

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Tariffs of Aquila, Inc., d/b/a)	
Aquila Networks – MPS and Aquila Networks – L&P)	
Increasing Electric Rates for the Services Provided)	<u>Case No. ER-2007-0004</u>
to Customers in the Aquila Networks – MPS and)	Tariff No. YE-2007-0001
Aquila Networks – L&P Service Areas)	

ORDER GRANTING LATE-FILED APPLICATION TO INTERVENE

Issue Date: September 12, 2006

Effective Date: September 12, 2006

On July 3, 2006, Aquila, Inc., submitted proposed tariff sheets designed to implement a general rate increase for retail electric service provided by Aquila to customers in its Aquila Networks – MPS and Aquila Networks – L&P service areas. The Commission issued notice of that filing on July 5, and established July 25 as the deadline for submission of requests to intervene. On August 21, The Commercial Group, an unincorporated association of large commercial users of electricity in Aquila's service territory, filed an application to intervene.¹ Aquila objected to The Commercial Group's application on August 25. The Commercial Group replied to Aquila's objection on August 31.

Commission Rule 4 CSR 240-2.075(4) provides that the Commission may grant an application to intervene upon a showing that the applicant has an interest in the case that is different from that of the general public and that may be adversely affected by the Commission's final order in the case. In the alternative, the Commission may grant an

¹ The application to intervene indicates that the current members of The Commercial Group are JCPenney Corporation, Inc.; Lowe's Home Centers, Inc.; and Wal-Mart Stores East, LP.

application to intervene if doing so would serve the public interest. Subsection (5) of that same rule provides that the Commission may grant a late-filed application to intervene upon a showing of good cause.

The Commission had previously established an intervention deadline in this case of July 25. The Commercial Group filed its application to intervene on August 21, approximately one month late. In its application, The Commercial Group explained that it was unable to file a timely application to intervene because “its members needed time to review Aquila’s filing and analyze their business interests as they relate to this proceeding.” The Commercial Group also represented that “additional time was required to finalize arrangements between and among members of The Commercial Group for their joint intervention and representation in this case.” The Commercial Group agrees to accept the record as it now exists, and contends that allowing it to intervene after the established deadline will not unduly delay or prejudice the rights of the other parties in the case.

In opposing The Commercial Group’s application, Aquila argues that The Commercial Group has failed to show good cause for its delay in applying to intervene. Essentially, Aquila contends that The Commercial Group faced the same problems in reviewing and analyzing the case and obtaining legal representation as did every other intervenor that managed to file a timely application to intervene. Aquila argues that The Commercial Group should be excluded from participating in this case to encourage parties wishing to intervene in future cases to comply with requirements established by the Commission.

The Commission established a relatively short – twenty-day – period for intervention so that the interested parties could be quickly identified and the procedural gears could

start turning to bring this rate case to a conclusion within the time allowed by law. That does not mean, however, that late-arriving passengers should be thrown under the wheels. The Commercial Group has provided a reasonable explanation for its failure to apply to intervene within the allotted time. As an ad hoc collection of commercial interests that have not routinely appeared before this Commission, it is understandable that The Commercial Group would require more time to prepare its application to intervene. At some point, the train will have left the station and no more intervenors will be allowed to board. However, there is still time for The Commercial Group to safely come on board without disrupting the journey. The Commission finds that The Commercial Group has shown good cause to intervene after the established intervention date.

Having found that The Commercial Group has shown good cause for its late filing to intervene, the Commission must still address the question of whether The Commercial Group has an interest that is different than that of the general public and that its interest may be adversely affected by a final order arising from this case.

As large commercial users of electricity, the large retailers included within The Commercial Group have interests that differ from those of the general public. Those interests are not likely to be represented by the Office of the Public Counsel, which generally represents the interests of homeowners and small businesses. Aquila suggests that The Commercial Group's interests will be represented by AG Processing and the Sedalia Energy Industrial Users' Association, two industrial entities that have already been allowed to intervene. But, as The Commercial Group Points out, those entities are manufacturers rather than retailers and are likely to have different load factors and other operating characteristics. They may be on different rate schedules and in different

customer classes. Therefore, the industrial's interests may be different than and even adverse to the interests of the large retailers.

Based on those facts, the Commission finds that The Commercial Group has an interest that is different than that of the general public and that its interest may be adversely affected by a final order arising from this case. Therefore, in accordance with 4 CSR 240-2.075(4), the Commission will grant the application to intervene.

IT IS ORDERED THAT:

1. The Commercial Group's Application for Leave to Intervene Out of Time is granted.
2. This order shall become effective on September 12, 2006.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Morris L. Woodruff, Deputy Chief Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 12th day of September, 2006.