

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the joint application of the
RESIDENTIAL RATEPAYER CONSORTIUM)
and **AQUILA NETWORKS – MGU** (formerly) **Case No. U-14202**
known as **Michigan Gas Utilities**) to amend)
Sheet No. G-12.00 to implement a prior year)
adjustment payable credit or receivable charge)
to reflect prior year’s gas cost recovery)
overcollection or under collection.)

**AQUILA, INC.’S SUPPLEMENTAL RESPONSE TO
CORNERSTONE ENERGY INC.’S APPLICATION FOR LEAVE TO APPEAL AND
REQUEST FOR IMMEDIATE CONSIDERATION**

Aquila, Inc. d/b/a Aquila Networks-MGU (Aquila), respectfully submits this Supplemental Response to the Application for Leave to Appeal and Request for Immediate Consideration (Appeal Application) filed by Cornerstone Energy, Inc. (Cornerstone) on September 20, 2004.

On October 6, 2004, after the Administrative Law Judge (ALJ) denied Cornerstone’s intervention, Neitzert’s Greenhouse & Florists and Hortech, Inc. (Neitzert and Hortech, respectively) filed a late Petition to Intervene.¹ (Dkt. # 24).² Aquila opposed Neitzert’s and Hortech’s late intervention because it lacked good cause. (Dkt. # 27, attached at **Tab A**). Aquila asserted that Cornerstone was attempting to circumvent its own standing deficiencies by using Neitzert and Hortech as strawmen. (Id. at pp 4-5).

¹ This was approximately 35 days beyond the deadline for interventions.

² The term “Dkt #” refers to the Commission’s electronic docket sheet for this case.

On October 14, 2004, the ALJ granted Neitzert and Hortech's Petition to Intervene. The ALJ cautioned the following, however:

[Hortech and Neitzert], I am going to grant your petition. There is no dispute among the parties that your clients have standing, and I'm going to accept the petition on face value at this point in time. I am not ruling that any testimony you may offer is relevant to an issue to be decided in this proceeding, and I am not foreclosing the other parties to this case from questioning your clients' motivation, should they decide that they want to pursue that further through discovery as it may--may be relevant in this proceeding. (Dkt. # 27, p 62).

Aquila subsequently served discovery requests upon Neitzert and Hortech.

Responses filed by Neitzert and Hortech established that:

▶ Neitzert and Hortech did not timely intervene in the case even though they were contemplating becoming AES customers of Cornerstone in August 2004. (Data Requests 4-AQ, 26-AQ, attached at **Tab B**).

▶ Cornerstone contacted Neitzert and Hortech regarding Aquila's and RRC's joint application some time in early September 2004. (Data Requests 8-AQ, 9-AQ, 32-AQ, 33-AQ, attached at **Tab B**).

▶ Cornerstone "advised" Neitzert and Hortech that they might attempt to intervene in the case. (Data Requests 12-AQ, 36-AQ, attached at **Tab B**).

▶ Cornerstone is directly paying Neitzert and Hortech's attorneys fees to participate in this case. (Data Requests 17-AQ, 40-AQ, attached at **Tab B**).

▶ Cornerstone is providing Neitzert and Hortech "a slightly lower price on gas to take into account the indirect costs [Neitzert and Hortech] will incur in participating in this case." (Data Requests 19-AQ, 43-AQ, attached at **Tab B**).

In addition to the discovery responses, Neitzert and Hortech also sponsored the testimony of Richard Haubensak. (Dkt. # 29). Although Neitzert and Hortech portray

Mr. Haubensak as an “independent” consultant, the evidence shows otherwise. Specifically:

▶ Mr. Haubensak has “worked for Cornerstone in the past and continue[s] to work for Cornerstone on other matters.” (Data Request 22-AQ, attached at **Tab B**).

▶ Mr. Haubensak’s business address of 11011 Q Street, Suite 106A, Omaha, Nebraska 68137 is the same address of Cornerstone’s principal executive offices. (Dkt. #29; see also Tab C).

▶ Mr. Haubensak has previously submitted multiple filings and correspondence to this Commission on Cornerstone’s behalf. (see Tab D).

Contemporaneous with this Supplemental filing, Aquila filed a Motion To Reconsider Grant Of Permissive Intervention To Neizert And Hortech; Motion To Strike The Prefiled Direct Testimony Sponsored By Neizert And Hortech; And Motion To Quash Discovery. (See Tab E). Aquila argued in that motion that the “good cause” proffered by Neizert and Hortech for late intervention is disingenuous and they should be precluded from participating in this case.

Similar to Neizert and Hortech, Cornerstone has failed to act with candor and good faith. Instead, it is attempting to circumvent the ALJ’s intervention ruling by engaging in subterfuge. Because this is a blatant abuse of regulatory process which must be discouraged, Cornerstone’s Appeal Application should be denied.

Accordingly, in addition to the reasons cited in Aquila’s October 4, 2004 Response to Cornerstone’s Appeal, Aquila respectfully requests that this Commission deny Cornerstone’s Appeal Application for the reasons discussed herein.

Respectfully submitted,

DYKEMA GOSSETT PLLC

Date: October 27, 2004

By: _____

Albert Ernst (P24059)
Christine Mason Soneral (P58820)
124 W. Allegan, Suite 800
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October 12, 2004

Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
PO Box 30221
Lansing, MI 48909-7721

Re: Case No. U-14202
Aquila's Response to Neizert's and Hortech's Petition for Leave to Intervene

Dear Ms. Kunkle:

Enclosed please find original and four copies of Aquila, Inc.'s Response to Neizert's Greenhouse & Florist's and Hortech, Inc.'s Petition for Leave to Intervene and Proof of Service in the above-referenced matter. This Response will also electronically filed.

If there are any questions, please contact me.

Sincerely,

DYKEMA GOSSETT PLLC



Signature Not Verified

**Christine Mason
Soneral**

Christine Mason Soneral

Digitally signed by
Christine Mason Soneral
DN: cn=Christine Mason
Soneral, o=Dykema
Gossett PLLC, c=US
Date: 2004.10.12
09:31:02 -0500

CMMA:jmb

cc: Steve Jurek
Harry Ono
Dave Tyler
Chuck Hauska
Dave Shaltz
Service List

CALIFORNIA | ILLINOIS | MICHIGAN | WASHINGTON D.C.

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the joint application of the)
RESIDENTIAL RATEPAYER CONSORTIUM)
and AQUILA NETWORKS – MGU (formerly)
known as Michigan Gas Utilities) to amend)
Sheet No. G-12.00 to implement a prior year)
adjustment payable credit or receivable charge)
to reflect prior year’s gas cost recovery)
overcollection or under collection.)

Case No. U-14202

DYKEMA GOSSETT, A PROFESSIONAL LIMITED LIABILITY COMPANY, 124 W. ALLEGAN STREET, SUITE 800, LANSING, MICHIGAN 48933-1742

AQUILA, INC.’S RESPONSE TO NEIZERT’S GREENHOUSE & FLORIST’S AND
HORTECH, INC.’S PETITION FOR LEAVE TO INTERVENE

Aquila, Inc. d/b/a Aquila Networks-MGU (“Aquila”) submits this response in opposition to Neizert’s Greenhouse & Florist’s and Hortech, Inc.’s (the “Petitioners”) Petition For Leave to Intervene. The Petitioners’ intervention request should be denied because it is untimely, lacks good cause, and causes undue prejudice and delay.

