

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION  
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, )  
Maintain, and otherwise Control and )  
Manage Electrical Transmission )  
Substation and Related Facilities in )  
Benton County, Missouri (Near the City )  
of Cole Camp). )

Case No. EA-2007-0245

**MOTION FOR EXPEDITED TREATMENT**

COMES NOW Aquila, Inc., (hereinafter "Aquila" or "Company"), pursuant to Commission Rule 4 CSR 240-2.080 (16), and for its Motion for Expedited Treatment of the captioned case, states the following:

1. On December 28, 2006, Aquila filed an Application for a certificate of convenience and necessity ("Certificate") to construct, install, own, operate, maintain and otherwise control and manage an electric transmission power substation in Benton County, near the City of Cole Camp, Missouri (the "Cole Camp Substation"). For the reasons set forth below, Aquila is requesting that the Commission issue an order concerning Aquila's Application by February 1, 2007, bearing an effective date of no later than February 12, 2006.

2. This motion was filed as quickly as possible after the filing of Aquila's Application.

3. Aquila's budgeting, engineering and construction timelines for the Cole Camp Substation have been developed to execute an in-service date based on the projected customer growth and area development. As explained in great

detail in Aquila's Cole Camp Substation application, this transmission substation is a critical asset and much-needed to serve increasing load demand in this fast-growing area. The 2009 in-service date for the Cole Camp Substation is achievable under normal and cost effective material acquisition and construction procedures, but because this case is the agreed-upon "test case", (described below) expedited treatment is necessary to advance the matter for possible judicial review, which could take as long as two years to complete the appellate process.

4. On October 9, 2006, Aquila, the Commission's staff ("Staff"), and the Office of the Public Counsel entered into a Stipulation and Agreement (the "Agreement") regarding the Osceola and Raymore North Substations. The Commission approved the Agreement on October 19, 2006. The parties agreed that the Western District Court of Appeals decision in *Harline v. Public Service Commission*, 343 S.W.2d 177 (Mo. App. 1960) and its progeny held that utility companies, such as Aquila, may construct and operate new electrical transmission and distribution lines within their Commission-certificated service areas without obtaining additional specific certificates of convenience and necessity from the Commission. However, the Western District's recent opinion in *StopAquila.org v. Aquila, Inc.*, 180 S.W.3d 24 (Mo. App. W.D. 2005), created some uncertainty as to whether an electric utility may lawfully construct and operate any electrical substation, including a transmission substation, within the utility's certificated service area without first obtaining from the Commission a §

393.170.1 certificate of convenience and necessity that specifically authorizes the utility to construct and operate the electric substation.

5. According to the Agreement, the Staff and Public Counsel believe the holding in *StopAquila.org* does not require Aquila to seek a specific certificate of convenience and necessity from the Commission to construct and operate electrical substations. Aquila, however, interpreted the *StopAquila.org* holding as new binding precedent requiring additional approval from the Commission for Aquila to construct and operate new electric substations, specifically transmission substations. Because of the need for the expedited construction of the Osceola and Raymore North substations, the parties agreed that the Commission should exercise its discretion and issue certificates of convenience and necessity under §393.170.1 RSMo authorizing Aquila to construct and operate each of those two electrical substations so that Aquila could begin constructing them immediately.

6. Aquila believed that the uncertainty created by the *StopAquila.org* case needed to be resolved so the parties agreed that if the Commission approved the Raymore North and Osceola Substations applications that Aquila would apply for a certificate of public convenience and necessity under § 393.170.1, RSMo., to construct and manage another electric substation that would act as a “test case” for the courts to clarify whether utilities must obtain a certificate of convenience and necessity specifically authorizing the construction of a new substation.

7. While the parties anticipated that the “test case” would be a distribution substation to be located near the intersection of 172nd Street and U.S. Highway 169 in Clay County, Missouri, which Aquila refers to as the “Pope Lane” substation, Aquila does not believe that there will be enough time for the Commission to rule and for the matter to proceed through the appellate process before construction needs to begin to meet the pre-peak 2008 in-service date.<sup>1</sup>

8. The Cole Camp substation does not need to be in-service until pre-peak 2009. Accordingly, Aquila is requesting that the Cole Camp application be expedited in order to ensure sufficient time for possible judicial review to meet the June 2009 in-service date. Aquila has discussed these timing considerations with Staff in advance of the filing of its Application in this case.

WHEREFORE, for the reasons aforesaid, Aquila requests the Commission issue an order granting expedited treatment of its Application in this case and that it issue an order concerning the Certificate requested bearing an effective date of no later than February 12, 2007.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND

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<sup>1</sup> Aquila filed the application requesting a certificate of convenience and necessity for the Pope Lane (Case No. EA-2007-0244) and Cole Camp substations simultaneously.

### **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 28th day of December 2006, to the following:

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

Office of the Public Counsel  
Governor Office Building  
200 Madison Street, Suite 650  
P.O. Box 2230  
Jefferson City, MO 65102-2230

/s/ Paul A. Boudreau  
Paul A. Boudreau