

**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. _____

APPLICATION

COMES NOW Aquila, Inc., (hereinafter "Aquila" or "Applicant") pursuant to §393.170 RSMo 2000, 4 CSR 240-2.060 and 4 CSR 240-3.105(B), and for its Application to the Missouri Public Service Commission ("Commission") states as follows:

General Information About Applicant

1. Applicant is a Delaware Corporation with its principal office and place of business at 20 W. 9th Street, Kansas City, Missouri 64105-1711. Applicant is authorized to conduct business in Missouri through its Aquila Networks-MPS and Aquila Networks-L&P operating divisions and as such is engaged in providing electrical, natural gas and industrial steam utility service in those areas of the State certificated to it by the Commission. A Certificate of Authority for a foreign corporation to do business in the State of Missouri evidencing Aquila's authority under the law to conduct business in the State of Missouri was filed with the Commission in Case No. EU-2002-1053 and said documents are incorporated herein by reference in accordance with 4 CSR 240-

2.060(1)(G). Additionally, copies of the registrations of fictitious names of Aquila Networks-MPS and Aquila Networks L&P were filed in Case No. EU-2002-1053 and said documents are incorporated herein by reference in accordance with 4 CSR 240-2.060(1)(G).

2. Aquila has pending actions or final unsatisfied judgments or decisions against it involving customer service or rates having occurred within three (3) years from the date of this Application.

3. Aquila has no annual report or assessment fees that are overdue.

4. All pleadings, notices, orders and other communications and correspondence regarding this Application and proceeding should be directed to:

Mr. Dennis R. Williams
Aquila Networks
10700 East 350 Hwy
Kansas City, MO 64138
(816) 737-7857

Paul A. Boudreau
Brydon, Swearngen & England, P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, Missouri 65102
(573) 635-7166

Relief Requested

5. This Application is being filed by Aquila to confirm specifically that it possesses, or in the alternative, obtain from the Commission a certificate of convenience and necessity to construct, own, operate and manage an electrical power production facility and associated electric transmission substations to be located on two discrete tracts of property near the City of Peculiar in Cass County, Missouri, more

specifically described in paragraphs 23 and 24, *infra*. Each of these facilities is located within the geographic area previously certificated to Aquila's predecessors-in-interest pursuant to the Commission's prior decisions and orders in numerous cases, including its Case Nos. 1,074, 1,449, 3,171, 5,109, 9,470, and 11,892.

6. Because of the litigation described below in Paragraphs 13-16, Aquila requests that the Commission either confirm specifically that Aquila's existing certificate of convenience and necessity authorizes it to construct and operate the South Harper Facility and Peculiar Substation at their respective locations as described in Paragraphs 23-24, *infra*, or in the alternative, grant Aquila a site-specific certificate of convenience and necessity for the same purpose without regard to the existence of Aquila's prior certificates and orders. Such action would be consistent with the Commission's 1977 decision in Case No. EA-77-38 regarding The Empire District Electric Company's LaRussell Energy Center.

7. This Application does not ask that the Commission make a determination as to the prudence of constructing the electrical facilities sought to be certificated, the correctness of Applicant's resource planning decisions, or pre-approval of any of the costs associated with the South Harper Facility or the Peculiar Substation. Applicant anticipates that the Commission will include in the report and order its customary determination that any decision in this case is not binding for ratemaking purposes and that the Commission reserves the right to consider the ratemaking treatment to be given the projects in a subsequent proceeding or proceedings. Finally, Applicant is not requesting the Commission to make any findings in respect to the matters specifically

presented to it in Case No. EO-2005-0156, relating to an affiliate asset transfer and Chapter 100 financing considerations.

South Harper Site and Timing Considerations

8. In October of 2004, Aquila began land clearance and site preparation on a parcel of property in an unincorporated area in Cass County, Missouri, near the City of Peculiar at East 243rd Street and South Harper Road for the installation of a peaking power production facility comprising three (3) natural gas-fired combustion turbines (“CTs”) and an associated electric transmission substation (the “South Harper Facility”). Also, Aquila has begun land clearance activities in preparation for the construction of a related electric transmission substation on approximately ten (10) acres of a fifty-five (55) acre parcel of property at a location one-half mile west of 71 Highway and one-half mile south of the intersection of 203rd Street and Knight Road, approximately 2 miles northwest of Peculiar at a location adjacent to the intersection of an existing 345 kV electric transmission line and an existing 69 kV electric transmission line, each of which is owned by Applicant (the “Peculiar Substation”).