I. The Petitioners’ Intervention Request Must Be Denied Because It Is Untimely.

It is a fundamental principle that petitions to intervene must be timely. Rule 201 of the Michigan Public Service Commission’s (“Commission”) Rules of Practice and Procedure plainly states that “[u]nless otherwise provided in the notice of hearing, a petition for leave to intervene shall be filed with the commission not less than 7 days before the date set for the initial hearing or prehearing conference, and the petition shall be served on all parties to the proceeding.” 1992 AACS, R 460.17201(1).

On August 11, 2004, the Commission issued its Notice of Hearing, establishing a September 1, 2004 deadline for intervention petitions. (Dkt # 6, Notice of Hearing). The

Commission also directed that Aquila (1) mail the Notice of Hearing to municipalities in its gas service area by August 25, 2004 and file proof of service of the same by September 8, 2004; and (2) cause the Notice of Hearing to be published in daily newspapers of general circulation throughout its service area by August 25, 2004 and file affidavits of the same by September 8, 2004. (Dkt #6, Kunkle Letter).

Aquila complied with each of its requisite notice requirements. The municipalities received the Notice of Hearing on August 13, 2004, well before the deadline. Proof of service was filed with the Commission on September 7, 2004. (Dkt # 15, Proof of Service). Likewise, the Notice of Hearing was published in six newspapers, including the Jonesville Independent, Sturgis Journal, Hillsdale Daily News, The South Haven Tribune, The Monroe Evening News, and The Herald-Palladium. The newspapers published the notice before the August 25, 2004 deadline and proof of service was filed early on September 7, 2004. (Dkt # 14, Affidavit).

Despite the Commission's established petition deadline of September 1, 2003, Petitioners did not seek to intervene in the case until October 6, 2004—some 35 days beyond the deadline. (Dkt # 24, Petition to Intervene). Thus, Petitioners' request should be denied outright under Rule 201 because it is untimely. 1992 AACCS, R 460.17201(1).

II. The Petitioners' Intervention Request Must Be Denied Because It Is Entirely Lacking In Good Cause.

Because the Petitioners' intervention was filed late, their only avenue for participation is through a permissive grant by the Commission. A late intervention is permitted only upon "a showing of good cause and a showing that a grant of the petition will not delay the proceeding or unduly prejudice any party to the proceeding." 1992 AACCS, R 460.17201(1). Moreover, late intervention is not an entitlement but a matter of judicial discretion. *Id.*

A. Petitioners' Request To Intervene Should Be Denied As Subterfuge.

As the Commission will recall, Cornerstone filed a Petition to Intervene and Request for Hearing on July 30, 2004 seeking intervention as a matter of right, or in the alternative, permissive intervention. Cornerstone claimed it was directly interested in the proceeding because its entry into the gas choice market would be materially affected by Aquila's and RRC's joint proposal. Cornerstone further alleged that its interests could not be represented or protected by another party, and that it holds information that would be of assistance to the Commission. (Dkt # 3, Cornerstone Energy, Inc.'s Petition to Intervene and Request for Hearing at 2-3).

Cornerstone's Petition was denied at the September 8, 2004 Prehearing Conference because the Administrative Law Judge ("ALJ") determined that no intervention of right existed because the case involves gas cost recovery under Public Act 304 of 1982 ("Act 304") and Cornerstone is not within the zone of interest that statute seeks to protect. Likewise, standing was precluded because Cornerstone's interests were indirect and speculative. The ALJ also denied permissive intervention because the MPSC Staff and Attorney General will sufficiently protect ratepayers' interests. (Dkt # 19, Transcript at 38).

On September 20, 2004, Cornerstone filed an Application for Leave to Appeal and Request for Immediate Consideration of the ALJ's September 8, 2004 ruling. Aquila filed a response in opposition to the emergency appeal on October 4, 2004 arguing that, consistent with prior Commission decisions, the ALJ properly denied Cornerstone's intervention because it lacked standing because its interests were outside the scope of the applicable statute, its interests were purely speculative, it is a direct competitor of Aquila, and its participation would impede, rather than facilitate, a meaningful case. (Dkt 22, Aquila Response). Cornerstone's Application for Leave to Appeal is pending with the Commission.

Evidently recognizing and appreciating the shortcomings of its own intervention attempts, Cornerstone now tries to circumvent its standing deficiencies by using Petitioners as strawmen. Petitioners explain their late filing by stating that they “intended to elect to become choice service customers on Aquila’s system when they became aware of the joint proposal of Aquila and RRC [and that they] sought leave to participate as soon as they had actual awareness and understanding of the proposal and had become choice service customers.” (Dkt # 24, Petitioners’ Petition To Intervene, ¶ 1, 10). It is no great leap of logic to assume that Petitioners’ “awareness” was prompted by Cornerstone.¹ Cornerstone and Petitioners are represented by the same legal counsel. Moreover, the “theme” of Petitioners’ intervention request tracks the arguments posed by Cornerstone. Both focus on the gas customer choice program and arguments involving alleged additional and indefinite costs, rather than the Act 304 issues at hand. Below is an excerpt of actual text from Cornerstone’s Application for Leave to Appeal:

This proposal creates the prospect of an indeterminate and additional cost for choice customers. Because the cost is indeterminate, choice customers are faced with the uncertainty of knowing their ultimate gas supply cost. This uncertainty materially affects a choice customer’s ability to make deliberate and reasoned decisions and undermines Cornerstone’s ability to offer choice service.

(Dkt # 18, Application for Leave to Appeal at 6). Compare that language to Petitioners Petition to Intervene:

¹ To dispel these questions, Petitioners should individually submit affidavits stating that: (1) neither Cornerstone nor Cornerstone’s legal counsel contacted Petitioners and caused them to be aware of Aquila’s and RRC’s application; (2) neither Cornerstone nor its legal counsel solicited, encouraged, or requested that Petitioners intervene in the case; and (3) Cornerstone is not paying, directly or indirectly, for Petitioners’ attorneys fees to participate in this case.

Second, Petitioners contend that their intervention will not prejudice other parties because Petitioners agree to be bound by the record and follow the previously determined schedule. (Dkt # 24, ¶ 11). If Petitioners truly agree to be bound by the record, they never would have filed their Petition in the first place. Contrary to Petitioners' arguments, the ALJ has already ruled that this case does not involve the gas customer choice program. (Dkt #19, Tr. at 38). By filing the Petition and raising gas customer choice program issues, Petitioners flout the record. Likewise, the offer that Petitioners make in exchange for inclusion in this case is hollow. Rule 201

38). defined the case's parameters as relating to Act 304 cost recovery issues only. (Dkt # 19, Tr. at Petitioners are wrongly focused on the gas customer choice program. The ALJ has clearly depriving such customers from making effective cost-based decisions." (Dkt # 24, ¶ 6). they seek to intervene because "the proposal creates a cost uncertainty for choice customers the ALJ. The Petitioners describe themselves as "choice service customers" and explain that Petitioners seek to expand the scope of the case beyond the limitations previously established by Petitioners' late intervention will unduly prejudice Aquila for a number of reasons. First,

III. The Petitioners' Intervention Request Must Be Denied Because It Causes Undue Prejudice And Delay.

rejected because Petitioners' true intent is questionable. (Dkt # 24, Petition to Intervene, ¶ 6). Petitioners' request to participate therefore should be

making effective cost-based decisions, the proposal creates a cost uncertainty for choice customers depriving such customers from may not authorize charging choice service customers for unrecovered gas supply costs. Further, Petitioners take the position that the proposal is unlawful because the Commission

regarding petitions for intervention already requires intervenors to do what Petitioners offer. 1992 AACRS, R 460.17201(1).

