

**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, )  
Maintain, and Otherwise Control and )  
Manage Electrical Production and )  
Related Facilities in Unincorporated )  
Areas of Cass County, Missouri near the )  
Town of Peculiar. )

Case No. EA-2006-0309

**AQUILA'S RESPONSE TO THE PROPOSED REPORT AND ORDER OF  
CASS COUNTY, MISSOURI AND THE OFFICE OF THE PUBLIC COUNSEL**

COMES NOW Aquila, Inc. ("Aquila" or the "Company"), by and through counsel, and in response to the Report and Order proposed by Cass County, Missouri ("Cass County") and the Office of the Public Counsel ("Public Counsel") on May 18, 2006, respectfully states as follows to the Commission:

1. Normally, Aquila would not consider responding to a proposed Report and Order. Unfortunately, however, some of the statements contained in the proposed Report and Order submitted by Cass County and the Public Counsel are so blatantly false and misleading that Aquila cannot allow these matters to go unchallenged.

2. In their suggested Report and Order, Cass County and Public Counsel allege certain "facts" regarding Aquila's activities with regard to the proposed Camp Branch location in an apparent effort to rehabilitate the County's chief policy witness, Gary Mallory, who admitted that he had prejudged the Company's special use permit application. While the Company is willing to accept responsibility for its missteps, these "facts" are a complete fabrication and in no way can be considered as a fair and

accurate representation of Aquila's activities or a justification for Mr. Mallory's comments.

3. At pages seven and eight of their proposed Report and Order, Cass County and Public Counsel state, "Aquila engaged in no community development activities in advance of its SUP application for the Camp Branch site. There was no meaningful pre-application conference with County staff or decision-makers, there was no outreach to adjacent property owners, and there was no post-application discussion and negotiation of key issues with the County . . ." They also state that public outcry was substantial and that Glenn Keefe was involved in the Aries zoning.

4. These claims are false. With regard to Camp Branch, the evidence demonstrates that:

- Aquila had several pre-filing meetings with County Zoning Director Darrell Wilson and then with Cass County Presiding Commissioner Mallory; (Ex. 2, Empson Surrebuttal, pp. 10-11)
- Aquila prepared and eventually filed a SUP application based upon their input; (*Id.*)
- Aquila representatives met with the Harrisonville City Administrator on May 10, 2004; (*Id.*)
- There was a community meeting on May 12; (*Id.*)
- There was a community tour of Greenwood on May 13; (*Id.*)
- Aquila did not take additional actions because the local residents told Aquila point blank that there was absolutely nothing that Aquila could do to make the

siting acceptable. The opposition was led by a Cass County Circuit Court Judge. (*Id.*)

- Aquila, in fact, filed the application with the Cass County Planning and Zoning Board, because Aquila had to rely on the County's SUP process to argue its case. (*Id.*)
- The so-called substantial outcry consisted of approximately ten people who testified against Aquila's application. (See Exhibit 32)

Further, Glenn Keefe was never involved with the Aries plant and the Company's unregulated operations. He has always been a utility employee on the regulated side of Aquila's business.

5. There is simply no factual support for the statement by Cass County and Public Counsel that Commissioner Mallory's "snowball's chance in hell" comment was somehow related to Aquila's failure to work with local residents. The truth is the statement was made by Commissioner Mallory when he had not read Aquila's application (Mallory deposition, p. 76, lines 5-9), had not read the report prepared by the County's consultant (*Id.*, p. 76, lines 10-13), and had not attended the Planning Board meeting where Aquila's application was discussed (*Id.*, p. 72, lines 16-19). Commissioner Mallory stated that he was only concerned about the public opposition. (*Id.*, p. 75, lines 9-12) This is a classic case of prejudging a matter without regard to the involved facts or the merits of the arguments. Even assuming that Cass County had in place enforceable zoning, it is clear that the process would not have been fairly applied to Aquila.

6. Cass County and Public Counsel reference the meeting in early November, 2005 and state that "Cass advised Aquila it would require Aquila to apply for either rezoning or a SUP....". The true facts pertinent to this meeting are set forth on page 17, lines 9-20, of Jon Empson's Surrebuttal testimony. Additionally, and more importantly, during his deposition, Commissioner Mallory said several times that he has no recollection of what the meeting was about. (Mallory deposition, pp. 90-93)

Q: Well, do you have any recollection about any discussion about whether or not Aquila would go through the zoning process at that meeting?

A: No, I do not.

(*Id.*, p. 92, lines 5-8) Commissioner Mallory later stated: "Quite frankly, don't recall anything about the meeting, except the names that you mentioned." (*Id.*, p. 92, lines 16-18) Commissioner Mallory's deposition testimony is in direct conflict with the representations now being made to this Commission by Cass County and Public Counsel concerning "advice" given by the County to Aquila during the November meeting.

WHEREFORE, Aquila respectfully requests that the Commission disregard the Report and Order proposed by Cass County and Public Counsel and adopt the Report and Order proposed by Aquila and supported by the Staff of the Commission, the City of Peculiar, and the Southwest Power Pool.

Respectfully submitted,

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ATTORNEYS FOR AQUILA, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was delivered electronically, by first class mail, or by hand delivery, on this 22<sup>nd</sup> day of May, 2006, to all parties of record.

/s/ James C. Swearengen