9. The Commission has authorized Applicant to construct, operate and maintain electric facilities and to render electric service throughout portions of Cass County, Missouri, to further the public convenience and necessity pursuant to the Commission’s prior decisions, including in Case Nos. 1,074, 1,449, 3,171, 5,109, 9,470 and 11,892 (hereinafter the “Certificate”). The location of the South Harper Facility and the Peculiar Substation are both within the general electric service area certificated to Aquila by the Commission in its Case Nos. 9,470 (1938) and 11,892 (1950). As such, Applicant concluded that a separate and overlapping certificate of convenience and

necessity for the construction and operation of the South Harper Facility and the associated Peculiar Substation would be duplicative and unnecessary.¹ Applicant's understanding of the law in this regard is in full accord with the Commission's long-standing policy summarized in a letter dated November 5, 2004, to Mrs. Nanette L. Trout and signed by the Executive Director of the Commission. A copy of said letter is attached hereto, marked **Appendix 1**, and incorporated herein for all purposes.

10. The South Harper Facility is being constructed to replace a power purchase agreement ("PPA") that expires May 31, 2005. The current PPA is for 500 megawatts ("MW") of capacity during the summer months and 200 MW in the winter. With increasing demand in Aquila's Missouri service area and the need for year-around peaking capability, the South Harper Facility's three (3) 105 MW simple cycle CTs will provide flexibility to meet the needs of Aquila's customers. Aquila's Western Missouri service area includes the majority of Cass County, a first class non-charter county, which is one of the fastest growing areas served by Aquila.² Aquila is adding approximately 5,000 new customers per year in this area, and the total system demand for electricity at peak times hit an all-time high of approximately 1,861 MW in 2003. Electrical load in this area is up approximately 7.5% since 2002. Aquila's capacity needs of approximately 200 – 250 MW will be met with PPAs that resemble base load power supply.

¹ See, *State ex. rel. Harline v. Public Service Commission*, 343 S.W.2d 177 (Mo. App. 1960) [A public utility is not required to obtain an additional certificate to construct facilities within a territory already allocated to it.]; *The Empire District Electric Company v. Cox*, 588 S.W.2d 263 (Mo. App. 1979); [Utilities do not have to come before the Commission to obtain authority to build a plant within their respective certificated areas.]; *Re Union Electric Company*, 24 Mo.P.S.C.(N.S.) 72 (1980) [Application for certificate to construct and operate two combustion turbine generating units within an existing certificated territory dismissed as unnecessary.]

² The Missouri Office Administration has identified Cass County as one of the top ten fastest growing counties in the State showing a population increase of 8.2% over the three (3) years between April 1, 2000 and July 1, 2003. (OA News Release, April 9, 2004)

Critical Timing Considerations

11. The timeframe to complete construction activities at the South Harper Facility and the Peculiar Substation so that commercial operations can begin as scheduled by June 30, 2005 is very tight and unforgiving. June is only four (4) calendar months off and several interim key dates are imminent. Site preparation activities, including the pouring of concrete foundations for the CTs, are nearing completion. The installation of the first two CTs is scheduled to commence as early as the end of February or early March. The third CT is scheduled to be installed shortly thereafter. These activities absolutely cannot be delayed if the process of commissioning the CTs is to begin on schedule by mid-May. If these dates are not met, the CTs may not be on line producing power when needed for the upcoming Summer cooling season.

12. Applicant's financial commitment to this undertaking has been significant to date. Project costs through December of 2004 have totaled almost \$14 million and significant additional expenditures of approximately \$28 million are anticipated through the first quarter of 2005 alone. Aquila anticipates investing approximately \$3 million per week through the end of March 2005. Ultimately, total project costs are expected to exceed \$144 million through October of this year including the CTs.

