in additional gross annual electric revenues in its L&P service area, exclusive of gross receipts, sales, franchise, and occupational taxes, a 9.6% increase.

The Commission issued its Suspension Order and Notice on May 31, setting Monday, June 20, 2005, as the deadline for applications for intervention. On June 20, the

AARP timely filed its Application to Intervene. Therein, AARP states that it is a nonprofit, nonpartisan membership organization that advocates for persons who are 50 years of age and older and approximately 740,000 AARP members currently reside in the state of Missouri. AARP states that its interest in this matter relates to the proposed rates, terms and conditions of service for Aquila's residential electric customers in both the L&P and MPS service territories. More specifically, AARP's interest in this matter relates to how these proposals may directly and adversely impact those Missouri seniors who are receiving monopoly electric service from Aquila in the L&P and MPS areas. AARP states that it plans to provide the Commission with a more detailed position on the filings and testimony of Aquila in this case and that, accordingly, its intervention in this proceeding would serve the public interest.

On June 22, Aquila responded in opposition to AARP's intervention application. Aquila states that it opposes AARP's intervention in this proceeding because, Aquila contends, AARP does not satisfy the Commission's intervention criteria. Aquila states, "If all 'interested' parties are permitted intervention in all Commission matters, undue delay – both at the Commission level and at the appellate level – will result. That is why the intervention rules are in place." Aquila asserts that the interests of AARP's members are not different than those of the general public and that the intervention of AARP will not serve the public interest. Instead, Aquila states, "Allowing the intervention of AARP in this rate case proceeding will simply create two public counsels."

AARP replied to Aquila on June 27, stating that it promotes the well-being of older persons through advocacy, education, and service on a number of priority issues, one of which is reasonable utility rates and service for seniors. AARP further states that it has

intervened in numerous rate and other regulatory cases in dozens of states around the country, providing expert testimony and legal arguments regarding a variety of telecommunications and energy issues that affect older consumers. The specific interest that AARP has in this proceeding is the interest of the older residential customers served by Aquila. AARP contends that this is an interest that is clearly “different from that of the general public and which may be adversely affected by a final order arising from the case” pursuant to Commission Rule 4 CSR 240-2.075 (4)(A). AARP’s interest in this matter thus relates to a specific subset of Aquila’s general body of ratepayers. AARP points to Section 386.710.1(3), RSMo 2000, which provides:

Nothing in this section shall be construed to limit the right of any person, firm or corporation specified in subsection 1 of section 386.390 to petition or make complaint to the commission or otherwise intervene in proceedings or other matters before the commission.

AARP further states that this Commission, like the majority of public utility commissions around the country, has a long tradition of permitting entities to intervene in utility rate cases in order to represent the interests of a particular class of customer or a specific type of customer. Moreover, AARP states, this Commission has traditionally allowed municipalities and other political subdivisions to intervene in rate cases for the purpose of representing the interests of that segment of consumers who reside within their boundaries and has already done so in this case by allowing the intervention of the City of Kansas City and the City of St. Joseph for the purpose of representing the interests of the Aquila consumers who are residents of those particular cities.

AARP also states that its intervention would serve the public interest. AARP contends that older Missourians are particularly vulnerable to rapid increases in energy

prices. Older Missourians devote a higher percentage of their total spending to residential energy costs than does the public generally. Older Missourians also have special needs with regard to their access to electric service. Older Missourians have a strong interest in safe, reliable, and affordable electric service. If permitted to become a party, AARP states that it fully intends to offer expert testimony relating to these issues.

On June 28, Aquila responded to AARP's reply, stating essentially that the criteria for intervention in a Commission case would have no meaning if AARP is permitted to intervene. If the particular interests of "seniors" require independent representation, then so do the interests of children and those of all other subsets of society.

AARP filed its Supplemental Reply on July 6, noting that the presiding officer had authorized such a filing at the prehearing conference held on June 30. Therein, AARP states that the interests of the older consumers it seeks to represent may be at odds with other consumer interests impacted by this rate case; for example, a clear conflict would arise if programs were proposed in this rate case that benefited or targeted senior ratepayers but which were to be funded by revenues collected from other ratepayers. AARP further asserts that the consumers that it seeks to represent have significant pecuniary interests at stake in this case and those interests may be adversely impacted by the Commission's decision in this rate case. Further, Missouri courts have clarified that it is not necessary to have a direct pecuniary interest at stake, or to even be aggrieved, in order to qualify for "intervention, protest or appeal" of Commission matters.¹ The Missouri Supreme Court has stated:

¹ *St. ex rel. Riverside Pipeline, L.P. v. Public Service Commission*, ___ S.W.3d ___ (Mo. banc 2005), Case No. SC86474; *State ex rel. Consumers Public Service Co. v. Public Service Commission*, 180 S.W.2d 40, 46 (Mo. banc 1944); *State ex rel. Crown Coach Co. v. Public Service Commission*, 185 S.W.2d 347, 356 (Mo. App. 1944).

The reasonable construction seems to be that the interest necessary to authorize intervention 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 . . . or as a competitor . . . is surely sufficient to show an interest . . . and, therefore, is likewise a **sufficient basis for intervention**.²

AARP contends that its interest in this case, that of Aquila's older residential customers, is a specific "local partisan interest" distinguishable from the general "public interest" that is represented by the Public Counsel.

Discussion:

Commission Rule 4 CSR 240-2.075(4) provides:

The commission may on application permit any person to intervene on a showing that:

(A) The proposed intervenor has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or

(B) Granting the proposed intervention would serve the public interest.

Having considered the rule set out above and the arguments of the parties, the Commission determines that AARP qualifies for intervention both because its interests are different from those of the general public and may be adversely affected and because its participation as a party in this proceeding would serve the public interest. Older consumers – "seniors" – are not identical to the other ratepayers served by Aquila; their voice deserves to be heard. The active participation of a party that will provide useful expert testimony and other evidence on the matters pending before the Commission can only serve the public interest. For these reasons, the Commission will grant AARP's application.

² *Consumers Public Service Co.*, 180 S.W.2d 40 at 46 (emphasis added).

IT IS THEREFORE ORDERED:

1. That the Application to Intervene filed by AARP on June 20, 2005, is granted. The Commission's Data Center shall add counsel for AARP to the Service List maintained in this case.

2. That this order will become effective on July 12, 2005.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Gaw, Clayton,
and Appling, CC., concur.
Murray, C., dissents.

Thompson, Deputy Chief Regulatory Law Judge