

**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) Generation Units and Related Improvements to be) Installed and Operated near the City of Peculiar,) Missouri)	Case No. EO-2005-0156
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Staff's Response to Public Counsel's Motion to Stay

COMES NOW the Staff of the Missouri Public Service Commission ("Staff") and for its response to Public Counsel's Motion to Stay states:

1. On December 6, 2004 Aquila, Inc. filed its original application in this case.
2. In that application Aquila requested Commission authorization to take certain actions to effect a Chapter 100 RSMo financing with the City of Peculiar, Missouri.
3. On January 13, 2005 Aquila prefiled the direct testimony of Dennis R. Williams in support of its application subscribed and sworn to by him on January 3, 2005. As the following excerpt from that testimony shows, Aquila's witness testified as if the Chapter 100 RSMo transaction was prospective, i.e., that it had not yet occurred (emphasis added):

Q. How, generally, **will** the Project transaction be structured?

A. ***In the event*** the Bonds are issued, ***it is expected*** that the Project ***will be*** conveyed to and owned by Peculiar and leased back to Aquila, an arrangement that ***will*** exempt the Project from property taxes levied by any applicable taxing authority for as long as Peculiar owns the Project. The Lease payments made by Aquila to Peculiar shall be equal to and timed to coincide with the due date, and pledged to pay, all applicable principal and interest as it shall become due and payable with respect to the Bonds. A copy of the summary term sheet is attached to my testimony as Schedule DRW-4.

Q. How ***will*** this structure come about?

A. Aquila ***first will cause*** AE to transfer the CTs to Aquila Networks-MPS. ***At the conclusion of construction of the new power station***, the Project ***will be transferred*** to Peculiar. ***Concurrently with the issuance of the Bonds***, Peculiar ***will lease*** the Project back to the Company pursuant to a lease agreement between Peculiar and Aquila (the

“Lease”). The term of the Lease **will be** the same as the final maturity of the Bonds and **will be** a net lease with the applicant being responsible for rental payments in an amount sufficient to pay the debt service on the Bonds. Aquila **will be** responsible to maintain, ensure and pay any taxes related to the Project. During the term of the Lease, Aquila **will be** responsible to operate and control the Project and have the right, at its own expense, to make certain additions, modifications or improvements thereto. A copy of the Lease is attached to my testimony as Schedule DRW-5.

Q. **Will** the Project assets be pledged or encumbered in connection with the financing structure you have described?

A. Yes. The Lease also provides that the Project **will be** pledged to a trustee (the “Trustee”) under the terms of an Indenture of Trust (the “Indenture”) and a Deed of Trust and Security Agreement (“Security Agreement”) as security for the benefit of the holders of the Bonds. Copies of the Indenture and Security Agreement are attached to my testimony, respectively, as Schedule DRW-6 and Schedule DRW-7.

(Ex. 1, p. 7, 1.18 to p. 9, 1.3).

4. On June 3, 2005 Aquila filed an amended application in which it changed its original application only by striking its prayer that the Commission determine acquisition of the three combustion turbines in question was Aquila’s least cost option. It made no other changes.

5. Staff’s review of the Company’s request did not include any independent verification that Aquila had not engaged in the transaction without the requested Commission approval. Staff assumed that Aquila would not undertake such an action.

6. After the on-the-record presentation held in this case on Wednesday, September 21, 2005 the Staff first learned from counsel Mark Wheatley of the Office of the Public Counsel that Aquila may have closed the Chapter 100 RSMo financing with the City of Peculiar, Missouri on December 30, 2004. Public Counsel attorney Mark Wheatley and the undersigned Staff counsel contacted first E. Sid Douglas III, the attorney-of-record in this case for the City of Peculiar, and then Paul A. Boudreau, an attorney-of-record in this case for Aquila, regarding whether the Chapter 100 financing had closed on December 30, 2004. Based on copies of documents Public Counsel attorney Mark Wheatley obtained from Mr. Douglas (which are attached to Public Counsel’s motion, and conversations with Mr. Boudreau, it is the Staff’s

understanding that all, or part, of the Chapter 100 RSMo financing that is the subject of this case and the nonunanimous Stipulation and Agreement closed on December 30, 2004.

7. Any statements or assumptions by Staff witnesses or counsel conveyed at the on-the-record presentation held September 21, 2005 that no part of the Chapter 100 financing had occurred for the transaction that is the subject of the instant case were made based on the information then known to the Staff and without any knowledge of the documents attached to Public Counsel's motion. Attached herewith are certified copies of recorded documents of the financing from the Office of the Recorder of Deeds of Cass County that the Staff has obtained.

8. In light of the apparent closing on December 30, 2004 of the Chapter 100 RSMo financing that is the subject of Aquila's application as amended, the Staff joins in and supports the Commission suspending deliberations on the nonunanimous Stipulation and Agreement as requested by Public Counsel to give the parties an opportunity to consider the ramifications of this unanticipated development on their positions and to make informed recommendations to the Commission.

WHEREFORE, the Staff supports Public Counsel's motion to stay on the nonunanimous stipulation and agreement filed in this case September 1, 2005.

Respectfully submitted,

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/s/ Nathan Williams

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 23rd day of September 2005.

/s/ Nathan Williams