Cass County Litigation

13. Shortly after the commencement of site preparation and improvements at the South Harper Facility, separate petitions for injunctive relief were filed by Cass County, Missouri and an unincorporated association of individuals. Said lawsuits challenged the right of Aquila to construct the South Harper Facility and the Peculiar Substation claiming, among other things, that the provisions of §64.235 RSMo 2000,

providing for the adoption by first class non-charter counties of a planning and zoning code, superceded the authority of Aquila's Certificate or imposed additional requirements on Aquila to seek either project-specific authority from the Commission to construct and operate the South Harper Facility and the Peculiar Substation or, more specific authority from the Cass County Commission. On January 6, 2005, the Cass County Circuit Court issued a permanent injunction enjoining Aquila from constructing and operating the South Harper Plant and the Peculiar Substation, and ordering that Aquila remove all improvements and equipment inconsistent with the property's agricultural zoning classification by Cass County. A copy of the Court's Judgment, is marked **Appendix 2**, attached hereto and incorporated herein for all purposes.

14. The Court's Judgment also provided for the injunction to be suspended pending the posting by Aquila of a cash or surety bond during the pendency of appeal. Aquila posted a surety bond, which was accepted on January 11, 2005 by the Circuit Court. On January 12, 2005, Aquila filed a Notice of Appeal of the Judgment in the Missouri Court of Appeals, Western District, Case No. WD64985. A copy of that documentation is marked **Appendix 3**, attached hereto and incorporated herein for all purposes.

15. The Judgment of the Circuit Court contains the following finding:

The Court finds that either Aquila's Cass County franchise must give Aquila the specific authority to build a power plant within Aquila's certificated area or service territory, and that Aquila's 1917 franchise with Cass County does not; or that Aquila must obtain a "specific authorization" in its certificate of public convenience and necessity, pursuant to the provisions of §64.235 of the revised statutes of Missouri, to build a power plant within its certificated area or service territory from the Missouri Public Service Commission, and that Aquila has not. (Judgment, p.3, emphasis added)

The Circuit Court's conclusion that the provisions of §64.235 RSMo, as they apply to the authority of first class non-charter counties to adopt a comprehensive planning and zoning code supercede or impose additional requirements on certificates of convenience and necessity held by investor-owned utilities subject to the Commission's jurisdiction, is not consistent with Aquila's understanding of the expository case law as articulated by the Missouri Supreme Court in a series of important opinions.³ Consequently, Aquila is confident that its appeal is meritorious and that it will ultimately prevail on the legal issues raised by Cass County and addressed in the Judgment. Aquila intends to request an expedited appeal of the Judgment of the Cass County Circuit Court but the timing of a decision in that appeal is uncertain. It is possible that the Court of Appeals will not issue its decision sufficiently in advance of June 2005 to meet Aquila's urgent need to have power production capacity on line to meet the growing demands of its Aquila Networks-MPS customers, including those located in Cass County, Missouri.

16. Because of the uncertainties created by the Court's injunction, Aquila does not have the luxury of simply waiting for the outcome of the appeal. The power to be produced by the South Harper Facility is needed to meet its customers' demands and significant additional capital commitments associated with the construction of the South Harper Facility are imminent. Without the restoration of certainty concerning Applicant's right and authority to construct and operate the South Harper Facility and the Peculiar Substation, Aquila will be forced to consider more costly options to meet its obligation to serve the public. In an abundance of caution, Aquila is compelled to address the

³ See, *Union Electric Company v. Saale*, 377 S.W. 2d 427, 430 (Mo. 1964); *Union Electric Company v. City of Crestwood*, 499 S.W. 2d 480, 482-84 (Mo. 1973) ("Crestwood 1"); *Union Electric Company v. City of Crestwood*, 562 S.W. 2d 344, 346 (Mo banc. 1978) ("Crestwood 2").

legality and legitimacy of the South Harper Facility and the Peculiar Substation by all means possible and in the most time-effective manner.

