

**BEFORE THE PUBLIC SERVICE COMMISSION  
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 ) Case No. EO-2005-0156  
Generation Units and Related Improvements to be )  
Installed and Operated near the City of Peculiar, )  
Missouri )

**Staff's Motion in Limine**

**COMES NOW** the Staff of the Missouri Public Service Commission ("Staff") and for its motion in limine states:

1. Commission Rule 4 CSR 240-2.130(7) provides:

For the purpose of filing prepared testimony, direct, rebuttal, and surrebuttal testimony are defined as follows:

(A) Direct testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief;

(B) Where all parties file direct testimony, rebuttal testimony shall include all testimony which is responsive to the testimony and exhibits contained in any other party's direct case. A party need not file direct testimony to be able to file rebuttal testimony;

(C) Where only the moving party files direct testimony, rebuttal testimony shall include all testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party's direct case; and

(D) Surrebuttal testimony shall be limited to material which is responsive to matters raised in another party's rebuttal testimony.

2. The only direct testimony Aquila pre-filed in this case is the direct testimony of Dennis R. Williams.

3. At lines eight through seventeen on page five of his verified pre-filed direct testimony Aquila witness Dennis R. Williams testifies as follows:

Q. Has Aquila made any determination as to the current fair market value of the CTs?

**NP**

A. Yes. Aquila retained the services of an independent engineering consulting firm of R.W. Beck ("Beck") to perform an appraisal to determine the fair market value of the CTs. Beck produced a report entitled "Limited Appraisal of the Three SWPC 501 D5A Combustion Turbines and Auxiliaries" dated as of November 22, 2004. Beck concluded that the fair market value of the CTs is \$70,796,850 as of November 2004, a figure that does not include the preliminary survey charges of \$3 million I described above. A copy of the Beck appraisal report is attached to my testimony as Schedule DRW-1(HC).

4. Schedule DRW-1(HC) on its face purports to be a report prepared by R.W. Beck, Inc., not Aquila.

5. Dennis R. Williams is an employee of Aquila, Inc., not R. W. Beck, Inc.

6. While the pre-filed direct testimony Aquila witness Dennis R. Williams has not yet been offered as evidence, Commission Rule 4 CSR 240-130(7), quoted above, requires that Aquila's prefiled "direct testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief."

7. The pre-filed direct testimony of Aquila witness Dennis R. Williams indicates Aquila received a report from R. W. Beck, Inc.; however, nothing in that testimony indicates Dennis R. Williams has personal knowledge of the preparation of the report. In other words, the pre-filed direct testimony of Aquila witness Dennis R. Williams does not authenticate that R. W. Beck, Inc. created Schedule DRW-1(HC). Thus, there is no foundation for admitting Schedule DRW-1 at the evidentiary hearing in this case presently scheduled for July 13-14, 2005, and the Staff objects to admission of Schedule DRW-1(HC) at the evidentiary hearing on that basis.

8. In *State ex rel. GS Technologies Operating Co. v. Public Service Commission*, 116 S.W.3d 680 (Mo. App. 2003), the court held that the Commission erred in concluding plant records and statements of a utility's employees were not substantive evidence in the record where they were objectionable as hearsay, but no objection had been made. *Id.* at 691-92.

9. In addition to failing to lay a sufficient foundation for the admission of Schedule DRW-1(HC), the schedule is hearsay—it is comprised of statements made by R.W. Beck, Inc., including statements regarding valuation of the combustion turbines, where no employee of R.W. Beck, Inc. filed direct testimony upon which he or she can be cross-examined. The Staff also objects to admission of Schedule DRW-1(HC) at the evidentiary hearing on the basis of hearsay.

10. Without an opportunity to cross-examine a witness with personal knowledge of the work performed to develop Schedule DRW-1(HC), the Staff will be prejudiced and denied due process of law. For example, At page 4-4 of Schedule DRW-1(HC) the following statements appear:

\*\* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_. \*\*

As part of a response to Staff's Data Request 5, Staff received a letter purportedly from Siemens Westinghouse to R.W. Beck, Inc. dated July 28, 2004 in which it shows a price of \$24,500,000 for new build, with a lead time of 18 months. A copy of that letter is attached as Appendix A. According to Schedule DRW-1(HC) the \*\* \_\_\_\_\_

\_\_\_\_\_. \*\* Unless the Staff has a full and fair opportunity to cross-examine someone with personal knowledge of how the determination was made that the cost to purchase a new combustion turbine in the market in November of 2004 was \*\* \_\_\_\_\_, \*\* the Staff will be prejudiced and denied due process in presenting its case to the Commission.

11. Commission Rule 4 CSR 240-130(7), quoted above, requires that Aquila's prefiled "direct testimony shall include all testimony and exhibits asserting and explaining that

party's entire case-in-chief" and that "surrebuttal testimony shall be limited to material which is responsive to matters raised in another party's rebuttal testimony." It would be prejudicial to the Staff and other parties in this case if Aquila were permitted to introduce the R.W. Beck, Inc. appraisal report in surrebuttal testimony to support the combustion turbine valuation it seeks for this Commission to approve in this case since the Staff and other parties would be denied the opportunity to adduce evidence from their witnesses in response to Aquila's surrebuttal testimony.

**WHEREFORE**, the Staff respectfully moves the Commission to enter an order excluding Schedule DRW-1(HC) of the direct testimony of Aquila witness Dennis R. Williams from evidence in this case on the bases that said schedule is inadmissible as evidence in this case over the Staff's objections that Aquila has not authenticated the schedule and that the schedule is hearsay.

Respectfully submitted,

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General Counsel

/s/ Nathan Williams  
Nathan Williams  
Senior Counsel  
Missouri Bar No. 35512

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record this 23<sup>rd</sup> day of June 2005.

**/s/ Nathan Williams**

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