

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

In The Matter of the Application of Aquila,)
Inc. for Specific Confirmation or, in the)
Alternative, Issuance of a Certificate of)
Convenience and Necessity Authorizing)
it to Construct, Install, Own, Operate,)
Control, Manage, and Maintain a)
Combustion Turbine Electric Generating)
Station and Associated Electric)
Transmission Substations in)
Unincorporated Areas of Cass County,)
Missouri Near the Town of Peculiar.)

Case No. EA-2005-0248

JOINT RESPONSE TO COMMISSION ORDER

COME NOW Aquila, Inc. ("Aquila"), Staff of the Missouri Public Service Commission ("Staff"), The Office of the Public Counsel ("Public Counsel"), the County of Cass, Missouri and STOPAQUILA.ORG (hereinafter, collectively, the "Parties") and submit the following suggestions and response to the Commission's February 10, 2005 Order Setting Intervention Period and Scheduling Prehearing Conference (the "Order").

1. On February 16, 2005, the Commission held a prehearing conference in the referenced case at which the Parties in the case appeared in person or by telephone. At that time, the Parties were asked to propose a procedural schedule that could be employed by the Commission in addressing the relief requested in the Application filed by Aquila on January 28, 2005 given Aquila's Motion for Expedited Treatment filed thereafter on February 1, 2005.

2. At prehearing, Aquila characterized its Application as containing a request that the Commission specifically confirm that Aquila has the permission, approval and authority necessary under its existing certificates of convenience and necessity, or in

the alternative, grant Aquila a site specific certificate of public convenience and necessity, to install, acquire, build, construct, own, operate, control, manage and maintain the described electric power generation station and associated electric transmission substations, facilities and equipment in an unincorporated area of Cass County, Missouri. As such, Aquila asserts the Application requests relief either in the form of (1) a clarification of Aquila's existing authority or (2) an overlapping certificate of convenience and necessity without regard to its existing certificates of convenience and necessity. Other Parties have referred to the alternative and second request as one for "site specific" authority rather than overlapping authority. Different procedural considerations are implicated depending on whether and in what manner the Commission decides to proceed.

3. Following are the Parties proposed alternative procedural schedules for the Commission's consideration.

ORDER OF CLARIFICATION

EVENT	DATE
Intervention Deadline	2/23/2005
On-the-Record Presentation	2/25/2005
Stipulation of Facts	3/1/2005
Local Public Hearing @ 6:00 p.m.	3/9/2005
Brief/Proposed Findings of Fact & Conclusions of Law	3/11/2005
Oral Argument	3/14-15/2005
Commission Order Issued By (suggested)	3/31/2005

**OVERLAPPING/SITE SPECIFIC
CERTIFICATE OF CONVENIENCE AND NECESSITY**

EVENT	DATE
Intervention Deadline	2/23/2005
On-the-Record Presentation	2/25/2005
Direct Testimony (Aquila)	3/2/2005
Local Public Hearing @ 6:00 p.m.	3/9/2005
Rebuttal Testimony (Staff, Public Counsel, Cass County, STOPAQUILA.ORG)	3/21/2005
Surrebuttal Testimony (all)	3/24/2005
List of Issues, Statement of Positions, Order of Cross-examination	3/25/2005
Evidentiary Hearing	3/29-31/2005

The only area of disagreement with respect to the latter proposed schedule relates to whether provision should be made for the filing of post-hearing briefs. Aquila proposes that each party be given an opportunity to make closing arguments at the conclusion of the scheduled evidentiary hearing in lieu of post-hearing briefs. Cass County and STOPAQUILA.ORG propose that the Commission provide for the filing of post-hearing briefs within seven (7) days after the close of the evidentiary hearing.¹

4. Because the Parties are proposing alternative procedural avenues for the Commission's consideration, the Parties recommend that as part of the Commission's scheduled on-the-record discussion on Friday, February 25, 2005, the Parties will be allowed to explain their positions with respect to the two procedural alternatives in question and, also, answer the questions the Commission may have about the

¹ Should the Commission decide to direct the filing of post-hearing briefs under this time frame, provision will need to be made for the preparation of hearing transcripts on an expedited basis.

Application, the nature of the relief being requested and the legal/procedural/practical implications of the alternative proposals set forth in paragraph 3, *supra*.

5. Some parties have expressed concerns about the time frame established for other possible interested parties to be permitted to request to intervene. To address those concerns in a manner not inconsistent with the alternative procedural schedules proposed above, the Parties have agreed that the Commission should extend the intervention deadline to Wednesday, February 23, 2005. This proposal is made with the understanding that any other interventions that may be granted by the Commission will not by themselves form the basis of a modification of the subsequent proposed events/dates set forth in paragraph 3, *supra*.

6. In adopting either of the alternative procedural schedules set forth above, the Commission should direct that the Parties should respond or object to data requests within five (5) business days of the date received.

WHEREFORE, the Parties request that during the Commission's scheduled on-the-record presentation in this matter, on Friday, February 25, 2005, the parties be granted the opportunity to explain their respective positions and preferences and, answer questions the Commission may have.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ Paul A. Boudreau

Paul A. Boudreau MO#33155
BRYDON, SWEARENGEN & ENGLAND,
P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
(573) 635-7166 Telephone
(573) 635-0427 Fax
paulb@brydonlaw.com

Attorneys for Aquila, Inc.

/s/ John B. Coffman

John B. Coffman (#36591)
Public Counsel
P O Box 2230
Jefferson City, MO 65102
(573) 751-5565
(573) 751-5562 FAX
john.coffman@ded.mo.gov

Attorney for The Office of the Public
Counsel

/s/ Debra L. Moore

Debra L. Moore MO #36200
Cass County Counselor
Cass County Courthouse
102 E. Wall
Harrisonville, MO 64701
(816) 380-8206
(816) 380-8156 FAX
dmoore@casscounty.com

Attorney for Cass County, Missouri

/s/ Nathan Williams

Nathan Williams MO #35512
Lera L. Shemwell MO #43792
Senior Counsel
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-7431 Telephone
(573) 751-9285 Fax
lera.shemwell@psc.mo.gov

Attorney for the Staff of the Missouri
Public Service Commission

/s/ Mark W. Comley

Mark W. Comley MO #28847
Newman, Comley & Ruth, P.C.
601 Monroe Street, Suite 301
P.O. Box 537
Jefferson City, MO 65102-0537
(573) 634-2266
(573) 636-3306 FAX
comley@ncrpc.com

Attorney for Cass County, Missouri

/s/ Gerard D. Eftink

Gerard D. Eftink MO #28683
P.O. Box 1280
Raymore, MO 64083
(816) 322-8000
(816) 322-8030 FAX
geftink@comcast.net

Attorney for STOPAQUILA.ORG et al.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail or by hand delivery, on this 18th day of February 2005 to the following:

Mr. Nathan Williams
Senior Counsel
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102-0360

Mr. John B. Coffman
Public Counsel
Office of the Public Counsel
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102

Mr. Gerard D. Eftink
Van Hooser, Olsen & Eftink, P.C.
704 W. Foxwood Drive
P.O. Box 1280
Raymore, MO 64083-1280

Ms. Lera Shemwell
Senior Counsel
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102-0360

Mark W. Comley
Newman, Comley & Ruth
P.O. Box 537
Jefferson City, MO 65102-0537

Debra L. Moore
Cass County Counselor
Cass County Courthouse
102 E. Wall
Harrisonville, MO 64701

/s/ Paul A. Boudreau