

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

The Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	
v.)	Case No. WC-2010-0227
)	
Aspen Woods Apartment Associates, LLC)	
Barry Howard, Aspen Woods apartments,)	
Sapal Associates, Sachs Investing Co.,)	
Michael Palin, Jerome Sachs, and National)	
Water & Power, Inc.)	
)	
Respondents.)	

**APPLICATION TO INTERVENE BY THE NATIONAL APARTMENT
ASSOCIATION AND MOTION FOR EXPEDITED CONSIDERATION**

COMES NOW the National Apartment Association (hereinafter the "NAA"), by and through counsel, pursuant to Public Service Commission ("Commission") Rule 4 CSR 240-2.075, and respectfully applies for intervention as a party in this complaint case in order to protect its interests, and its members interests, which are jeopardized by the actions of the Commission's staff ("Staff"). Pursuant to 4 CSR 240-2.080, NAA also requests that the Commission expedite its consideration of this matter. In support of this Application and Motion, NAA states the following:

1. NAA is the leading national advocate for quality rental housing. NAA is a federation of 170 state and local affiliated associations, representing more than 50,000 members responsible for more than 5.9 million apartment units nationwide. NAA is the largest broad-based organization dedicated solely to

rental housing. NAA has several affiliate organizations located in Missouri: Missouri Apartment Association, Columbia Apartment Association, Greater Springfield Apartment and Housing Association, Mid Missouri Rental Properties Association, Mid-Missouri Apartment Association, Saint Louis Apartment Association, Southwest Missouri Rental Housing Association.

2. Approximately 81.2 million people, or one-third of the United States population, live in apartment homes. The apartment industry employs more than a half million people, and the current estimated value of U.S. rental housing stock is \$2.5 trillion. The most prominent, professional businesses in the rental housing industry are members of NAA. These include large corporations, real estate investment trusts or “REITS”, and partnerships offering rental housing to the American public.

3. As a service to its members, NAA operates and maintains a lease program in 41 states, utilizing a template that is amended to comply with each state’s laws. The NAA forms are the most widely used residential leases in the country with more than 3 million units enrolled in the program. NAA estimates that 63 million pages of its leasing forms will be bought by its members in 2010. To ensure the compliance of its forms with the law, NAA closely monitors legislation in each state and relies on legal opinions of experienced local counsel. The purpose of the lease program is twofold: to instruct residents and owners of their duties and obligations under the law and to provide a balanced, enforceable contract between the parties.

4. Pursuant to CSR 240-2.075(3) NAA attaches a list of its Missouri members as "Exhibit A." As stated hereinabove, NAA has many members nationwide and providing a list of every member would be unduly burdensome. Accordingly, NAA requests a variance from subsection (3) of Commission rule 4 CSR 240-2.075 to permit it instead to provide a list of its Missouri members. NAA will provide a complete membership list to the Commission in the event such a list is necessary to satisfy the procedural rule.

5. Correspondence, communications, orders and the decision in this matter should be addressed to:

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6. On or about January 29, 2010, Staff filed a complaint against a number of individuals and companies alleging, generally, that the nature of their operations as an apartment complex subject them to the Commission's jurisdiction as a regulated water and sewer company. At issue in this case are two of the leasing forms that NAA publishes in Missouri: The NAA Missouri Apartment Lease Contract and the NAA Utility Addendum for Water, Sewer, Gas and Electric Service (both documents are attached to the Complaint as "Exhibit

C”). As a result, NAA has a direct interest in protecting the integrity of the content of its intellectual property.

7. In addition, NAA’s members have important interests in the outcome of this case because it will affect their ability to contract with the prospective residents of their properties. An unfavorable ruling will substantially limit apartment owners’ ability to pass the costs of utility usage to residents. Provisions for ratio utility billing (“RUBS”) and sub-metering systems are common ways for owners and managers of multifamily properties to recoup their expenses associated with the residents’ use of public utilities. Many professional management companies (and owners) employ some type of billing system that allows for the pass through of utility costs. If RUBS and sub-metering systems are eliminated, owners will be forced to increase rents.

8. Historically, multifamily residential housing was built as “single meter” facilities for purposes of billing utility usage, much as commercial office buildings were constructed. This practice often resulted in wasteful use practices by residents while utility costs increased. Residents had no incentive to conserve heat, electricity or water usage. This trend began to change over the past decade as owners and property managers brought these costs to residents’ attention by shifting the payment responsibility. Not surprisingly, much of the wasteful behavior ended once residents realized that they were responsible for these costs. This practice was also adopted by commercial leasing companies. Utility costs are typically passed through to commercial tenants and dictated in

lease agreements. Applicant is unaware of an instance where any regulatory authority has sought to characterize a commercial property as a public utility.

9. Holding residents financially accountable for their utility usage provides important conservation benefits as well. Studies show that when residents pay for their usage of utilities, they consume less. As the country faces daunting challenges with respect to the production and consumption of natural resources like water, electricity and gas, sound public policy dictates that owners should be allowed to pass the costs of utility usage to the actual consumer.

10. If the Commission rules against Aspen Woods (“AW”) and National Water & Power, it effectively finds that NAA’s members and other apartment owners seeking to recoup the costs associated with residents’ water and electric usage are *de facto* public utilities. Such a holding will discourage investment in residential property, limit affordable housing options by increasing rents for the general public and punish business owners who have already made the choice to own real estate, all of whom never dreamed of becoming a public utility. NAA does not believe the nature of the Respondent’s operation has the attributes that would cause them to fall under the Commission’s jurisdiction as a public utility. Additionally, the policy implications presented in the Complaint are enormous. Extending the jurisdiction of the Commission to apartment complexes that do not individually meter water and sewer services would be unprecedented and potentially sweep hundreds of such businesses under the Commission’s regulatory authority, a result that was not intended when the Missouri General Assembly enacted the Public Service Commission Act in 1913. Such a result

would be contrary to applicable law and inconsistent with the manner in which analogous situations have been handled by the Commission in the past.

11. NAA believes that its intervention and participation in this proceeding will present a broader perspective of the rental housing industry not otherwise represented in the proceeding and, as such, will provide the Commission with the position of an important sector of Missouri's economy. NAA's intervention would therefore serve the public interest.

12. Granting NAA's request will not prejudice any party to the proceeding. The procedural schedule adopted by the Commission on September 7th, does not contemplate that testimony will be filed until March of 2011. NAA is not requesting a modification of that schedule so its participation will not cause any delay in the processing of the case.

13. NAA requests that the Commission issue an order granting the relief requested herein by no later than Friday, October 29, 2010. No intervention deadline has been established in this case, however, Respondent AW has been directed to file its dispositive motion on the issue of the Commission's jurisdiction by no later than November 1, 2010.¹ A prompt grant of the relief requested would allow NAA also to file a pleading addressing the issue of jurisdiction such that Complainant can address the issue in a comprehensive way. Failure to rule expeditiously could effectively bar NAA's meaningful participation.

¹ See, Order Directing Filing dated October 12, 2010.

WHEREFORE, the NAA respectfully requests that the Commission grant its application to intervene, permitting it to participate in this proceeding.

Respectfully submitted,

/s/ Paul A. Boudreau
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ATTORNEYS FOR NATIONAL APARTMENT
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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 19th day of October 2010 to the following:

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/s/ Paul A. Boudreau_____
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