

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

In the Matter of the Application of Aquila,)
Inc., for Authority to Acquire, Sell and)
Lease Back Three Natural Gas-Fired)
Combustion Turbine Power Generation)
Units and Related Improvements to be)
Installed and Operated in the City of)
Peculiar, Missouri.)

Case No. EO-2005-0156

**REPLY TO THE RESPONSE OF STOPAQUILA.ORG TO AQUILA'S SUGGESTIONS
IN OPPOSITION TO APPLICATION OF STOPAQUILA.ORG TO INTERVENE**

COMES NOW Aquila, Inc., (hereinafter "Aquila"), by and through counsel, and offers the following reply to STOPAQUILA.ORG's Response to Aquila's Suggestions Opposing Intervention:

1. On January 21, 2005, STOPAQUILA.ORG filed its Response to Aquila's Suggestions in Opposition to Application of STOPAQUILA.ORG to intervention in the captioned case (hereinafter, the "Response"). The Response of STOPAQUILA.ORG does not contain any additional allegations which state an interest sufficient under the standards of Commission rule 4 CSR 240-2.075 to justify granting its Application to Intervene in this case.

2. The Response does not address the proposed intervenor's failure to comply with that portion of the Commission's intervention rule which would require an association to list all of its members a condition to participation in a Commission proceeding. 4 CSR 240-2.075(3). This is not a matter of mere academic interest, particularly in the case of an unincorporated association like STOPAQUILA.ORG. To allow such an association to intervene in this case without listing all of its members

would prejudice Aquila's ability to pursue effective discovery through data requests, interrogatories or depositions. To whom should data requests be directed? Who would be responsible to compile complete answers? Who would verify their accuracy? What sanction would be available if one of the claimed 350-member association failed to comply with discovery? The bottom line is there is no responsible party that can ensure that discovery requests are fully, correctly and truthfully answered.

3. In that same vein, how many of the claimed 350 individuals comprising STOPAQUILA.ORG actually live in close proximity to the location of the new power station? Aquila questions whether the members of this group are as numerous as has been claimed and, more importantly, whether they all actually reside near the construction site because this is not a densely populated area of Cass County. The requirement to list the names and addresses of members would certainly have shed light on this pertinent fact.

4. The reliance in the Response on the Commission's decision to permit the intervention of certain landowners in Commission Case No. EO-2002-351 is not on point with the circumstances presented in this case. In the Union Electric case, the issue presented was the siting of an electric transmission line through portions of Maries, Osage and Pulaski Counties. That case involved routing considerations and the acquisition of additional right-of-way by condemnation or otherwise. The landowners in that case would retain fee ownership interests in the property over which the transmission line was to be constructed. In this case by way of contrast, Aquila already owns the real estate upon which the South Harper peaking facility is being constructed outright. The same is true of the land for the associated Peculiar

substation. Aquila does not propose to acquire additional right-of-way for new transmission lines in conjunction with the installation of the South Harper peaking facility. To the contrary, the new electric power plant will be tied into an existing electric transmission line that is being upgraded. Unlike the landowners in the Union Electric Company case, the purported members of STOPAQUILA.ORG have no proprietary interest in the real estate upon which the South Harper power station and electric transmission substation are to be constructed. The cases are factually distinguishable. As such, the Commission's intervention ruling in Case No. EO-2002-351 provides no justification for permitting STOPAQUILA.ORG to intervene in this case.

5. The Response contains the statement that "the general public does not have to live within close proximity to a power plant, with the noise and pollutants that emanate therefrom." Response, p. 3. The statement is factually incorrect. There are a number of power peaking facilities like South Harper located in and around the Kansas City in more densely populated areas surrounded by subdivisions of single-family residences. This case presents no unprecedented circumstance in this regard. As to the suggestion that the facility will be a source of noise and pollution, it should be noted that the combustion turbines will be fitted with exhaust silencing to reduce noise. Also, Aquila filed for and received a New Source Review Permit No. 122004-017 from the Air Pollution Control Program of the Missouri Department of Natural Resources evidencing compliance with all applicable clean air emissions standards. In any event, none of these issues are implicated in this case where the only matters to be considered are an affiliate transaction and funding with low cost revenue bonds.

WHEREFORE, Aquila restates its objections to the intervention of STOPAQUILA.ORG in this proceeding for the reasons aforesaid and as previously set forth in its Suggestions in Opposition to Application of STOPAQUILA.ORG to Intervene.

Respectfully submitted,

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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 or by hand delivery, on this 26th day of January 2005 to the following:

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