Third, Petitioners' participation will unduly prejudice Aquila because it is nothing more than a thinly veiled attempt by a competitor (Cornerstone) to participate in a cost recovery case. Similar to Cornerstone, Petitioners' will seek to interject irrelevant issues into the case and derail the expeditious administration of this case. There is absolutely no benefit from Petitioners' participation at this point in time.. *See e.g. In the matter of Michigan Consolidated Gas Company for a Gas Cost Recovery Plan, 5-year Forecast and Monthly GCR Factor for the 15 Months Ending March 2005, Case No. U-13902, November 13, 2003 (Gas marketer Energy America LLC's intervention denied because it was viewed as a competitor.)*

IV. Customer Interests Are Best Protected By Known Neutral Parties: Commission Staff And The Attorney General.

As pointed out by the ALJ at the prehearing conference there is already "ample customer protection . . . provided by the existing customer representatives, namely [MPSC] staff and the Attorney General" both of whom are charged with protecting the public interest. (Dkt # 19, Tr. at 38.). Because Petitioners' interests in this case are more than dubious, the public's interest should be left to the care of Commission Staff and the Attorney General.

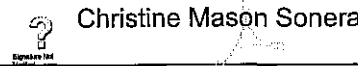
CONCLUSION

For the foregoing reasons, Aquila respectfully requests that the Commission deny the Petitioners' Petition To Intervene.

Respectfully submitted,

DYKEMA GOSSETT PLLC
Attorneys for
AQUILA, INC. d/b/a AQUILA NETWORKS-MGU

Dated: October 12, 2004

By  Christine Mason Soneral
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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the joint application of the)
RESIDENTIAL RATEPAYER CONSORTIUM)
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Sheet No. G-12.00 to implement a prior year)
adjustment payable credit or receivable charge)
to reflect prior year’s gas cost recovery)
overcollection or under collection.)

Case No. U-14202

PROOF OF SERVICE

STATE OF MICHIGAN)
) SS.
COUNTY OF INGHAM)

Jeanne M. Beachnau, an employee of Dykema Gossett PLLC, being first duly sworn, deposes and says that on the 12th day of October, 2004, she served a copy of Aquila, Inc.’s Response to the Neitzert’s Greenhouse & Florist and Hortech, Inc.’s Petition for Leave to Intervene upon parties listed in the attached Service List, by electronic mail and enclosing copies of the same in an envelope properly addressed, and by depositing said envelope in the United States Mail with postage thereon having been fully prepaid.

 Digitally signed by Jeanne Beachnau
DN: cn=Jeanne Beachnau, o=Dykema Gossett PLLC, c=US
Date: 2004.10.12 09:31:39 -0500

Jeanne M. Beachnau

Subscribed and sworn before me this 12th day of October, 2004.

 Digitally signed by Trace Graham
DN: cn=Trace Graham, o=Dykema Gossett PLLC, c=US
Date: 2004.10.12 09:32:06 -0500

Trace Graham, Notary Public, Ingham, Co., MI
Acting in Ingham County, Michigan
My Commission Expires: 08/20/06

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NEITZERT'S GREENHOUSE & FLORIST AND HORTECH, INC.
RESPONSE TO AQUILA, INC.
DATA REQUEST SET NO. 1
MPSC CASE NO. U-14202

Data Request No. 4-AQ

Request

1.4 Provide the date that Neitzert's filled out an application or enrollment form to become an AES customer of Cornerstone Energy, Inc. ("Cornerstone").

Response

Respondent objects to this request on the grounds that it seeks information that is not relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. However, subject to and without waiving its objection, respondent states:

On or about, August 24, 2004.

Respondents

Kent Neitzert
Counsel

**NEITZERT'S GREENHOUSE & FLORIST AND HORTECH, INC.
RESPONSE TO AQUILA, INC.
DATA REQUEST SET NO. 1
MPSC CASE NO. U-14202**

Data Request No. 8-AQ

Request

1.8 Did Cornerstone contact Neitzert's regarding Aquila's and RRC's joint application in this case?

Response

Respondent objects to this request on the grounds that it seeks information that is not relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. However, subject to and without waiving its objection, respondent states:

Yes.

Respondents

Kent Neitzert
Counsel

**NEITZERT'S GREENHOUSE & FLORIST AND HORTECH, INC.
RESPONSE TO AQUILA, INC.
DATA REQUEST SET NO. 1
MPSC CASE NO. U-14202**

Data Request No. 9-AQ

Request

1.9 If so:

- a. When did the first contact occur?;
- b. Who participated in the first contact?;
- c. What was communicated?;
- d. Identify all subsequent contacts, who participated, and what was *communicated*;
- e. Do any documents memorialize the communication? If so, please provide copies.

Response

Respondent objects to this request on the grounds that it seeks information that is not relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. However, subject to and without waiving its objection, respondent states:

- a. Some time in early September 2004.
- b. Greg Goodrich and Kent Neitzert.
- c. Goodrich generally advised Neitzert that Aquila and the RRC were proposing to add a charge for choice customers to collect underrecovered gas costs or credit overrecovered gas costs.
- d. None.
- e. None.

Respondents

Kent Neitzert
Counsel

**NEITZERT'S GREENHOUSE & FLORIST AND HORTECH, INC.
RESPONSE TO AQUILA, INC.
DATA REQUEST SET NO. 1
MPSC CASE NO. U-14202**

Data Request No. 12-AQ

Request

1.12 Did Cornerstone or its representatives (including its legal counsel) solicit Neitzert's to intervene in the case?

Response

Respondent objects to this request on the grounds that it seeks information that is not relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. However, subject to and without waiving its objection, respondent states:

No. Goodrich advised me that Neitzert's might attempt to intervene in the proceeding before the Michigan Public Service Commission, should it be in Neitzert's interest to attempt.

Respondents

Kent Neitzert
Counsel

**NEITZERT'S GREENHOUSE & FLORIST AND HORTECH, INC.
RESPONSE TO AQUILA, INC.
DATA REQUEST SET NO. 1
MPSC CASE NO. U-14202**

Data Request No. 17-AQ

Request

1.17 Is Cornerstone's indirectly paying Neitzert's attorney fees to participate in this case?

Response

Respondent objects to this request on the grounds that it seeks information that is not relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. However, subject to and without waiving its objection, respondent states:

No.

Respondents

Kent Neitzert
Counsel

**NEITZERT'S GREENHOUSE & FLORIST AND HORTECH, INC.
RESPONSE TO AQUILA, INC.
DATA REQUEST SET NO. 1
MPSC CASE NO. U-14202**

Data Request No. 19-AQ

Request

1.19 Is Cornerstone providing Neitzert with any compensation, benefit, remuneration, or incentive of any kind for its participation in this case?

Response

Respondent objects to this request on the grounds that it seeks information that is not relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. However, subject to and without waiving its objection, respondent states:

Cornerstone is providing Neitzert's a slightly lower price on gas to take into account the indirect costs Neitzert will incur in participating in this case.

