

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

The Staff of the	)	
	)	
Missouri Public Service Commission	)	Case No. WC-2010-0227
	)	
Complainant,	)	
	)	
v.	)	
	)	
Aspen Woods Apartment Associates, LLC, <i>et al.</i>	)	
	)	
Respondents.	)	

**NATIONAL APARTMENT ASSOCIATION’S REPLY  
TO STAFF’S RESPONSE TO THE APPLICATION TO INTERVENE BY THE  
NATIONAL APARTMENT ASSOCIATION AND MOTION FOR EXPEDITED  
CONSIDERATION**

The National Apartment Association (“NAA”) respectfully files this Reply to Staff’s Response to the Application to Intervene By the National Apartment Association and Motion For Expedited Consideration to permit NAA to intervene in the action named above. The Missouri Public Service Commission (the “Commission”) should grant NAA’s Application to Intervene because it is timely filed, NAA’s members’ substantial interests in the adjudication of the issues presented in the Complaint and/or Amended Complaint, and Staff is not unduly prejudiced.

**Procedural History**

On January 29, 2010 the Staff of the Missouri Public Service Commission (the “Staff”) filed a Complaint alleging that Aspen Woods Apartment Associates, LLC and National Water & Power, Inc., among other defendants, should fall under the jurisdiction of the Commission because of certain utility billing practices employed by the Respondents. Staff sought leave to amend the Complaint to add additional defendants on October 5, 2010. NAA filed to intervene in this matter on October 19, 2010. On October 25, 2010, the staff of the Missouri Public

Service Commission ( “Staff”) filed a response requesting that the Commission deny NAA’s Application to Intervene.

**NAA’s Application to Intervene is Timely**

Staff argues that NAA should have filed to Intervene in this matter within 30 days after the Commission issued the February 2, 2010, Order Giving Notice of the Complaint And Directing Answer. However, from the face of the Order, it is apparent that the only entities receiving such notice were the respondents and a registered agent – NAA received no notice of this matter and, in effect, had no opportunity to file for intervention within the 30 day time period. Moreover, Staff has sought to amend the Complaint to add addition parties to the proceeding. Assuming the Commission grants Staff leave to amend the complaint, NAA will have filed to intervene within 30 days of the issuance any order directing the new parties to answer the Amended Complaint.

**NAA and its Members Have Shown Good Cause For Intervening**

NAA represents more than 58,000 apartment units in Missouri, many of which utilize billing systems similar to the one Aspen Woods Apartment Associates, LLC employs. An adverse ruling by the Commission at the behest of the Staff would mean higher fees and costs of doing business for residential and commercial real estate companies and ultimately lead to higher rents for Missouri residents when the broader economy and job market are weak. Commission Rule 4 240-2.075(3) specifically allows for the intervention of an association presumably for instances exactly like the one at hand – when the association membership is vast and the members’ interests are substantial, intervention by the association provides representation to a an affected constituency in a judicially economical way. To deny NAA’s intervention is, in effect,

to deny many Missouri business owners the ability to be heard on an issue that will directly affect their costs as well as their daily operations.

As noted in the Application to Intervene, NAA publishes leasing forms in Missouri, two of which Staff attached to the Complaint as Exhibit “C.” NAA has as substantial interest in defending the content of the forms – which allow for the billing systems challenged by Staff. Because Staff elected to attach NAA’s leasing forms to the Complaint, and challenge the legal validity of the content of the addenda, NAA should be granted the opportunity to defend its intellectual property.

#### **Granting the Intervention Does Not Prejudice the Staff**

Staff’s claim that it would be prejudiced by the addition of NAA as a party is disingenuous at best. Staff recently sought to expand the number of defendants in this matter by seeking leave of the Commission to amend the Complaint. Staff admits in its October 22, 2010, response that the discovery period has not ended. As such, adding NAA to the proceeding will not require the reopening of discovery. The intervention by NAA will not slow the process of this matter more than would the addition of the parties the Staff is seeking to add in its Amended Complaint.

#### **Conclusion**

For the reasons stated herein and in its Application to Intervene, NAA’s Application to Intervene should be granted.

Respectfully submitted,

/s/ Paul A. Boudreau

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, electronic mail or hand delivery, on the 26<sup>th</sup> day of October, 2010, to the following:

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