

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

In the Matter of the Resource Plan of Aquila, Inc. )	
d/b/a Aquila Networks-MPS and Aquila )	Case No. EO-2007-0298
Networks-L&P Pursuant to 4 CSR 240-22 )	

**RESPONSE OF AQUILA, INC., IN OPPOSITON TO THE  
APPLICATION TO INTERVENE OUT OF TIME  
BY DOGWOOD ENERGY, LLC**

Aquila, Inc., d/b/a Aquila Networks-MPS and Aquila Networks-L&P (“Aquila” or the “Company”), by and through the undersigned counsel and pursuant to 4 CSR 240-2.080(15), hereby files its response in opposition to the “Application to Intervene Out of Time” that was filed by Dogwood Energy, LLC (“Dogwood”) on February 27, 2007. In support of its response, Aquila states as follows:

1. On February 7, 2007, the Missouri Public Service Commission (“Commission”) issued its “Order Directing Notice, Setting Date for Submission of Intervention Requests, and Scheduling a Prehearing Conference.” The order required that “[a]ny person wishing to intervene in this matter shall file an application to do so no later than February 27, 2007.” Although the Commission received Dogwood’s application to intervene on February 27<sup>th</sup>, it did not receive it by 4:00 p.m., CST, as required by 4 CSR 240-2.080(11). Accordingly, the actual file date of Dogwood’s application is February 28, 2007 – one day beyond the time limit for interventions prescribed in the Commission’s order.

2. Aquila does not object based on this technical deficiency. Dogwood’s application to intervene in this case nevertheless should be denied because the interests that Dogwood seeks to advance through its intervention are foreign – and perhaps

antithetical – to the objectives of Chapter 22 of the Commission’s rules, which govern electric utility resource planning.

3. As stated in 4 CSR 240-22.010(2), “[t]he fundamental objective of the resource planning process . . . shall be to provide the public with energy services that are safe, reliable and efficient, at just and reasonable rates, in a manner that serves the public interest.” This goal is to be achieved through: (1) consideration and analysis of demand and supply-side alternatives; (2) using minimization of long-run costs as the primary criterion for choosing a preferred resource plan; and (3) identifying and, whenever possible, quantitatively analyzing any other considerations that are “critical to meeting the fundamental objective of the resource planning process, but which may constrain or limit the minimization of the present worth of expected utility costs.” In contrast, Dogwood’s goal is entirely parochial: Dogwood recently acquired a 600 MW combined-cycle generating facility and it may seek to use this proceeding to further its objective to become a power supplier to Aquila.

4. Aquila has several concerns regarding Dogwood's proposed intervention in this case. Dogwood is both a competitor and a potential supplier of electric power. The items submitted by Aquila as "Highly Confidential" in conjunction with its initial filing on February 5, 2007, were assigned that designation in part because the Company believes these items contain competitive, market-sensitive information. Moreover, Aquila may, during the course of this proceeding, be asked to supply information about prior, current or upcoming energy proposals or requests for proposals (RFPs). In this regard, it is Aquila's expectation that Dogwood will propose a power supply option as did the predecessor of the former owner of the Aries facility, Calpine Corporation, in response to prior RFPs. As a matter of fact, Aquila is currently in the process of issuing a RFP and this is likely to occur before the proceedings in this case are concluded. As such, Dogwood's intervention may give it access to confidential resource planning

information that may weaken Aquila's negotiating position during the RFP review process. Additionally, Dogwood's intervention may give it access to information regarding the RFP process itself, including information regarding prior and current responses from other companies that would weaken Aquila's negotiating position and provide a significant advantage to Dogwood compared to other participants in the RFP process. If Aquila's negotiating position concerning its RFP is weakened, it could result in higher purchase power costs for Aquila's customers. This outcome would be contrary to the public interest.

5. In summary, the Company believes that Dogwood seeks to intervene in this case because it hopes it can achieve through the regulatory process an objective it has not been able to achieve through business means; that is, an unfair advantage in Aquila's capacity planning process. Intervention in a resource planning case was never intended: (1) to serve as a substitute for the normal, arms-length, business negotiations wherein competing power suppliers attempt to convince an electric distribution company, like Aquila, to buy power, or (2) to afford a supplier a means to gain leverage in those negotiations. Dogwood and its predecessor have attempted to convince Aquila to buy its power, but to date those attempts have not resulted in a purchased power contract. By intervening in this case, Dogwood clearly hopes to renew those efforts, but outside the normal RFP process. This is a perversion of the IRP review process and should not be allowed.

WHEREFORE, for the reasons stated above, Aquila asks the Commission to deny Dogwood's application to intervene.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was electronically transmitted, sent by U.S. Mail, postage prepaid, or hand-delivered, on this 9th day of March, 2007, to:

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