

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)	<u>Tariff No. YE-2007-00001</u>
Aquila Networks-L&P Service Areas.)	

**APPLICATION OF THE COMMERCIAL GROUP
FOR LEAVE TO INTERVENE OUT OF TIME**

Pursuant to 4 CSR 240-2.075 The Commercial Group submits this Application For Leave To Intervene Out Of Time ("Application") to the Public Service Commission of the State of Missouri (the "Commission"). In support of this Application, The Commercial Group states as follows:

1. On July 3, 2006, Aquila, Inc. ("Aquila"), d/b/a Aquila Networks-L&P and Aquila Networks-MPS, filed its application with the Commission seeking authority to implement a general rate increase for electric service within its Missouri service territories.

2. The Commercial Group is an unincorporated, voluntary association of large commercial users of electricity throughout Aquila's Missouri service territories. The Commercial Group was formed for the purpose of economically representing the interests of its members in this proceeding. Current members of The Commercial Group are JCPenney Corporation, Inc., Lowe's Home Centers, Inc., and Wal-Mart Stores East, LP. Additional similarly situated customers may subsequently be added to The Commercial Group. However, any such additions to the Group will be identified and will not delay this case or adversely impact the rights of other parties to the case.

3. 4 CSR 240-2.075(5) permits interventions filed after the intervention date to be granted upon a showing of good cause. The term “good cause” is not defined by the Commission’s rules, nor does it appear that the Courts of Missouri have defined the term precisely as used in the Commission’s rules. In another somewhat analogous context the Missouri Courts have recognized that the term is incapable of precise definition, but is remedial in purpose and should be interpreted liberally to avoid manifest injustice. See, e.g., *Stroup v. Leopard*, 981 S.W.2d 600, 603 (Mo. Ct. App. 1998).

4. The members of The Commercial Group have acted in good faith in seeking to intervene in this cause. The Commercial Group has not filed for intervention until now because its members needed time to review Aquila’s filing and analyze their business interests as they relate to this proceeding. Additional time was required to finalize arrangements between and among the members of The Commercial Group for their joint intervention and representation in this cause.

5. As of the date of this filing no procedural schedule has been ordered in this cause. The Commercial Group's intervention will not unduly delay or prejudice the rights of other parties to the cause. Further, The Commercial Group agrees to accept the record as established thus far. Therefore, the progress of this cause will not be impeded by allowing The Commercial Group’s intervention.

6. Denial of The Commercial Group’s intervention, however, would result in manifest injustice to its members and would be contrary to the public’s interest. Collectively members of The Commercial Group operate approximately 34 large retail stores and other facilities throughout Aquila’s Missouri service territories, consuming

approximately 115,446,014 kWh of electricity a year. The proposal filed by Aquila in this proceeding, if adopted, would significantly increase the cost of electricity to members of The Commercial Group, directly and substantially affecting their business and operations in the State of Missouri. Accordingly, The Commercial Group has a direct interest in these proceedings.

7. Further, as large commercial customers of Aquila, the interests of The Commercial Group differ significantly from those of other customer groups represented in this proceeding. The interests of The Commercial Group cannot be adequately represented by any existing or future participant in these proceedings given the unique nature of its members' interests. Allowing The Commercial Group to intervene in this proceeding will serve the public interest by ensuring that the Commission is apprised of the interests of large commercial electric customers. Further because members of The Commercial Group operate in many different states, they have substantial and unique insights gained in various states and markets regarding issues in this proceeding, including those such as customer class costs of service and rate design.

8. The Commercial Group continues to review the filing of Aquila, especially the rate design and cost of service components, and may support or seek changes to various aspects of the filing. For purposes of 4 CSR 240-2.075(2), at present The Commercial Group is unsure of the position it will take in this matter.

9. The following persons should be included on the service list in these proceedings, and all communications concerning this matter should be addressed to:

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Case No. ER-2007-0004**

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WHEREFORE, The Commercial Group respectfully requests that this Application be granted and that it be provided full rights to participate immediately as a party to this proceeding.

Dated this 21st day of August, 2006.

Respectfully submitted,

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ATTORNEYS FOR THE COMMERCIAL
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CERTIFICATE OF SERVICE

The undersigned certifies that on August 21, 2006, a true and correct copy of the foregoing Application to Intervene was served by U.S. mail, postage prepaid, or by electronic mail addressed to all parties by their attorneys of record as provided by the Secretary of the Commission.

/S/ Rick D. Chamberlain