Regulatory Context and Considerations

17. For a period of time, there was a divergence of views within the industry about the scope of the authority of electric utilities to build additional electric plants within geographic areas certificated to them to provide service to the public. In 1973, Commissioner Clark noted that:

[M]any existing electric companies in this state have, for many years, after first obtaining consent necessary for subsection [393.170] (1) authority added to the existing plant or built additional plants at different locations without having applied to the Commission, and to hold otherwise would place in jeopardy the many plants heretofore constructed without the consent of the Commission.

Re Missouri Power and Light Company, 18 Mo.P.S.C. (N.S.) 116, 121 (1973)(Clark, C., concurring in result). Aquila's predecessor-in-interest, Missouri Public Service Company, followed this practice. Like the South Harper Facility, Aquila's base-load Sibley Power Station and its Greenwood Energy Center, each located in Jackson County, Missouri, were constructed and put into operation in reliance on its Case No. 11,892 certificate.⁴ As noted in the *Missouri Power and Light Company* decision, other companies sometimes followed a different practice and would request site-specific certificates for new power production facilities, including those built within the service

⁴ In Case No. 11,892, the Commission specifically granted Missouri Public Service Company a certificate of public convenience and necessity to ". . . own, maintain and operate all properties and assets and to acquire, hold and exercise all contracts, franchises, permits and rights now held and possessed by Missouri Public Service Corporation; including, without limitation, all rights to construct, own and maintain electric utility facilities in the areas in the State of Missouri described and designated in the order of this Commission entered in Case No. 9,470 on January 18, 1938."

areas previously certificated to the applicant. This was the practice of Union Electric Company as revealed in the case papers of Commission Case No. EA-79-119.⁵

18. In that 1980 case, Union Electric Company filed an application for a certificate of convenience and necessity to install two (2) combustion turbine power generating units at a location within its existing certificated service area. In the context of that case, the Commission examined the decisions of the appellate courts in the *Harline* and *Cox* decisions.⁶ In the Union Electric case, the Commission carefully articulated its policy regarding the authority of electric utilities to build additional electrical facilities within their certificated service areas. In an important exercise of its primary jurisdiction,⁷ the Commission determined that the decision to construct additional facilities is one reserved to the management discretion of the company as driven by its statutory obligation to provide reliable public service to meet the need already established in the underlying area certificate case. Accordingly, it dismissed the application of Union Electric Company.

19. There have been occasional exceptions to the application of the Commission's general policy. In 1973 in Case No. 17,737, the Commission granted Missouri Power and Light Company a power plant "footprint" certificate for authority to construct and operate a 54 MW combustion turbine within its certificated service area in Jefferson City, Cole County, Missouri. In doing so, the Commission reiterated its view that it did "not feel we should interfere with such a management decision unless there is

⁵ Reported at 24 Mo. P.S.C. (N.S.) 72.

⁶ See, footnote #1, *supra*.

⁷ The Commission has exclusive jurisdiction to make decisions within the specialized expertise reserved to the Commission by law. See, *State ex rel. MCI Metro Access Transmission Services v. City of St. Louis*, 941 S.W.2d 634, 644 (Mo. App 1997); *Killian v. J&J Installers, Inc.*, 802 S.W.2d 158, 160 (Mo. banc 1991); *Crestwood 1* and 2.

clear showing that such decision is unreasonable and unsound.” 18 Mo.P.S.C. (N.S.) at 120. As noted in paragraph 17, *supra*, Commissioner William R. Clark filed a separate opinion concurring in the result but stating:

[i]t is my opinion that Missouri Power and Light Company does not need to apply to the Commission for the consent set forth in §393.170(1) RSMo 1969 for the reason that Missouri Power and Light Company possesses the authority to construct and operate electric plants within the City of Jefferson and has done so for many years.

18 Mo.P.S.C. (N.S.) at 121.

20. In 1977, The Empire District Electric Company (“Empire”) filed an Application for a certificate of convenience and necessity associated with the construction of the LaRussell Energy Center located in Jasper County, Missouri. The Commission docketed the Application as Case No. EA-77-38. Like Aquila, the Commission observed that Empire had been certificated in Commission Case No. 9,420 “to construct, operate and maintain electric facilities and to render electric service in all unincorporated areas of Jasper County, Missouri and certain other counties in Missouri.” The Commission noted that upon advice of legal counsel, Empire nevertheless sought to certificate a 90 MW oil-fired combustion turbine to be located near the confluence of Spring River, the Missouri Pacific Railroad and the Explorer Pipeline in an unincorporated portion of Jasper County.⁸

21. Ultimately, after considering the information provided by Empire, the Commission granted the requested certificate. In doing so, however, the Commission recited its reservations about the necessity of the filing.

