

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

In The Matter of the Application of Aquila,)	
Inc. for Permission and Approval and a)	
Certificate of Public Convenience and)	
Necessity Authorizing it to Acquire,)	
Construct, Install, Own, Operate,)	Case No. EA-2006-0309
Maintain, and otherwise Control and)	
Manage Electrical Production and)	
Related Facilities in Unincorporated)	
Areas of Cass County, Missouri Near the)	
Town of Peculiar.)	

CASS COUNTY’S LIST OF ISSUES

Comes now Cass County, Missouri, by and through counsel, and pursuant to the Commission’s order proposes the following list of issues in this proceeding:

LIST OF ISSUES

**I. ISSUES IF THE COMMISSION CONDITIONS THE GRANT OR APPROVAL
OF ANY CERTIFICATE ON ACQUISITION OF LOCAL ZONING APPROVAL**

A. Pursuant to Section 393.170, RSMo 2000, does the Commission have jurisdiction to grant a certificate of public convenience and necessity for a generating plant that has already been constructed.

B. Presuming the Commission has jurisdiction, is the proposed construction of the South Harper Plant and Peculiar Substation necessary and convenient for the public service.

- (1) Is there a need for the additional capacity proposed.
- (2) Are there alternatives to meet the need other than erection of a peaking facility.

- (3) Will the plant as proposed have reasonable and economical access to fuel, water and transmission facilities.
- (4) What will be the impact on the neighboring community.
- (5) Has the applicant satisfied all requirements of state and local agencies before construction of the plant.
- (6) Is Aquila qualified financially and technically to construct and operate the plant and substation as proposed.
- (7) Is construction of the plant and substation in the public interest.

II. ISSUES IF THE COMMISSION DOES NOT CONDITION GRANT OR APPROVAL OF THE CERTIFICATE UPON ACQUISITION OF LOCAL ZONING APPROVAL.

- A. See issue A above.
- B. See issue B above.
- C. Does the Missouri Public Service Commission have the statutory authority to consider zoning issues itself, rather than deferring to local authorities, as part of an application for certification of a proposed generating plant.

- (1) Under what standard or set of circumstances may the Commission disregard local zoning authorities in approving the site for new generation facilities.
- (2) Has Aquila met that standard or supplied proof of the required circumstances for the Commission to disregard local zoning authorities in approving the site for South Harper and the Peculiar Substation.

D. Assuming the Commission does have the statutory authority to consider zoning issues, does the proposed location for the South Harper Plant and Peculiar Substation conform to the requirements of Cass County zoning.

- (1) Independent of considerations of need for the proposed plant and substation, are the proposed sites for the South Harper Plant and Peculiar Substation within a district zoned for generating plants and related facilities.
- (2) Independent of considerations of need for the proposed plant and substation, are the proposed sites consistent with the Cass County Master Plan.
- (3) Independent of considerations of need for the proposed plant and substation, will the proposed sites qualify for a special use permit under Cass County zoning ordinances in the event they are not located within an industrial district, or are otherwise inconsistent with the Cass County Master Plan;
 - (a) What will be the impact on the local community if a special use permit for the South Harper Plant and the Peculiar Substation is approved.
 - (b) What will be the impact on the County Master Plan if a special use permit for the South Harper Plant and the Peculiar Substation is approved.
 - (c) What conditions would Cass County be likely to impose on issuance of a special use permit for the South Harper Plant and

Peculiar Substation and should those conditions be imposed by the Commission.

- (d) Considering that the South Harper Plant and Peculiar Substation are already erected, is Aquila able to secure at this late date a special use permit to remedy any unlawful uses Aquila created itself.

E. If the Commission grants the certificate sought in Aquila's application and ignores Cass County's zoning and development ordinances and regulations, and further fails to treat Cass County's zoning and development ordinances and regulations as a consideration independent from need, has the Commission effectively extended to utilities the right to build generation plants wherever they may want.

WAIVER REQUEST

1. Although Commission Rule 4 CSR 240-2.080(21) prescribes the form for List of Issues ordered by the Commission, Cass County submits that good cause exists to waive its requirements as allowed by 4 CSR 240-2.025 in that the facts of this case are already well known to the Commission. Moreover, the issues have been well framed in briefs and pleadings previously submitted and argued. The above list of issues has been prepared based upon the testimony filed to date in this matter. To the extent surrebuttal testimony may raise additional issues, Cass County and other parties proposing this list reserve the right to supplement the issues accordingly.

2. Finally, the Office of Public Counsel, counsel for interveners StopAquila.Org, Frank Dillon, Kimberly Miller and James E. Doll have authorized the undersigned to represent to the Commission that they join in proposing this list of issues and the waiver sought herein.

Respectfully submitted,

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ATTORNEYS FOR CASS COUNTY, MISSOURI

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 11th day of April, 2006 to:

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/s/ Mark W. Comley

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