Respondents

Kent Neitzert
Counsel

**NEITZERT'S GREENHOUSE & FLORIST AND HORTECH, INC.
RESPONSE TO AQUILA, INC.
DATA REQUEST SET NO. 1
MPSC CASE NO. U-14202**

Data Request No. 22-AQ

Request

1.22 Do you intend to work with Cornerstone or any of its representatives in preparing your prefiled testimony in this case?

Response

Respondent objects to this request on the grounds that it seeks information that is not relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. However, subject to and without waiving its objection, respondent states:

No because, however, my business is selling flowers, I am utilizing the services and advice of my counsel and independent consultant. Our independent consultant and counsel have worked for Cornerstone in the past and continue to work for Cornerstone on other matters.

Respondents

Kent Neitzert
Counsel

**NEITZERT'S GREENHOUSE & FLORIST AND HORTECH, INC.
RESPONSE TO AQUILA, INC.
DATA REQUEST SET NO. 1
MPSC CASE NO. U-14202**

Data Request No. 26-AQ

Request

1.26 Provide the date that Hortech first contacted Cornerstone about becoming an AES customer of Cornerstone? Or, if Cornerstone made the first contact, provide the date of Cornerstone's first contact to Hortech.

Response

Respondent objects to this request on the grounds that it seeks information that is not relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. However, subject to and without waiving its objection, respondent states:

An exact date is indeterminate but nevertheless some time in August 2004. Hortech received written marketing material from Cornerstone via U.S. mail.

Respondents

Chris Howe
Counsel

**NEITZERT'S GREENHOUSE & FLORIST AND HORTECH, INC.
RESPONSE TO AQUILA, INC.
DATA REQUEST SET NO. 1
MPSC CASE NO. U-14202**

Data Request No. 32-AQ

Request

1.32 Did Cornerstone contact Hortech regarding Aquila's and RRC's joint application in this case?

Response

Respondent objects to this request on the grounds that it seeks information that is not relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. However, subject to and without waiving its objection, respondent states:

Yes.

Respondents

Chris Howe
Counsel

**NEITZERT'S GREENHOUSE & FLORIST AND HORTECH, INC.
RESPONSE TO AQUILA, INC.
DATA REQUEST SET NO. 1
MPSC CASE NO. U-14202**

Data Request No. 33-AQ

Request

1.33 If so:

- a. When did the first contact occur?;
- b. Who participated in the first contact?;
- c. What was communicated?;
- d. Identify all subsequent contacts, who participated, and what was communicated;
- e. Do any documents memorialize the communication? If so, please provide copies.

Response

Respondent objects to this request on the grounds that it seeks information that is not relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. However, subject to and without waiving its objection, respondent states:

- a. *Approximately October 1, 2004.*
- b. *Greg Goodrich and Chris Howe.*
- c. *Goodrich advised Hortech that Aquila and the RRC had proposed to add a charge for choice customers to collect underrecovered gas costs or credit overcollected gas costs.*
- d. *None.*
- e. *None.*

Respondents

Chris Howe
Counsel

**NEITZERT'S GREENHOUSE & FLORIST AND HORTECH, INC.
RESPONSE TO AQUILA, INC.
DATA REQUEST SET NO. 1
MPSC CASE NO. U-14202**

Data Request No. 36-AQ

Request

1.36 Did Cornerstone or its representatives (including its legal counsel) solicit Hortech to intervene in the case?

Response

Respondent objects to this request on the grounds that it seeks information that is not relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. However, subject to and without waiving its objection, respondent states:

Goodrich advised me that Hortech might attempt to intervene in the proceeding before the Michigan Public Service Commission, should it be in Hortech's interest to attempt.

Respondents

Chris Howe
Counsel

**NEITZERT'S GREENHOUSE & FLORIST AND HORTECH, INC.
RESPONSE TO AQUILA, INC.
DATA REQUEST SET NO. 1
MPSC CASE NO. U-14202**

Data Request No. 40-AQ

Request

1.40 Is Cornerstone directly paying Hortech attorney fees to participate in this case?

Response

Respondent objects to this request on the grounds that it seeks information that is not relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. However, subject to and without waiving its objection, respondent states:

Yes, because Hortech would not be able to afford to present its position in this case without some assistance.

Respondents

Chris Howe
Counsel

**NEITZERT'S GREENHOUSE & FLORIST AND HORTECH, INC.
RESPONSE TO AQUILA, INC.
DATA REQUEST SET NO. 1
MPSC CASE NO. U-14202**

Data Request No. 43-AQ

Request

1.43 Is Cornerstone providing Hortech with any compensation, benefit, remuneration, or incentive of any kind for its participation in this case?

Response

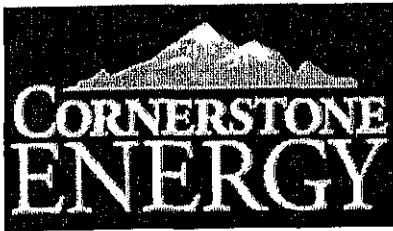
Respondent objects to this request on the grounds that it seeks information that is not relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. However, subject to and without waiving its objection, respondent states:

Cornerstone is providing Hortech a slightly lower price on gas to take into account the indirect costs Hortech will incur in participating in this case.

Respondents

Chris Howe
Counsel

C



Wednesday, October 27, 2004

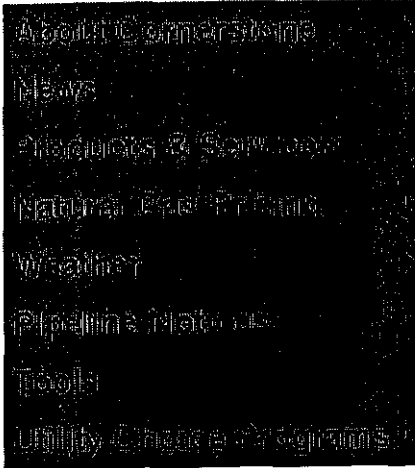
The Mid-Continent's leading retail provider of natural gas

Contact Us

Cornerstone Energy, Inc. (Corporate Office)

11011 Q Street
Suite 106A
Omaha, NE 68137
(402) 829-3900
(800) 470-9331

[E-mail Us](#)



1-800-470-9331





11011 "Q" Street
Suite 106A
Omaha, NE 68137
1-800-470-9331

April 1, 2003

Alternative Gas Supplier Program
Competitive Energy Division
Michigan Public Service Commission
P.O. Box 30221
Lansing, Michigan 48909

Re: Application To Be Licensed As An Alternative Gas Supplier Under Public Act 634 of 2002,
MCL 460.9 et seq.

Dear Commission Staff:

Cornerstone Energy respectfully applies to be licensed as an alternative gas supplier. Enclosed are the following:

- Answers to Part I of the Information Requirements, Questions 1-12
- Legal Affidavit, signed by Bret Feller, President of Cornerstone Energy, attesting to the competence of Cornerstone Energy to market natural gas as an AGS
- Brief Biographies of the Cornerstone Management Team
- A letter from Dominion Energy Clearinghouse indicating that they will be the exclusive supplier of natural gas to Cornerstone
- A Cornerstone customer brochure

Please address all correspondence or questions to me. My telephone number is 402-829-3966.

