

**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)	Case No. EO-2005-0156
Related Improvements to be Installed and)	
Operated in the City of Peculiar, Missouri)	

RESPONSE TO EX PARTE COMMUNICATION OF DELLA JANUARY

COMES NOW Aquila, Inc., Applicant in the referenced case, and provides the following response to an *ex parte* communication sent to Commissioner Jeff Davis, December 7, 2005.

1. On December 7, 2005, the Commission posted a Notice of *Ex Parte* Contact relating to an email communication of the same date received from Ms. Della January. The email stated as follows:

“Aquila’s Denny Williams was wrong again in his testimony on Monday, Dec 5. He was being asked about Aquila’s involvement in StopAquila v. The City of Peculiar (WD6500). He stated they had no involvement, he was asked if Aquila was paying the City’s legal fees and he replied that Aquila had paid the fees but were deducting those amounts from the PILOT payments as provided under the financial agreement. The city had previously told us that Aquila was covering its legal fees without consideration, so StopAquila representatives attended the Peculiar City Counsel meeting on Tuesday, Dec 6 confirmed with Mike Fisher, City Administrator for Peculiar that Aquila has paid the City’s legal fees gratuitously up to this point. Aquila has also reimbursed StopAquila for approximately \$50,000 in legal fees.”

As will be shown below, Ms. January’s claim that Aquila witness Denny Williams’s testimony was inaccurate is erroneous.

2. Despite Ms. January's assertion, Mr. Williams testified only that the City of Peculiar's legal fees ultimately would be borne by the recipients of the PILOT payments made by Aquila under the Chapter 100 financing arrangement between Aquila and the City. Mr. Williams did not testify that Aquila has no involvement in Case No. 65000, nor did he testify that Aquila has not paid any legal fees incurred by the City in connection with the Chapter 100 financing or Case No. 65000. Instead, Mr. Williams merely stated the following:

"Q: You indicated that – as far as the Court of Appeals case regarding the revenue bonds which the Court of Appeals indicated that the revenue bonds were void for a different reason, that you were not – Aquila was not a party to that case; is that correct?

A: That is my understanding, yes.

Q: And – but could I ask you who is paying for the legal fees associated with that case on behalf of the City of Peculiar?

A: Ultimately, that comes out – it is my understanding, comes out of the PILOT payments that are made. So it's – it's funded out of the PILOT payments. So the recipients of the PILOT payments would ultimately, I guess, practically bear that cost." Tr. p 307, l.7-22 (emphasis added).

3. Mr. William's testimony is accurate and directly supported by the terms of the Economic Development Agreement entered into by the City and Aquila as part of the Chapter 100 financing and previously filed of record in this case. The Economic Development Agreement provides that any legal expenses of the City reimbursed by Aquila in respect of the Chapter 100 financing will be credited against future PILOT payments. Specifically, Exhibit C to the Economic Development Agreement contains the following provision:

"Grants will be reduced on a 'rolling,' dollar-for-dollar basis by amounts paid by Aquila to the City (or its designees) concerning

litigation to which the City is party and which relates to the Bonds or any other aspect of the Chapter 100 financing contemplated by the Agreement. For purposes of illustration only, if (a) the City has been conveyed the Project on or before January 1, 2005 and (b) on March 31, 2005, Aquila reimburses the City for \$300,000 of legal fees incurred in connection with litigation over the City's right to issue Bonds without a vote of its residents, then Aquila would be credited for having paid to the City (x) \$214,455 on May 1, 2005 and (y) \$85,545 ($\$300,000 - \$214,455 = \$85,545$) on September 1, 2005, which would result in Aquila owing only \$156,285 to the City on September 1, 2005. This process will continue until all applicable Aquila credits have been used up or, if sooner, the date on which the Bonds are redeemed by Aquila."

The effect of this netting provision is that, to the extent Aquila pays any of the City's litigation-related legal fees in the future, the ultimate recipients of the PILOT payments will bear the cost of these legal fees. This is precisely what Mr. Williams testified.

4. Although Aquila agreed in the Economic Development Agreement to pay the legal fees of bond counsel (Gilmore & Bell P.C.) retained by the City in connection with the Chapter 100 financing, these legal fees related entirely to work performed prior to the execution of the Chapter 100 financing documents on December 30, 2004. At no time since then has the City submitted any legal invoices to Aquila related to Case No. 65000.

5. Aquila is unable to say whether Ms. January misunderstood what Mr. Fisher said at the City Council meeting, or even whether Mr. Fisher misspoke about the City's legal expenses. Regardless, it should be noted that Mr. Williams was not asked whether or not Aquila has paid any of the legal fees of StopAquila.Org. Although Aquila did pay certain legal bills of StopAquila.Org as a good faith gesture to work to amicably resolve the issues raised by

StopAquila.Org, in no way are Aquila's actions toward StopAquila.Org tied to Aquila's obligations to the City under the Chapter 100 financing, despite Ms. January's implied assertion.

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 electronic mail, first class mail or by hand delivery, on this 14th day of December, 2005 to the following:

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