

**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. _____ |
| Related Improvements to be Installed and |) | |
| Operated in the City of Peculiar, Missouri |) | |

APPLICATION

COMES NOW Aquila, Inc., (hereinafter “Aquila” or “Applicant”) pursuant to §393.190 RSMo, 4 CSR 240-2.060, 4 CSR 240-3.110 and 4 CSR 240-20.015, and for its Application to the Missouri Public Service Commission (“Commission”) states as follows:

Overview

1. This Application is being filed by Aquila to obtain from the Commission (i) a determination that Aquila’s acquisition for its regulated Missouri electric utility operations from an affiliated entity of three (3) 105 megawatt natural gas-fired combustion turbines for the purpose of constructing an electric generation station in an area near the City of Peculiar, Cass County, Missouri does not provide a financial advantage to the unregulated affiliate, (ii) authorization to enter into a sale and leaseback arrangement with the City of Peculiar to facilitate the issuance of tax-advantaged Chapter 100 revenue bonds to finance the construction and operation of a power generation station and, (iii) authorization to cause said electric generation station to be subjected to the lien of the Indenture as security for the benefit of the holders of the revenue bonds.

General Information about Applicant and Other Entities

2. 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 its 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 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 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). Likewise, 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).

3. 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.

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

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

Mr. Denny Williams
Aquila, Inc.
10700 East 350 Hwy
Kansas City, MO 64138
(816) 737-7857

Paul A. Boudreau MO #33155
BRYDON, SWEARENGEN & ENGLAND, P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, Missouri 65102
(573) 635-7166

6. MEP Investments, LLC (“MEP”) is a wholly-owned subsidiary of Aquila. MEP in September 2001 acquired from Siemens Westinghouse Power Corporation (“SWPC”) three (3) 105 megawatt (“MW”) natural gas-fired combustion turbines and associated transformers and breakers (hereinafter, collectively, the “CTs”) at a cost of \$78,716,233. In September 2002, the CTs were transferred from MEP to another Aquila wholly-owned subsidiary, Aquila Equipment, LLC (“AE”) at book cost. These three (3) combustion turbines are owned by AE and comprise the only material assets owned by that company. There is approximately an additional \$3 million in preliminary survey charges associated with the turbines that is currently being evaluated as to what portion, if any, will be transferred to Aquila Networks – MPS. The total value of the turbines including preliminary survey charges is \$81.7 million. The CTs are not currently in use and presently are stored at two locations; the Ralph Green Plant site, in Pleasant Hill, Missouri and Richards Gebaur Air Force Base. AE is not engaged in any ongoing line of business.

7. The City of Peculiar is a city of the fourth class located in Cass County, Missouri (hereinafter “Peculiar”). Peculiar is a political subdivision having the authority under Article VI Section 27(b) of the Constitution of the State of Missouri and §§ 100.010 through 100.200 of the Revised Statutes of Missouri, as amended, (hereinafter, the “Act”) to issue and sell revenue bonds for the purpose of paying all or any part of the

cost of purchasing, constructing or improving any project to be leased to a private person or corporation for industrial development purposes.

Request for Commission Authorization

8. As hereinafter described, Applicant will acquire the CTs from AE for the purpose of installing, owning, acquiring, constructing, operating, controlling, managing and maintaining a 315 MW electric generation station to be located near the city limits of Peculiar in an unincorporated area of Cass County (hereinafter, the "Project"). In this regard, Applicant requests (i) the Commission's determination that the acquisition of the CTs from AE by its regulated Aquila Networks-MPS division at a transfer value of \$70,796,850 does not provide a financial advantage to AE, (ii) permission to enter into a sale and leaseback arrangement whereby legal title to the CTs will be conveyed to Peculiar to obtain financing for the installation and construction of the electric generation station through the issuance by Peculiar of tax-advantaged revenue bonds under the Act and, (iii) authorization to cause the Project assets to be pledged and conveyed to a trustee under an indenture of trust as security for the benefit of the holders of the revenue bonds.

Background Information

9. Applicant has determined that the fair market value of the CTs as of the end of November 2004 is \$70,796,850. This determination is based on an appraisal prepared for Aquila by the engineering consulting firm of R.W. Beck. This does not include the preliminary survey charges of \$3 million that are being evaluated. Attached hereto, marked **Appendix 1**, and incorporated herein by reference for all purposes is a

copy of R.W. Beck's "Limited Appraisal of Three SWPC 501 D5A Combustion Turbines and Auxiliaries" dated November 22, 2004.¹

10. The CTs are replacing a purchased power contract that expires in June 2005. The current contract is for 500 MW of capacity during the summer months and 200 MW in the winter. With increasing demand in the Aquila Networks Missouri service area and the need for year round peaking capability, the three 105 MW simple cycle units will provide better flexibility to meet the needs of Applicant's customers. The additional capacity need of approximately 200-250 MW will be met with purchased power contracts that resemble more of a base load type of unit.