Sincerely,

Richard Haubensak
Regulatory Affairs Consultant
Cornerstone Energy
11011 Q Street
Omaha, Nebraska, 68137

Cornerstone Energy, Inc.

Application for participation in
The Michigan Gas Utilities
Choice Program

“Confidential Material”

1. Applicant’s business name and type of legal entity.

Cornerstone Energy, Inc.
“C” Corporation incorporated in the state of Nebraska.

2. Contact agent, telephone number, fax, and email address for application process and staff contact.

Vicki Martens
Phone - 402-829-3940
Fax – 402-829-3901
vmartens@cornerenergy.com

3. Provide business name, address and telephone number.

Cornerstone Energy, Inc.
11011 Q Street
Suite 106A
Omaha, NE 68137
1-800-470-9331

4. Toll-free telephone number, email address, and website for 24-hour contact for customers.

1-800-470-9331
vmartens@cornerenergy.com
<http://www.cornerenergy.com>

5. If principal place of business is outside Michigan, provide Michigan office address.

Cornerstone Energy
6231 Euclid Street
Marlette, MI 48459

6. Specify type of provider (utility, utility affiliate, marketer).

Marketer

7. Business affiliation (utility affiliation, other).

None

8. FERC authorization type(s) and number(s), if required.

Not required

9. Has the applicant or any agent of the applicant within the past three years committed any violations of law or business ethics in connection with provision of energy or energy-related products and services anywhere in the United States that resulted in a conviction or acceptance of a penalty for said behavior?

No

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10. Experience as a supplier of retail energy, including natural gas or electricity. This should outline any failures to serve customers by the applicant or any predecessor or affiliate entity.

For your review, we have enclosed a Cornerstone brochure as well as bios for the management team.

A broad overview of the company follows:

Independent, non-affiliated retail marketer

Cornerstone is an independent, non-affiliated natural gas retail marketer. The company's sole focus is natural gas sales to industrial and commercial markets. As such, the company is in the business for the long term.

Great Lakes and Midwest Focus

Cornerstone considers its core markets to be in the Great Lakes and Midwest regions of the country. The company has no plans to expand beyond these regions.

Cornerstone's decision to stay focused solely in the Great Lakes and Midwest region is the result of two factors. The first of which is that the company doesn't want to get spread so thin that it cannot do a good job in any single area of the country. The second major influence is the fact that the company's expertise are in the Great Lakes and Midwest regions, not the East or West coasts.

To date, Cornerstone serves approximately 12,000 commercial customers and 1,000 industrial customers throughout the following states: Colorado, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, and Oklahoma.

Target LDC's

Cornerstone provides service to customers behind the following local distribution companies: Alliant Energy, Aquila (including Michigan Gas Utilities), Atmos Energy, Consumers Energy, Kansas Gas Service, Michigan Consolidated, and Missouri Gas Energy.

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Product Offering

Cornerstone's product offering is extensive. Our core focus is to provide products and services which allow customers to mitigate their price risk. Cornerstone's product line includes index, fixed, cap, NYMEX, and basis price offerings as well as managed natural gas procurement funds.

Employees

Cornerstone currently employs 37 employees. Of this total, 13 individuals are considered direct salespeople.

Headquarters

Cornerstone's main office is located in Omaha, Nebraska.

Supply Partner

Cornerstone has contracted with Virginia Power Energy Marketing, an affiliate of Dominion, for wholesale supply and credit support. Dominion has over \$34 billion in assets, maintains a high credit rating, serves approximately 4 million customers and generates over \$10 billion in annual sales. More can be learned about Dominion at <http://www.dom.com>.

A letter from the President of Dominion Energy Clearinghouse is enclosed.

11. Outline of *staffing and procedure for responding to customer inquiries and customer complaints.*

Cornerstone will make a good faith effort to resolve customer inquiries and complaints. Cornerstone will have an internal customer dispute procedure, which allows for complete, fair and timely response to customer disputes and inquiries. Cornerstone will investigate each complaint, report the results to the customer and attempt to resolve the complaint. If the complaint cannot be resolved, Cornerstone will refer the customer to the LDC, if appropriate, or to the Commission. Cornerstone will provide a telephone number and website address for customers to call or email any inquiries or complaints.

12. A separate legal affidavit, signed by a corporate officer with proper authority, which shall attest to the competence of the company's employees to market natural gas as a Michigan Alternative Gas Supplier and shall state that applicant will abide by the Commission rules, terms, and conditions for Alternative Gas Suppliers.

Please see the enclosed affidavit.



11011 "Q" Street
Suite 106A
Omaha, NE 68137
1-800-970-9331

April 21, 2003

Alternative Gas Supplier Program
Competitive Energy Division
Michigan Public Service Commission
P.O. Box 30221
Lansing, Michigan 48909

Re: Application To Be Licensed As An Alternative Gas Supplier Under Public Act 634 of 2002,
MCL 460.9 et seq.

Dear Commission Staff:

Enclosed is the Part III Compliance Commitment which should be added to our original filing
made April 1, 2003.

Please address all correspondence or questions to me. My telephone number is 402-829-3966.

Sincerely,

Richard Haubensak
Regulatory Affairs Consultant
Cornerstone Energy
11011 Q Street
Omaha, Nebraska 68137

RECEIVED
M.P.S.C.

APR 24 2003

Competitive Energy Division

PART III – COMPLIANCE COMMITMENT

By signing this application and providing the affidavit letter required in item 11 of this application, the applicant and its representatives (1) certify that the information provided herein is accurate and complete and (2) agree to abide by the provisions of this agreement including the Terms and Conditions for a Michigan alternative natural gas supplier.

Signature: Bret Feller

Date: April 21, 2003

Name: **Bret Feller**

Title: **President & CEO**

COUNTY OF DOUGLAS)
)
STATE OF NEBRASKA) SS.

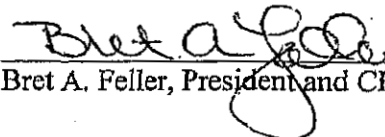
AFFIDAVIT OF BRET A. FELLER

COMES NOW Bret A. Feller and after being duly sworn upon his oath states as follows:

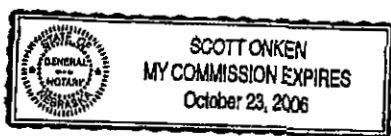
1. This Affidavit is being furnished as part of the application process to qualify Cornerstone Energy, Inc. as an Alternative Gas Supplier under the provisions of the Commission's order of March 12, 2003 in Case No. U-13694, issued under authority of MCL 460.9 et seq. This Affidavit and the related application documents are being filed with:

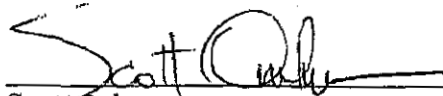
Alternative Gas Supplier Program
Competitive Energy Division
Michigan Public Service Commission
P.O. Box 30221
Lansing, Michigan 48909
2. My name is Bret Feller, and my address is 8013 Hidden Valley Drive, Papillion, Nebraska. I am the duly elected President and Chief Executive Officer of Cornerstone Energy, Inc., 11011 Q Street, Suite 106A, Omaha, Nebraska 68137, a Nebraska Corporation duly licensed to conduct business in Michigan on September 30, 2002 under the name of Cornerstone Energy Marketing, Inc. (Michigan ID number 643997).
3. I am very familiar with the marketing of natural gas and the operations of a natural gas supply system necessary to support the Michigan Choice Program having been employed in all aspect of natural gas marketing and management in a variety of responsible operational and management positions for more than sixteen years.
4. I am also familiar with the operation and management employees of Cornerstone Energy, Inc. having worked with and/or supervised some of these individuals for at least five years.