Inasmuch as Empire has submitted voluntarily to this Commission its application for authority to construct these facilities, notwithstanding its existing certificate of convenience and necessity under the Report and

⁸ 21 Mo. P.S.C. (N.S.) at 352.

Order in Case No. 9,420, we choose to exercise our authority and jurisdiction and do not treat the issue respecting the efficacy of that certificate as authority for the facilities involved in this proceeding.

21 Mo.P.S.C. (N.S.) at 355.

22. The *Missouri Power and Light and Empire* decisions, though consistent with the Commission's long-standing interpretation as to the scope of authority granted by a blanket certificate, demonstrate that the Commission has reserved the right to consider applications that request an overlapping production facility certificate under special circumstances. Aquila submits that compelling special circumstances justify the Commission's issuance of such an overlapping certificate for the locations of the South Harper Facility and the Peculiar Substation. As noted above, Aquila faces a deadline for additional peaking power capacity in June of 2005. The Judgment of the Circuit Court has cast doubt on Aquila's right to proceed with the completion of the South Harper Facility and the Peculiar Substation, as well as its decision to incur significant expenses to complete this project. The issuance of either a confirmation of specific authority under the existing certificate or a new project-specific certificate of convenience and necessity will remove any doubt about Aquila's authority and right to complete and operate the South Harper Facility and the Peculiar Substation.

**The Public Convenience Will Be Served By
Completion of the South Harper Facility**

23. Applicant requests specific confirmation under its existing certificate or, in the alternative, a new site-specific certificate of public convenience and necessity, authorizing Aquila to install, own, acquire, construct, operate, control, manage and maintain an electric generation station comprising three (3) 105 MW natural gas-fired CTs and its associated electric transmission substation, as well as the related electric

substation and all associated fixtures, buildings, transformers and breakers (hereinafter, collectively, the “Project”). All facilities, equipment and installation will be located on two (2) separate parcels of property located in an unincorporated area of Cass County, Missouri as set forth on the map attached hereto as, marked **Appendix 4** and incorporated herein for all purposes.⁹ Tract A is approximately 74 acres of land at or near 243rd Street and Harper Road, approximately two (2) miles Southwest of Peculiar, and is generally located in parts of Sections 29 and 32, Township 45 North, Range 32 West in Cass County. The three (3) CTs and an associated transmission substation, fixtures, equipment and improvements will be located on Tract A. Tract B is approximately 55 acres of property one-half mile west of 71 Highway and one-half mile south of the intersection of 203rd Street and Knight Road, and is generally located in the northwest quarter of Section 5, Township 45 North, Range 32 West, in Cass County. An electric transmission substation will be located on Tract B.

24. Attached hereto, marked **Appendix 5** and incorporated herein for all purposes are legal descriptions of Tract A and Tract B, each described by metes and bounds.

25. Applicant requests a waiver from the requirement of Commission Rule 4 CSR 240-3.105(1)(B)2, that it submit a study containing the plans and specifications for its power generation station, the associated electric substations and the estimated cost of construction of the Project. Those materials are extremely voluminous and would be an unreasonable burden on Applicant to either reproduce or electronically submit the materials on the Commission’s EFIS. Applicant is prepared to make these materials

⁹ The Peculiar Substation is indicated as the “North Substation” on the map.

available to the Commission's Staff or the Office of Public Counsel ("OPC") at Applicant's offices in Kansas City, Missouri, or at any other agreed-to location.

26. The Project will be financed with Aquila's internally generated funds.¹⁰

27. As explained in greater detail in its Application in Case No. EO-2005-1156, title to the Project will be transferred to the City of Peculiar and will be leased back to Aquila. Aquila will treat the lease arrangement as a capital lease. The resulting accounting treatment will be the same as if the Project were a power generation asset owned outright by Aquila Networks-MPS.