11. Aquila, on behalf of its Aquila Networks operating divisions in Missouri, issued several requests for proposals and conducted multiple independent solicitations seeking in excess of 500 MW of power supply beginning in 2005; 500 MW replacing an existing purchase power agreement from a combined cycle facility interconnected with the Aquila Networks-Missouri transmission system and approximately 25 MW to 100 MW necessitated by system load growth. Aquila Networks' evaluation of the comprehensive list of responses/solicitations determined that a portfolio of alternatives rather than one single response provided the least-cost supply option. Specifically, Aquila Networks determined the least-cost supply option combination to be comprised by the application of three (3) combustion turbine generators with a combined nominal rating of 318 MW and two (2) power supply agreements of 75 MW (eight-year duration) and 150 MW (five-year duration), respectively.

¹ Appendix 1 is considered highly confidential and will be late-filed upon the issuance by the Commission of a Protective Order.

12. The CTs will be installed in an unincorporated area in Cass County at a location near the city limits of Peculiar. Applicant holds a Certificate of Convenience and Necessity (“Certificate”) to provide electric service throughout portions of Cass County, Missouri, including Peculiar, pursuant to the Commission’s prior decisions in Case Nos. 9,470, 11,892, EM-87-26 and EM-2002-297. Under the circumstances presented, a separate and overlapping Certificate would be duplicative and unnecessary.²

13. Applicant’s Project involves the construction and development of a new electric power generating facility consisting of three (3) 105 MW gas-fired combustion turbine generating units, fueled by natural gas, together with any and all real estate, improvements, facilities, equipment and installations related thereto located in an unincorporated area of Cass County, Missouri near the City of Peculiar at East 241 Street and South Harper Road. Attached hereto, marked **Appendix 2** and incorporated herein for all purposes is a map showing the proposed location of the Project.

14. Pursuant to the Act, Peculiar is authorized to issue the Bonds to promote its economic development. In that regard, Aquila expects to enter into an Economic Development Agreement with Peculiar (the “Agreement”). In connection therewith, Peculiar will agree, upon the request of Aquila, to issue up to and including \$140 million of revenue bonds (the “Bonds”) in furtherance of the Project the maximum term of which shall not exceed thirty (30) years after the commencement of commercial operations of

² See, *State ex rel. Harline v. Public Service Commission*, 343 S.W. 2d 177 (Mo. App. 1960) [a public utility was 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 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 existing certificated territory dismissed as unnecessary].

the Project. In the event the Bonds are issued, it is expected that the Project will be conveyed to and owned by Peculiar and leased 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 of, and pledged to pay, all applicable principal and interest as same shall become due and payable with respect to the Bonds. A summary of the terms of the Agreement is marked **Appendix 3**, attached hereto and incorporated herein for all purposes.

15. Applicant will transfer the Project to Peculiar. Concurrently with the issuance of the Bonds, Peculiar will lease the Project to the Applicant pursuant to a Lease Agreement (the "Lease") between Peculiar and the Applicant. 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, insure 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. The Lease also provides that the Project assets will be pledged to a trustee (the "Trustee") under the terms of an Indenture of Trust (the "Indenture") as security for the benefit of the holders of the Bonds.

16. Applicant will treat the Lease 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.

17. Pursuant to the terms of the Agreement, Aquila will agree to make, or cause to be made, to Peculiar, certain annual grants and payment in lieu of tax (“PILOT”) payments. In addition, Aquila will incur approximately \$1 million of upfront bond issuance fees and legal costs necessary to implement the structure. The PILOT payments and upfront fees will, however, facilitate significant property tax abatement such that Aquila expects to generate net savings over the expected thirty (30) year life of the Project of \$14 to \$17 million. These savings will contribute to the provision of reliable and affordable electric power to the Missouri customers of Aquila Networks-MPS.