5. Based upon my years of experience in the gas marketing industry and my long-term intimate working association with the operations and management employees of Cornerstone Energy, Inc., I can and hereby do attest to their competence, knowledge and ability to market natural gas as an Alternative Gas Supplier under the Michigan Customer Choice Program.


Bret A. Feller, President and CEO

Sworn to and subscribed before me this 31st day of March, 2003.




Scott Onken
Notary Public in and for said State and
County

Brief Biographies of Cornerstone Management Team
"Confidential"

Bret Feller – Principal (President and CEO)

11011 Q Street, Suite 106 A
Omaha, NE 68106
(402) 829-3932 office
(402) 593-8840 home

Bret has been in the energy industry since 1986. Employed by Aquila Inc. his entire professional career, until his current assignment with Cornerstone, he held several key positions within the Aquila organization. Those positions included sales, marketing, gas trading, and general business management. During his last two years at Aquila, Bret managed a non-regulated affiliate of the company which generated annual revenues in excess of \$100 million. Bret is currently the President and CEO of Cornerstone where he has ultimately responsibility for business operations including overseeing the supply, sales, marketing, and backroom office functions for the company. Bret graduated magna cum laude with a BSBA from the University of Nebraska at Omaha.

Ken Graeber – Principal (Vice President, Business Development)

11011 Q Street, Suite 106 A
Omaha, NE 68106
(402) 829-3934 office
(402) 697-9624 home

Prior to Ken's current assignment at Cornerstone, he had been employed by Aquila since 1988 spending the first 9 years in Engineering at the firm. Beginning in 1997 he joined Marketing and Sales serving various account manager roles. He was most recently the Director of Gas Retail Services at Aquila, where he was responsible for a multi-million P&L, which encompassed commodity sales to Industrial and Commercial customers. In this role he was also responsible for creating and implementing new product lines as well as defining overall sales direction. He holds a BS degree in

Mechanical Engineering from the University of Nebraska where he earned All Big-8 honors, both academically and athletically.

Jerry McKenna – Principal (Vice President, Administration)

11011 Q Street, Suite 106 A
Omaha, NE 68106
(402) 829-3942 office
(402) 556-8594 home

Prior to Jerry's assignment within Cornerstone, he was employed by Aquila, Inc. for 12 years, holding a broad range of positions in engineering, operations, management, and sales in both the Networks and Merchant entities. For the past four years, he had been a Principal Account Manager with Retail Services. He was entrusted with many of Aquila's largest retail accounts including a number of steel, agri-business, and electric generation customers. Prior to Aquila, Jerry was chief engineer for KFAB/KGOR, an Omaha radio station. He graduated from the Radio Engineering Institute.

Bob White – Principal (Vice President, Operations)

11011 Q Street, Suite 106 A
Omaha, NE 68106
(402) 829-3964 office
(402) 213-8515 home

Bob started in the energy field in 1988 with the UGI Corporation, a utility located in Reading, Pennsylvania. Mr. White held the positions of Gas Accountant, Gas Dispatcher, and Supervisor of Customer Service while at UGI. In 1993, he began his career with Aquila. Mr. White held several important and strategic positions while at Aquila including: Gas Supply Analyst, Asset Manager, Transportation and Exchange Trader, and the Director of Gas Supply Operations. Mr. White is considered one of the foremost experts regarding gas supply operations in the upper mid-continent and especially on the Northern Natural Gas pipeline system. He holds a B.A. from Alvernia College.

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Mark Straub (Vice President, Sales)

11011 Q Street, Suite 106 A

Omaha, NE 68106

(402) 829-3958 office

(402) 330-2787 home

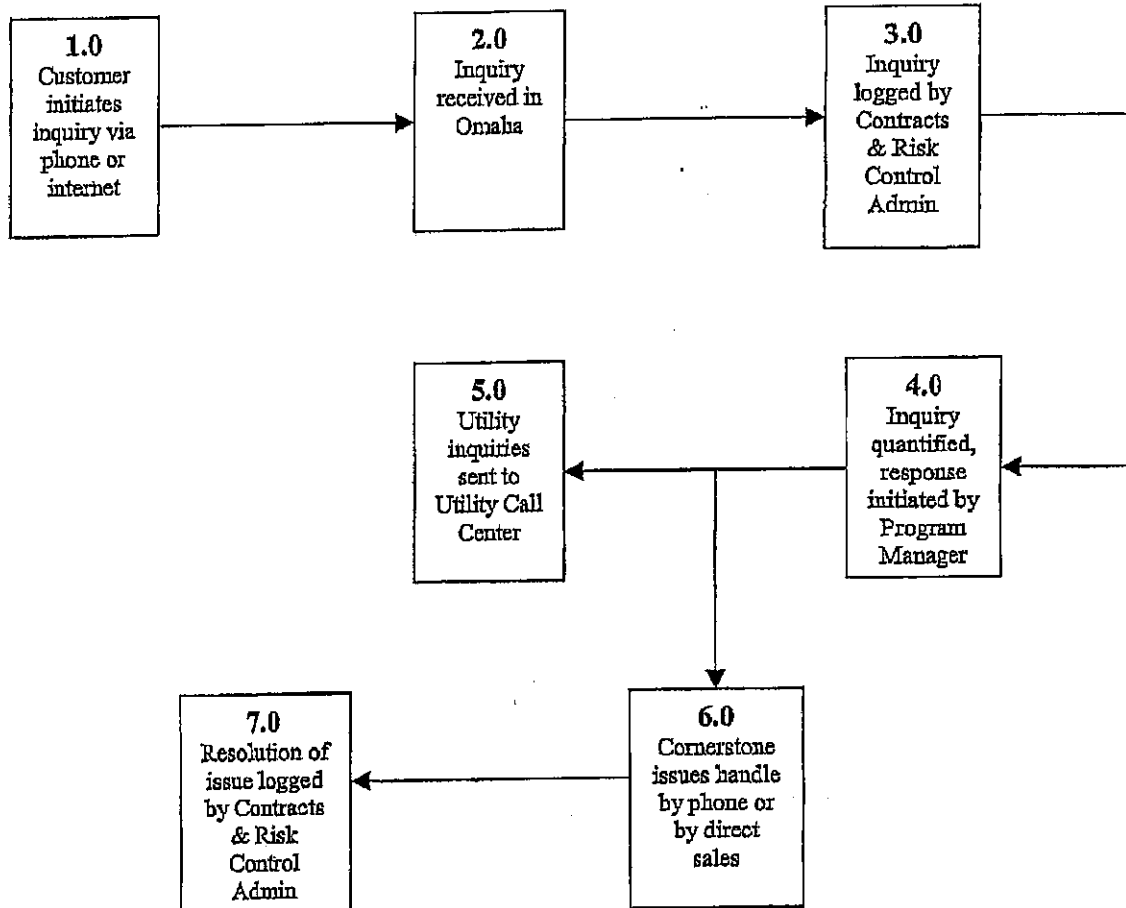
Mark, until his current assignment with Cornerstone, was employed by Aquila beginning in 1977. During his last five years at Aquila, he managed a sales force of 33 employees throughout Nebraska, Minnesota and Iowa as Director of Midwest Sales. During this period, he participated in the development and sales of natural gas price risk management products. He was awarded the Excellence Award by the Aquila Retail Services Group for his sales accomplishments. His background includes experience in engineering, cogeneration Systems, marketing, and energy efficiency programs. He holds a BSChE from the University of Nebraska and MSChE from Iowa State University.