28. This Commission has previously established in Case Nos. 3,171, 9,470 and 11,892 and others that the public convenience and necessity is served by Aquila's extension of new electric plant, including power plants and transmission substations, throughout those areas of Cass County currently served by it, including at the locations of Tracts A and B. Said findings are final and conclusive and are not subject to collateral challenge. §386.550 RSMo 2000. Nevertheless, the granting of this Application will be in the public interest because the electric power to be generated by the Project will be rate-based capacity that will be available to serve increasing demand for electric power by Aquila's customers in Missouri, including those located in Cass County. There are operational and cost advantages inherent in a utility's ownership of generating facilities. In recognition of these advantages, the Commission just recently stated its preference for company-owned generation instead of heavy reliance PPAs to meet Missouri load requirements and to protect Missouri customers.¹¹ This statement

¹⁰ The terms of tax-advantaged Chapter 100 RSMo revenue bond financing are addressed with more specificity in the Application heretofore filed by Aquila and docketed by the Commission as Case No. EO-2005-0156.

¹¹ See, FERC Docket EC03-53-000 and 001, Opinion 473, pages 7 and 10.

has been consistent with Aquila's recent experience in which the Commission's Staff has encouraged the company to reduce its reliance on PPAs in favor of power plant ownership when justified. Since as early as May of 2003, Aquila has presented to representatives of Staff and OPC information demonstrating the need for peaking capacity of 300 MW during regular reviews of its integrated resources plan ("IRP"). The construction of the South Harper Facility is consistent with the IRP. The location of the Project is desirable because of its relative proximity to the load center of the Western side of Aquila Networks-MPS's service area, existing electrical transmission facilities and the availability of fuel from natural gas pipelines near the Project site, all as more specifically described in Paragraph 34, *infra*.

29. In accordance with Commission Rule 4 CSR 240-3.105(B)(1), Applicant states that construction activities at the South Harper Facility required the lowering of an existing telephone line of Cass County Telephone Company (representatives of which were on-site at the time) and the placement of the driveway that crossed an existing water line of Public Water Supply District No. 7 ("PWSD7"). Representatives of PWSD7 worked with Applicant to lower the line to accommodate the driveway entrance to Tract A. Other activities associated with an upgrade of an existing 69 kV electric transmission line will occur over buried natural gas lines, but it is not expected that those lines will be disturbed.

30. In connection with the construction and development of the South Harper Facility and the associated Peculiar Substation, Aquila is preparing to apply, has applied, and/or has obtained all required authorizations from local, state, and federal authorities, including but not limited to, county driveway permits, county building code

permits, a prevention of significant deterioration (“PSD”) air permit, acid rain permit, review of threatened and endangered species, wetland determinations, cultural resources review, permits under the National Pollutant Discharge Elimination System (“NPDES”) and Storm Water Pollution Protection Plans (“SWPPP”) for construction activity, NPDES hydrostatic testing permit, NPDES and SWPPP operating permits and Commission approval for the use of purchased CTs and Chapter 100 revenue bond financing in Commission Case No. EO-2005-0156.

31. In accordance with Commission Rule 4 CSR 240-3.105(D), Applicant has marked **Appendix 6**, and attached hereto for all purposes a copy of the assent of Cass County, Missouri pursuant to the provisions of §229.100 RSMo issued by order of the Cass County Commission in 1917. A copy of this franchise was heretofore filed as a matter of public record as Exhibit B-5 in Commission Case No. 9,470 in 1937.

32. In accordance with Commission Rule 4 CSR 240-3.105(D), Applicant has marked as **Appendix 7** and attached hereto for all purposes a copy of the New Source Review Permit No. 122004-017 issued by the Air Pollution Control Program of the Missouri Department of Natural Resources on December 29, 2004. Said permit authorizes Aquila to construct and commence operation of the South Harper Facility.

