

**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 OF AQUILA, INC. TO MOTION TO SUSPEND PROCEDURAL  
SCHEDULE AND HEARING AND REQUEST FOR EXPEDITED TREATMENT**

**COMES NOW** Aquila, Inc. (“Aquila” or “Company”) by and through counsel provides the following response to the Office of the Public Counsel’s (“OPC”) Motion to Suspend Procedural Schedule and Hearing and Request for Expedited Treatment (the “Motion”) filed in the referenced case:

1. On or about June 23, 2005, OPC filed its Motion. Generally, OPC alleges that an opinion handed down by the Western District Court of Appeals in Case No. WD64985 on June 21, 2005 provides cause to suspend the scheduled proceedings in this case.

2. OPC’s Motion should be denied in that it provides no changed circumstance that justifies suspending the scheduled proceedings in this case. As OPC has noted, the opinion of the Western District Court of Appeals is not final and is still subject to customary post-hand down motions, including motions to transfer the matter to the Missouri Supreme Court.<sup>1</sup> Also, as noted in

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<sup>1</sup> In a footnote on page 2 of the Motion, OPC contends that the likelihood of a transfer of the case to the Missouri Supreme Court “are extremely slim” in apparent reliance on statements contained in a Missouri appellate practice deskbook. Aquila respectfully suggests that transfers of appeals to the Missouri Supreme Court are not as uncommon as OPC would have the Commission

paragraph 4 of the Motion, the nearly identical argument made by intervenor Cass County earlier in this proceeding was denied. Cass County had argued that legal proceedings might ultimately prevent Aquila from completing the South Harper peaking station. The Commission stated that it was aware of the risk, and that the risk did not justify delays in the proceeding.

3. The opinion of the Western District Court of Appeals does not change the procedural posture of this case. To the extent that there is a legal uncertainty associated with Aquila's construction and operation of the South Harper peaking facility, that uncertainty has been known for some time now. It will continue to exist until the legal process plays itself out. As the Commission is aware, the Circuit Court of Cass County issued an injunction against the construction of the South Harper station (and associated substations) but stayed the enforcement thereof pending Aquila's appeal after Aquila filed a \$350,000 appeal bond.

4. Aquila intends to pursue its legal remedies so it can continue to meet the needs of its customers in the State of Missouri for safe, reliable and affordable electric power. This power generation station is set to begin entering commercial operation very shortly. Combustion turbine units 2 and 3 of the South Harper plant have been synchronized into the power grid and unit 1 is

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believe. In fact, with respect to appeals of Commission orders since 2001, no fewer than six appeals have ended up before the Missouri Supreme Court. *State ex rel. Public Service Commission v. Dally*, Case No. SC83484 (2001); *State ex rel. AG Processing, Inc. v. Public Service Commission*, Case No. SC85352 (2003); *State ex rel. Atmos Energy Corporation v. Public Service Commission*, Case No. SC84344 (2003); *State ex rel. Alma Telephone Company v. Public Service Commission*, Case No. SC86529 (2005); *State ex rel. Sprint Missouri, Inc. v. Public Service Commission*, Case No. SC86584 (2005); *State ex rel. Riverside Pipeline Company v. Public Service Commission*, Case No. SC86474 (2005). Aquila believes the public policy issues presented by the opinion handed down in Case No. WD64985 are of enough significance that a compelling case for transfer can be made.

scheduled to be synchronized into the grid in early July, 2005. While the units are going through test cycles they supply megawatts to the grid to meet the peak requirements of Aquila's customers for electric power. As noted above, Aquila posted a \$350,000 bond which stays the injunction on the plant while Aquila pursues an appeal.

5. The request for relief regarding tax-advantaged Chapter 100 RSMo financing is still relevant to the operation of the South Harper Station. The financing is in place and the Company is making payments to the City of Peculiar in lieu of property taxes for 2005. If the Commission denies this aspect of the relief requested, the financing will be unwound and replaced with more conventional but costlier forms of debt obligations. Also, Aquila needs to know what value to book the combustion turbines on its regulated books of account, regardless of the legal uncertainty surrounding the South Harper facility. Speculation about the still unresolved appeal is no reason for inaction.

6. Much discovery has taken place. The parties to the case have filed the direct, rebuttal and surrebuttal testimony of five (5) witnesses. The evidentiary hearing is to take place on July 13 and 14, 2005. It would be much more wasteful of the resources of the parties and the Commission to suspend the proceedings in this case than to address the very narrow issues that are now before the Commission, that is, (1) authorization of the acquisition by Aquila Networks – MPS of three natural gas-fired combustion turbines from an affiliate at a transfer value of \$70,796,850 and (2) authorization for Aquila to enter into a sale and leaseback arrangement with the City of Peculiar and to subject the

South Harper peaking power station to the lien of an indenture to facilitate the issuance of tax-advantaged Chapter 100 RSMo revenue bonds to finance its construction and operation.

7. At best, OPC's Motion is premature. The questions raised in the Motion are not matters that need to be considered until the Missouri Supreme Court either refuses to accept transfer or, if transfer is accepted, renders its decision with regard to the merits of the issues currently on appeal.

**WHEREFORE,** Aquila requests that the Commission deny OPC's Motion to Suspend the Procedural Schedule and Hearing and Request for Expedited Treatment in this case for the reasons aforesaid.

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 29th day of June, 2005 to the following:

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