

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.                  | ) |                                 |

**RESPONSE TO THE  
OBJECTION OF AQUILA, INC., TO  
APPLICATION OF THE COMMERCIAL GROUP  
FOR LEAVE TO INTERVENE OUT OF TIME**

The Commercial Group submits this response pursuant to 4 CSR 240-2.080(15).

In support of this response, The Commercial Group states as follows:

1. On August 21, 2006, The Commercial Group filed its Application For Leave To Intervene Out Of Time ("Intervention") with the Commission seeking leave to intervene and fully participate in this cause. On August 25, 2006, Aquila, Inc., ("Aquila") filed its Objection Of Aquila, Inc., To Application Of The Commercial Group For Leave To Intervene Out Of Time ("Objection"). Aquila's Objection asks the Commission to deny The Commercial Group's Intervention. By virtue of this filing ("Response") The Commercial Group answers Aquila's Objection and respectfully requests that it be allowed to intervene in this cause and participate as a full party of record.

2. First and foremost, it should be noted that Aquila's Objection wholly and completely fails to demonstrate that The Commercial Group's Intervention will harm any interest of Aquila or any other party to this proceeding. Further, Aquila's Objection fails to show how The Commercial Group's Intervention will delay this proceeding a single day. The Commercial Group's Intervention expressly states that the Group accepts the

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record as established thus far. In this Response, The Commercial Group further states that it accepts and will abide by the procedural schedule subsequently adopted by the Commission. Therefore, even if every argument in Aquila's Objection is accepted in full, allowing The Commercial Group's Intervention will harm no one and will not delay this proceeding.

3. Aquila's Objection raises two grounds for denying The Commercial Group's Intervention. First, Aquila argues that The Commercial Group's Intervention fails to satisfy the Commission's "good cause" standard. Aquila argues that the explanation given in The Commercial Group's Intervention fails to satisfy the Commission's "good cause" standard because other parties were able to meet the intervention deadline. Tellingly, however, Aquila does not cite to a single order in which the Commission applied such a strict interpretation of its rules. In fact, the Commission's own orders refute Aquila's argument.

4. A review of the Commission's orders since January 1, 2006, reveals only one denial of an application to intervene out of time for a failing to show "good cause." In its Order Denying Intervention<sup>1</sup> issued August 7, 2006, the Commission denied intervention because *no reason* was given for requesting intervention out of time. By contrast, "good cause" evidently existed where another intervenor simply "was unable to

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<sup>1</sup> *In the Matter of the Application of NuVox Communications of Missouri, Inc. for an Investigation into the Wireless Centers that AT&T Missouri Assets are Non-Impaired Under the TRRO*, Case No. TO-2006-0360.

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determine whether or not it should intervene...prior to the initial intervention deadline.<sup>2</sup>

Even more to the point, the identical explanation of “good cause” given by The Commercial Group in this cause was deemed sufficient in the Commission’s Order Granting Applications to Intervene issued August 28, 2006, in Case No. ER-2007-0002.<sup>3</sup>

5. Aquila’s argument is completely circular and makes no logical sense. It simply assumes that any party seeking to intervene after the intervention deadline must have acted in bad faith. Followed to its logical extreme Aquila’s argument would rewrite the Commission’s rules. That is, once any party intervenes prior to an intervention deadline, it will presumably be impossible for another party to show “good cause” for intervening out of time, no matter what the circumstances. Aquila’s argument is inconsistent with the Commission’s rules for intervention and contrary to the way the Commission has interpreted its own rules.

6. The second ground for objecting to The Commercial Group’s Intervention is Aquila’s claim that the interests of The Commercial Group can be adequately represented by other parties to the case. Aquila points specifically to AG Processing, Inc., and members of the Sedalia Industrial Energy Users’ Association (“SIEUA”). However, these parties are manufacturing operations whereas members of The Commercial Group operate large retail stores and related facilities.

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<sup>2</sup> Missouri Department of Economic Development’s Late Filed Application to Intervene, p. 2, ¶ 6, Case No. ER-2007-0002. This intervention was permitted by the Commission’s Order Granting Applications To Intervene issued August 28, 2006, in the same docket.

<sup>3</sup> *In the Matter of Union Electric Company d/b/a AmerenUE for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Company’s Missouri Service Area.*

7. Manufacturing and retail operations have completely different load factors and other operating characteristics. They are frequently on different rate schedules and in different customer classes. As such, their interests are often significantly different, even adverse to one another, particularly in the cost of service/rate design phase of a rate case. This is precisely the area in which The Commercial Group intends to participate. The interests of The Commercial Group in this case cannot be adequately represented by AG Processing or the SIEUA.

8. Aquila also argues that The Commercial Group's interests can be adequately represented by the Commission's Staff. With all due respect, the role of the Commission's Staff is to support the Commission, not to represent the specific interests of individual parties. In addition, as articulated in its Intervention, The Commercial Group's members 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. It simply is not possible for the Commission's Staff – or any of the other existing parties – to replicate the industry experience of The Commercial Group's members.

9. Aquila's Objection provides no legitimate basis for denying The Commercial Group's Intervention. The Commercial Group has given a rational explanation for its Intervention – an explanation that was accepted by the Commission in Case No. ER-2007-0002. The Commercial Group has also demonstrated that its interests cannot be adequately represented by other parties to this cause. There is simply no reason why The Commercial Group's Intervention should not be granted,

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particularly when doing so will not prejudice the rights of any of the other parties or delay the procedural schedule in this cause.

10. In contrast, denial of The Commercial Group's intervention will result in manifest injustice to its members and would be contrary to the public's interest. The proposal filed by Aquila in this proceeding, if adopted, will significantly increase the cost of electricity to members of The Commercial Group and other similarly situated customers, directly and substantially affecting their business and operations in the State of Missouri. Accordingly, The Commercial Group has a direct interest in these proceedings.

WHEREFORE, The Commercial Group respectfully requests that Aquila's Objection be denied, and that its Intervention be granted, and that The Commercial Group be provided full rights to participate immediately as a party to this proceeding.

Dated this 31st day of August, 2006.

Respectfully submitted,

By /S/ Koriambanya S. Carew

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ATTORNEYS FOR THE COMMERCIAL  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that on August 31, 2006, a true and correct copy of the foregoing Response To The Objection Of Aquila, Inc., To Application Of The Commercial Group For Leave To Intervene Out Of Time 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 \_\_\_\_\_