Supplemental Project Information

33. Aquila issued several requests for proposals and conducted multiple independent solicitations seeking the required power supply beginning in 2005 to replace an existing 500 MW PPA from a combined cycle facility interconnected with the Aquila Networks-MPS transmission system and to acquire approximately 25 MW to 100 MW necessitated by system load growth. Aquila’s evaluation of the comprehensive list

of responses/solicitations determined that a portfolio of alternatives, rather than one single response, provided the best supply option for the company. Specifically, Aquila determined the preferred supply option combined the construction of three (3) CTs with a combined nominal rating of 318 MW, and two (2) PPAs of 75 MW (eight-year duration) and 150 MW (five-year duration), respectively.

34. The South Harper Facility and the Peculiar Substation sites were chosen because of their relative proximity to the load center of the Western side of Aquila Networks-MPS's service area, existing electrical transmission facilities of Aquila that cross the sites, the availability of fuel supply for the CTs from interstate natural gas pipelines operated by Southern Star and Panhandle Eastern Pipeline Company ("Panhandle Eastern"), and for other considerations as more specifically set forth as follows:

- **Load Center and Growth:**

The South Harper Facility is located approximately 3 miles south of the City of Peculiar. The site is in rural area that is experiencing and is expected to continue to experience residential, commercial, and industrial load growth that ranks in the top two areas within the Aquila service territory. Peaking facilities are typically placed in or close to "Load Centers" to ensure generation during peak demand or other system outages. This is the Western side (Belton/Raymore/Peculiar) of the Aquila system. Currently there are no peaking facilities in this area and the transmission is 69kV which needs to be upgraded to 161kV in the future. The Eastern side (Lee's Summit/Greenwood/Pleasant Hill) of the Aquila system is served by the Greenwood Energy Center and Ralph Green 3, which are both peaking facilities. In addition, the transmission system on the Eastern side is already 161kV transmission.

- **Existing Infrastructure – Transmission:**

Existing transmission crosses through the sites. System planning has identified this transmission for upgrade from 69kV to 161kV in the future. The Project allows those enhancements to take place with the growth currently taking place. In addition, there are two KCPL transmission lines located approximately 2 miles south of the South Harper Facility that could provide system interconnect ability in the future, if necessary.

- **Existing Infrastructure – Fuel Gas:**
The South Harper Facility has two Southern Star natural gas lines crossing to a compressor station located within the original 80-acre site. The fuel lines have the necessary capacity and pressure to service the facility. In addition, Panhandle Eastern has additional natural gas lines located approximately 2 miles south of the site that also have capacity and pressure to service the facility. By having two different suppliers, the facility will have a flexible supply of fuel and will not be dependent upon a single supplier. Competition will allow Aquila to achieve the best fuel cost.
- **Existing Infrastructure – Water Line:**
PWSD7 has a major water line located on the eastern edge of the property, convenient for interconnection without obstructing construction. The process and potable water capacity required for the Project can be served by this interconnection. In addition, sufficient water supply capacity is available from this connection to meet the fire fighting requirements as approved by the West Peculiar Fire Protection District.
- **Local Support for the Project:**
The City of Peculiar actually first approached Aquila about working together on the Project. That municipality realizes that due to population growth, it will need the infrastructure upgrades provided by the South Harper Facility. In addition, the City desires to utilize Chapter 100 financing that will greatly enhance the financial benefit to the tax jurisdiction entities including the City, the School District, Fire District, etc. As a result, the Fire District and Water District have also supported the Project.
- **The Land at the Site:**
The 74-acre Site was expeditiously purchased from a willing seller without need for condemnation who will continue to reside on a small northern portion of the site. Helping to maintain the rural appearance of the land, there are partial treed surroundings and a slope on the plant site, which allows the facility to maintain a low profile. The rock shelf approximately 10-15 feet below the surface also permits the substantial turbine foundations to be readily installed and anchored. The site size (74-acres) also allows for a 100-foot buffer to the property line and substantially greater buffer to shield from surrounding homes.
- **Compatibility with Use of Adjacent Property:**
Southern Star has a major natural gas compressor station located on the east central boundary of the original 80-acre site. Southern Star has two major gas transmission lines, which bisect the remaining 74-acre tract from west to east. The Southern Star compressor station has been in service since 1954 and incorporates natural gas, compressors,

reciprocating engines, turbines, buildings, and stacks. All of these are similar in nature to the type of facilities that will be incorporated into the South Harper Facility. The compressor station facility was enlarged and updated within the past five years.