Cornerstone Energy, Inc.

Customer Inquiry Resolution
Procedures for the
MI Choice Program

Last update: 5/16/03

Customer Inquiry Resolution



1.0 CUSTOMER INQUIRY

Choice customers will be provided several different mechanisms through which they can initiate an inquiry. The three primary contact channels will be by mail, phone, and Internet. Customers contacting Cornerstone by mail will be able to mail correspondence to Cornerstone's headquarters in Omaha, NE. Cornerstone's published mailing address is:

Cornerstone Energy, Inc.
11011 Q Street
Suite 106A
Omaha, NE 68137
Attn: Choice Program

Cornerstone will also publish in its marketing materials as well as on its website the company's toll free number of 1-800-470-9331. In addition to using the toll free number, customers will be able to initiate inquiry's through Cornerstone's website at www.cornerenergy.com.

2.0 RECEIPT OF INQUIRY

All customer inquiries will be received in Omaha to ensure the integrity of the process. Whether the inquiry is by mail, phone or Internet, Cornerstone's Contracts and Risk Control Administrator will receive all inquiries.

3.0 DOCUMENT INQUIRY

The Contracts and Risk Control Administrator will document each inquiry. Specifically, this individual will log specific customer information such as customer name, address, phone number, and name of the individual making the inquiry. In addition, the nature of the inquiry will be captured as well as the date of the inquiry. The log will be electronic and kept as an excel file.

4.0 QUANTIFY INQUIRY

The Choice Program Manager for Cornerstone will review all inquiries and determine an appropriate action.

5.0 UTILITY INQUIRIES

If the Choice Program Manager determines that an inquiry is utility in nature such as inquiries regarding meter readings, payment options, natural gas piping, etc., these inquiries will be forwarded to the utility call center for follow-up. In these cases, Cornerstone will contact the customer and inform them that the matter will need to be addressed by the utility and will provide the utility call center number to the customer.

6.0 CORNERSTONE RELATED INQUIRIES

Cornerstone's Choice Program Manager will handle inquiries that are related to Cornerstone's program such as questions about the term of the contract, contract pricing, etc.. Generally, the Choice Program Manager will respond by phone in attempt to resolve the issue with the customer. To the extent the issue can not be resolved by phone, Cornerstone will have a direct sales representative located in Michigan arrange for a face-to-face meeting.

7.0 RESOLUTION OF INQUIRY

The Contracts and Risk Administrator will enter into the inquiry log the resolution of the inquiry.



Date of Issue: May 30, 2003
Letter of Credit No. : 3700673577
Expiration Date: May 30, 2004
Amount: \$100,000.00

IRREVOCABLE STANDBY LETTER OF CREDIT
May 30, 2003

State of Michigan
6545 Mercantile Way
Lansing, MI 48909

Gentlemen:

At the request and on behalf of Cornerstone Energy, Inc., 11011 Q Street Suite 106A, Omaha, NE 68137, we Commercial Federal Bank, 13220 California Street, Omaha, NE 68154, hereby issue this Irrevocable Standby Letter of Credit, in your favor up to an aggregate of One Hundred Thousand and 00/100 Dollars (\$100,000.00), (partial drawings are permitted) available by your drafts at sight drawn on Commercial Federal Bank, at 13220 California Street, Omaha, NE 68154, bearing the clause "Drawn under Irrevocable Standby Letter of Credit No. 3700673577."

It is the purpose of this letter of credit to secure the obligation of Cornerstone Energy, Inc. who must act to insure compliance with applicable provisions of 2002 PA 634 and the rules and regulations of the Michigan Public Service Commission by Cornerstone Energy, Inc. as a licensed alternative gas supplier, to ensure the units of government and to ensure the safe, reliable supply of natural gas to applicant's Michigan retail customers in conformance with any contracts, agreements, or arrangements they may have with those customers.

Your draft shall be honored if presented at 13220 California Street, Omaha, Nebraska 68154 on or before the expiration date shown above and must be accompanied by the following documents:

1. This original Irrevocable Standby Letter of Credit; and
2. A certificate on your official letterhead and signed by an authorized representative of the State of Michigan certifying that there has been an event of default under the terms of provisions of 2002 PA 634 and the rules and regulations of the Michigan Public Service Commission by Cornerstone Energy, Inc. as a licensed alternative gas supplier to ensure the payment of all applicable user, sales and use taxes to local units of Government and to ensure the safe, reliable supply of natural gas to applicant's Michigan retail customers in conformance with any contracts, agreements, or arrangements they may have with those customers. And as a result, we have received an order against *Cornerstone Energy, Inc.*, and we demand payment in the amount of \$_____ (specify amount), under Commercial Federal Bank Letter of Credit number 3700673577.

Residential Construction Lending
Income Property Lending
9387543220 California Street
Omaha, Nebraska 68154
(402) 514-5365

Drafts drawn under this Letter of Credit must be marked that they are drawn under Commercial Federal Bank's Irrevocable Letter of Credit and must show the date and number of the letter of credit.

In the event this Letter of Credit is no longer required the original Letter of Credit and all amendments must be submitted to Commercial Federal Bank with a signed letter on State of Michigan letterhead addressed to Commercial Federal Bank agreeing to its cancellation.

We engage with you that documents presented under and in compliance with the terms of this Letter of Credit will be honored on delivery of the documents as specified if presented at this office, located at:

13320 California Street
Omaha, Nebraska 68154

On or before May 30, 2003.

Commercial Federal Bank



Tom Weinandt
Vice President

E

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the joint application of the)
RESIDENTIAL RATEPAYER CONSORTIUM)
and AQUILA NETWORKS – MGU (formerly)
known as Michigan Gas Utilities) to amend)
Sheet No. G-12.00 to implement a prior year)
adjustment payable credit or receivable charge)
to reflect prior year’s gas cost recovery)
overcollection or under collection.)

Case No. U-14202

DYKEMA GOSSETT, A PROFESSIONAL LIMITED LIABILITY COMPANY, 124 W. ALLEGAN STREET, SUITE 800 LANSING, MICHIGAN 48933

AQUILA, INC.’S MOTION TO RECONSIDER GRANT OF PERMISSIVE INTERVENTION TO NEIZERT AND HORTECH; MOTION TO STRIKE THE PREFILED DIRECT TESTIMONY SPONSORED BY NEIZERT AND HORTECH; AND MOTION TO QUASH DISCOVERY

Aquila Inc. d/b/a Aquila Networks-MGU, a Delaware corporation doing business in the state of Michigan as Aquila Networks-MGU (Aquila), brings this motion pursuant to Rule 335 of the Michigan Public Service Commission’s (Commission) Rules of Practice and Procedure, R 460.17335. Aquila respectfully moves: (1) for reconsideration of the October 14, 2004 ruling granting Neizert Greenhouse & Florist’s (Neizert) and Hortech, Inc.’s (Hortech) permissive intervention; (2) to strike the prefiled direct testimony sponsored by Neizert and Hortech; and (3) to quash the discovery request issued by Neizert and Hortech. In support, Aquila states as follows:

MOTION TO RECONSIDER RULING GRANTING PERMISSIVE INTERVENTION

1. Aquila and the Residential Ratepayers Consortium (RRC) filed a joint application on July 21, 2004 requesting that the Commission authorize Aquila to implement a “prior year adjustment” payable credit or charge to reflect certain gas cost recovery (GCR) over/undercollections. (Dkt. # 1).¹

¹ The term “Dkt #” refers to the Commission’s electronic docket sheet for this case.