Related Filing Requirements

18. Applicant submits the following additional appendices each of which is incorporated herein by reference for all purposes:

Appendix 4: Certified copy of the Resolutions of the Board of Directors of Aquila authorizing and approving the Project including the terms of the Agreement and Lease

Appendix 5: Bill of Sale (to be late-filed)

Appendix 6: Execution copy of the Agreement (to be late-filed)

Appendix 7: Execution copy of the Lease (to be late-filed)

Appendix 8: Execution copy of the Indenture (to be late-filed)

Grounds and Need for Commission Authorization

19. There will be no adverse impact on the tax revenues of the various jurisdictions where the Project will be located because the Project has not yet been constructed and no tax revenues with respect thereto are being paid to any political subdivision or *quasi*-governmental entity. Also, because grant payments are being

allocated to various political subdivisions by Peculiar after the construction of the Project, the future impact on other taxing jurisdictions is not known by the Applicant. The proposed transaction will not be detrimental to the public interest but, rather, advantageous to the interests of the Applicant and its service to its customers and the public because of the substantial cost savings described in paragraph 17.

20. Because the Project as summarily described above involves a transfer of legal title of the CTs, associated equipment and the real estate upon which the Project shall be located to Peculiar in furtherance of obtaining tax-advantaged Chapter 100 RSMo financing at a transfer value to Aquila Networks-MPS of \$70,796,850 and a pledge of the Project assets to the Trustee under the terms of the Indenture, Aquila has filed this Application for various required Commission findings and approvals. Aquila's request is similar to that of Union Electric Company in Commission Case No. EO-2003-0035.³ Additionally, the public interest would be served by a determination of the Commission of the reasonableness of the transfer price of the CTs from AE to Aquila Networks-MPS as said transfer price will have a direct bearing on future cost of service.

WHEREFORE, Applicant requests an order and decision of the Commission:

(A) Finding that the relief requested in this Application is not detrimental to the public interest;

(B) Authorizing Aquila Networks-MPS to record on its regulated books of account a transfer price of \$70,796,850 related to its acquisition from AE of the CTs;

³ *In the Matter of the Application of Union Electric Company d/b/a AmerenUE for an Order Authorizing Applicant to Convey to and Leaseback from the City of Bowling Green, Missouri, Certain Real Property and Improvements and to Execute and Perform the Necessary Agreements Under Section 100.010 through 100.200, RSMo, for the Purpose of Constructing Applicant's Electric Generating Facility in Bowling Green, Missouri.*

- (C) Finding that the fair market value of the CTs is \$70,796,850;
- (D) Finding that the proposed transaction does not provide a financial advantage to AE;
- (E) Authorizing Aquila to sell and convey to Peculiar all real estate, facilities, equipment and installations necessary to install, construct, control, manage and maintain the Project;
- (F) Authorizing Aquila to lease the Project from Peculiar and operate the Project;
- (G) Authorizing Aquila to cause the Project to be pledged to the Trustee under the terms of the Indenture as security for the holders of the Bonds;
- (H) Authorizing Aquila to enter into and perform in accordance with the terms of the Agreement;
- (I) Authorizing Aquila to enter into and perform in accordance with the terms of the Lease;
- (J) Authorizing Aquila to enter into and perform in accordance with the terms of the Indenture;
- (K) Authorizing Aquila to enter into and perform in accordance with any and all other necessary agreements and instruments under the Act;
- (L) Authorizing Aquila to do any and all other things incidental, necessary or appropriate to the performance of any and all acts specifically to be authorized in such order or orders;

(M) Finding that the Project, in combination with power supply agreements, is the least cost option for additional power generation for Aquila Networks-MPS's operations; and

Further, making such other orders as it may deem just and proper in the circumstances.

Respectfully submitted,

/s/ Paul A. Boudreau
Paul A. Boudreau MO #33155
BRYDON, SWEARENGEN & ENGLAND, P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
(573) 635-7166 Phone
(573) 635-0427 Fax
paulb@brydonlaw.com

Attorneys for Applicant, Aquila, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail or by hand delivery, on this 6th day of December 2004 to the following:

General Counsel's Office
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102-0360

Office of the Public Counsel
Governor Office Building
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102-2230

/s/ Paul A. Boudreau

VERIFICATION

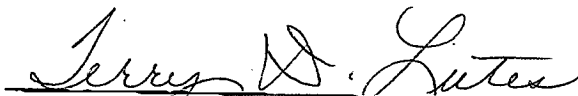
STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

I, Dennis R. Williams, having been duly sworn upon my oath, state that I am the Vice President of Regulatory Services of Aquila Networks; that I am duly authorized to make this Affidavit on behalf of Aquila Networks; and that the matters and things stated in the foregoing application and appendices thereto are true and correct to the best of my information, knowledge and belief.



Dennis R. Williams

Subscribed and sworn to before me this 3rd day of December, 2004.



Notary Public

Terry D. Lutes

My Commission expires:

8-20-2008



TERRY D. LUTES
Jackson County
My Commission Expires
August 20, 2008