The attached map, marked **Appendix 8**, and incorporated herein for all purposes, shows by township number the major portion of Aquila's service territory in Jackson and Cass Counties in western Missouri. The two fastest growing areas served by Aquila's Missouri operations are in and around Lee's Summit and from Belton southward to Peculiar. As can be seen by the red schematic line, the site is served by two gas pipelines owned by Southern Star and is near to gas pipelines owned by Panhandle Eastern, thus providing competitive sources of gas supply to the facility. The service area shown on the map is encircled by a 161 kV transmission line (shown in yellow) except for the western side of the Aquila system which is served only by a 69 kV line (shown in blue). Construction of the peaking facility at the South Harper site allows the 69 kV line to be upgraded so that the entire area will be serviced by a 161 kV line, which is necessary for continued transmission reliability.

35. Aerial photographs of the location of the South Harper Facility are attached hereto, marked **Appendix 9**, collectively, and incorporated herein for all purposes. By way of comparison, aerial photographs of Aquila's Greenwood Energy Center and three (3) similar Independence Power and Light power stations are attached hereto, marked **Appendices 10, 11, 12 and 13**, respectively, and incorporated herein for all purposes.

WHEREFORE, Applicant requests the Commission:

- (A) Specifically confirm that Aquila has the permission, approval and authority necessary, or in the alternative grant Aquila a new

specific certificate of public convenience and necessity, to install, acquire, build, construct, own, operate, control, manage and maintain an electric power generation station comprising three (3) 105 MW natural gas-fired combustion turbines and an associated transmission substation, transformers and breakers together with any and all other installations, facilities, structures, fixtures and equipment related thereto for the production and transmission of electric power and energy at the following described location in Cass County, Missouri:

The Southeast Quarter (SE1/4) of the Southeast Quarter (SE1/4) of Section Twenty-Nine (29), and the Northeast Quarter (NE1/4) of the Northeast Quarter (NE1/4) of Section Thirty-two (32), except that part deeded to Cities Service Gas Company by deed recorded in Book 398, Page 518, Recorder's Office, Cass County, Missouri, and except easements of record all in Township Forty-Five (45), Range Thirty-Two (32).

containing approximately 74 acres at or near the intersection of 243rd Street and Harper Road;

- (B) Specifically confirm that Aquila has the permission, approval and authority necessary, or in the alternative grant Aquila a new specific certificate of public convenience and necessity, to install, acquire, build, construct, own, operate, control, manage and maintain an electric transmission substation together with any and all other associated installations, facilities, structures, fixtures and equipment related thereto for the transmission of electric power

and energy at the following described location in Cass County, Missouri:

Beginning at the Northwest corner of the Northwest Quarter (NW1/4) of Section Five (5), Township Forty-five North (45 N), Range Thirty-two West (32 W), Cass County, Missouri; Thence South along the West line of said NW ¼ a distance of 2,508.18 feet more or less to the South line of said NW ¼; Thence East along said South line a distance of 1320 feet; Thence North parallel with said West line a distance of 1320 feet; Thence West parallel with said South line a distance of 570 feet; Thence Northwesterly 1240 feet more or less to a point on the North line that is 400 feet East of said Northwest corner; Thence West along said North line a distance of 400 feet to the Point of Beginning.

containing approximately 55 acres one-half mile west of 71 Highway and one-half mile south of the intersection of 203rd Street and Knight Road;

- (C) find that the construction of the South Harper Facility and the Peculiar Substation is necessary or convenient for the public service;
- (D) state that the confirmation or grant of the certificate of convenience and necessity hereinabove requested by Applicant is not binding for ratemaking or financing purposes and that the Commission reserves the right to consider the treatment to be given the described plant additions in a subsequent proceeding or proceedings; and
- (E) make such other orders and findings as are appropriate in the circumstances.

Respectfully submitted,

/s/ Paul A. Boudreau
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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, electronic mail or hand delivery, on this 28th day of January, 2005 to the following:

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