2. Cornerstone Energy, Inc. (Cornerstone) filed a Petition to Intervene and Request for Hearing (Petition) on July 30, 2004 seeking intervention as a matter of right, or in the alternative, permissive intervention. (Dkt. # 3). In support of its Petition, Cornerstone claimed it was directly interested in the proceeding because its entry into the gas choice market would be materially affected by Aquila's and RRC's joint proposal. Cornerstone further alleged that its interests could not be represented or protected by another party, and that it holds information that would be of assistance to the Commission. (Id. at 2-3.)

3. Cornerstone's Petition was denied at the September 8, 2004 Prehearing Conference. (Dkt. # 19). The Administrative Law Judge (ALJ) first determined that no intervention of right existed because the case involves gas cost recovery under Public Act 304 of 1982 (Act 304) and Cornerstone is not within the zone of interest that statute seeks to protect. Likewise, the only interests alleged by Cornerstone were indirect and speculative. (Dkt. # 19, pp 37-39). The ALJ also denied permissive intervention because the MPSC Staff and Attorney General will sufficiently protect ratepayers' interests. (Id.)

4. On September 20, 2004, Cornerstone filed an Application for Leave to Appeal and Request for Immediate Consideration of the ALJ's September 8, 2004 ruling ("Appeal Application"). (Dkt. # 18). MPSC Staff, Aquila, and the RRC opposed the Appeal Application. (Dkt. #'s 21, 22).

5. On October 6, 2004—some 35 days beyond the deadline for interventions—Neitzert and Hortech filed a Petition to Intervene. (Dkt. # 24).

6. Aquila opposed Neitzert's and Hortech's attempts to intervene on the basis that they failed to establish good cause. (Dkt. # 27). See **Tab A**. Among other arguments, Aquila asserted that Cornerstone was attempting to circumvent its own standing deficiencies by using Neitzert and Hortech as strawmen. (Id. at pp 4-5).

7. The ALJ granted Neitzert and Hortech's Petition to Intervene on October 14, 2004. The ALJ cautioned the following, however:

[Hortech and Neitzert], I am going to grant your petition. There is no dispute among the parties that your clients have standing, and I'm going to accept the petition on face value at this point in time. I am not ruling that any testimony you may offer is relevant to an issue to be decided in this proceeding, and I am not foreclosing the other parties to this case from questioning your clients' motivation, should they decide that they want to pursue that further through discovery as it may—may be relevant in this proceeding. (Dkt. # 27, p 62).

8. Aquila subsequently served discovery requests upon Neitzert and Hortech.

9. Neitzert's and Hortech's discovery responses conclusively demonstrate that, indeed, they are mere strawmen for Cornerstone. Specifically:

▶ Neitzert and Hortech were contemplating becoming AES customers of Cornerstone in August 2004 but they chose not to intervene in Aquila's case at that time. (Data Requests 4-AQ, 26-AQ) (**Tab B**).

● Cornerstone contacted Neitzert and Hortech regarding Aquila's and RRC's joint application some time in early September 2004. (Data Requests 8-AQ, 9-AQ, 32-AQ, 33-AQ)(**Tab B**).

▶ Cornerstone "advised" Neitzert and Hortech that they might attempt to intervene in the case. (Data Requests 12-AQ, 36-AQ) (**Tab B**)

▶ Cornerstone is directly paying Neitzert and Hortech's attorneys fees to participate in this case. (Data Requests 17-AQ, 40-AQ) (**Tab B**)

► Cornerstone is providing Neitzert and Hortech “a slightly lower price on gas to take into account the indirect costs [Neitzert and Hortech] will incur in participating in this case.” (Data Requests 19-AQ, 43-AQ) (**Tab B**)

► Neitzert and Hortech sponsored the testimony of Richard Haubensak. (Dkt. # 29). The parties portray Mr. Haubensak as an “independent” consultant. (Data Requests 22-AQ; Dkt. # 29, p 4). However, they admit that “[o]ur independent consultant and counsel have worked for Cornerstone in the past and continue to work for Cornerstone on other matters.” (Data Request 22-AQ) (**Tab B**). Moreover, Mr. Haubensak’s business address of 11011 Q Street, Suite 106A, Omaha, Nebraska 68137 is the same address of Cornerstone’s principal executive offices. (Dkt. #29, **Tab C**). Mr. Haubensak has also previously submitted multiple filings and correspondence to this Commission on Cornerstone’s behalf. (**Tab D**).

10. As Aquila argued in its opposition to Neitzert’s and Hortech’s Petition to Intervene, and as conclusively established by the documents attached hereto, the “good cause” proffered by Neizert and Hortech for late intervention is disingenuous. It is also poor policy and precedent to allow Cornerstone to flout the Commission’s rulings in this manner.

11. Because permissive intervention is a matter of judicial discretion rather than entitlement under 1992 AACRS, R 460.17201(1), the Commission should put a stop to Cornerstone’s chicanery by denying Neitzert’s and Hortech’s intervention.

MOTIONS TO STRIKE TESTIMONY AND QUASH DISCOVERY

12. On October 20, 2004, Neitzert and Hortech sponsored the testimony of two witnesses: Richard Haubensak and Kent Neitzert. (Dkt. # 29).

DYKEMA GOSSETT-A PROFESSIONAL LIMITED LIABILITY COMPANY, 124 W. ALLEGAN STREET, SUITE 800 LANSING, MICHIGAN 48933

13. Both testimonies should be stricken because, as discussed above, Neitzert and Hortech are not independent parties but mere strawmen for Cornerstone.


14. For the same reasons, Neitzert's and Hortech's First Set of Interrogatories and Requests for Production of Documents to Aquila should be quashed.

CONCLUSION

WHEREFORE, Aquila respectfully requests that the permissive intervention of Neitzert and Hortech, Inc. be denied; that the testimonies of Neitzert's and Hortech's witnesses, Richard Haubensak and Kent Neitzert, be stricken; and Neitzert's and Hortech's First Set of Interrogatories and Requests for Production of Documents to Aquila be quashed.

Respectfully submitted,
Aquila, Inc.

By Its Attorneys for:
DYKEMA GOSSETT PLLC

 Christine Mason Soneral
Albert Ernst (P24059)
Christine Mason Soneral (P58820)
124 W. Allegan, Suite 800
Lansing, Michigan 48933-1707
Tel: (517) 374-9155/(517) 374-9184
Fax: (517) 374-9191
E Mail: aernst@dykema.com
E Mail: cmason@dykema.com

Digitally signed by
Christine Mason Soneral
DN: cn=Christine Mason
Soneral, o=Dykema
Gossett PLLC, c=US
Date: 2004.10.27
11:27:34 -0500

Dated: October 27, 2004

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