

**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

In the Matter of the Application of Aquila, Inc., for)
Permission and Approval and a Certificate of Public)
Convenience and Necessity Authorizing it to Acquire,)
Construct, Install, Own, Operate, Maintain, and) Case No. EA-2006-0499
Otherwise Control and Manage Electrical Distribution)
Substation and Related Facilities in Kansas City,)
Jackson County, Missouri (Near the City of Raymore).)

In the Matter of the Application of Aquila, Inc., for)
Permission and Approval and a Certificate of Public)
Convenience and Necessity Authorizing it to Acquire,)
Construct, Install, Own, Operate, Maintain, and) Case No. EA-2006-0500
Otherwise Control and Manage Electrical Distribution)
Substation and Related Facilities in St. Clair County,)
Missouri (Near the City of Osceola).)

STIPULATION AND AGREEMENT

As a result of discussions, the Staff of the Missouri Public Service Commission (“Staff”), the Office of the Public Counsel (“Public Counsel”), and Aquila, Inc., (“Aquila”), (collectively, hereinafter referred to as the “Parties”), and Kansas City Power and Light Company (“KCPL”) hereby submit the following stipulation and agreement (“Agreement”) to the Missouri Public Service Commission (“Commission”).

I. FACTUAL SUMMARY AND PROCEDURAL BACKGROUND

Aquila is an electrical corporation under the jurisdiction of the Commission as provided by law. On June 23, 2006, Aquila filed applications with the Commission, requesting Certificates of Public Convenience and Necessity to construct, own, operate and manage an electrical distribution Substation in Kansas

City, Missouri, near the City of Raymore (the “Raymore North Substation”), docketed as EA-2006-0499, and an electrical transmission substation in an unincorporated area of St. Clair County near the City of Osceola, Missouri (the “Osceola Substation”), docketed as EA-2006-0500. Aquila subsequently filed Motions for Expedited Treatment for both substations requesting that the Commission issue an order approving Aquila’s applications by August 4, 2006, bearing an effective date no later than August 15, 2006,¹ so that construction of these substations would be completed prior to the 2007 peak in-service date. Upon an Order and Notice from the Commission, KCPL timely intervened, and Aquila and Staff timely filed memorandums in support of their respective positions.

II. STIPULATED FACTS

The Parties stipulate to the following facts:

1. Aquila is a Delaware Corporation with its principal office and place of business at 20 West 9th Street, Kansas City, Missouri 64105-1711.

2. Aquila is a regulated public utility corporation subject to the Commission’s jurisdiction under Missouri law. The Commission has authorized Aquila to conduct its business in its certificated areas in Missouri through its Aquila Networks--MPS and Aquila Networks--L&P operating divisions. As such, Aquila generates, transmits, distributes, and sells electric energy and power in those areas of Missouri certificated to it by the Commission.

¹ Aquila recognizes that an effective date no later than August 15 may no longer be possible, but it strongly desires to begin construction on these two substations as soon as possible. Therefore, Aquila requests, and none of the other parties objects, that the orders approving the applications for these two substations become effective no later than ten days after the entry of those orders.

3. Intervenor KCPL is a Missouri corporation with its principal office and place of business located at 1201 Walnut, Kansas City, Missouri 64106. KCPL is a regulated public utility subject Commission's jurisdiction under Missouri law. KCPL generates, transmits, distributes, and sells electric energy and power in those areas of Missouri certificated to it by the Commission.

Raymore North Substation

4. The Raymore North Substation and related facilities will be located in Jackson County, within incorporated Kansas City and near the City of Raymore, Missouri.

5. In 1937, Aquila's predecessor in interest secured from the Jackson County Court a perpetual assent to erect poles for the suspension of electric light and power wires along the public roads and highways. This order was filed with the Commission in its Case No. 9470. See Appendix A.

6. The Commission has authorized Aquila, or its predecessors-in-interest, to construct, operate, and maintain electrical facilities, transmission lines and distribution systems and to render electrical service throughout portions of Jackson County, Missouri, pursuant to various Orders, including its order in Case No. 9470. See Appendix A.

7. The Raymore North Substation will be located on private property within the general electric service area the Commission certificated to one of Aquila's predecessors in Case No. 9470, legally described ("Tract I") as follows:

All that part of the Southeast Quarter (SE $\frac{1}{4}$) of Section 33, Township 47, Range 32 in Jackson County, Missouri, more particularly described as follows:

Commencing at the Southeast corner of the SE $\frac{1}{4}$ of Section 33; thence North 02 Degrees 23 Minutes 20 Seconds East along the East line of the Southeast Quarter SE $\frac{1}{4}$ of Section 33 a distance of 1086.75 feet to the Point of Beginning; thence North 87 Degrees 36 Minutes 39 seconds West a distance of 603.45 feet; thence North 00 Degrees 00 Minutes 00 Seconds East a distance of 521.00 feet; Thence North 87 Degrees 13 Minutes 11 Seconds East a distance of 627.72 feet to a point in the East line of the SE $\frac{1}{4}$ of Section 33; thence South 02 Degrees 23 Minutes 20 Seconds West along the East line of the SE $\frac{1}{4}$ of Section 33 a distance of 577.10 feet to the Point of Beginning.

8. Aquila holds deeds for Tract I in fee, and an easement for the transmission line interconnect. See Appendix B.

9. The attached Appendix A contains a map of the site of the Raymore North Substation. Tract I consists of approximately 12.8 acres of land 1100 feet north of County Line Road between Peterson Road and the future location of Madison Road in southern Kansas City, just north of Raymore, as legally described above. The distribution substation and associated facilities will occupy approximately 4 of the approximately 12.8 acres of Tract I.

10. Aquila entered into a twenty year municipal franchise agreement with the City of Kansas City, Missouri, in January 1987, authorizing it “to erect, install, construct, maintain and reconstruct the necessary additional distribution lines, transmission lines, poles, conductors, anchors, guy wires, wires, conduits, substations, transformers, apparatus, and appliances” within the areas of Kansas City. See Appendix C.

11. The Raymore North Substation will promote public convenience and necessity in that it will serve customers in both Jackson and Cass Counties.

12. The estimated cost for this project is \$2.9 million. Aquila plans to finance construction of this substation with funds on hand or available to it through existing lines of credit. It will not be project-financed.

13. Aquila contends that the Raymore North Substation will relieve the surging electrical load demand in Jackson and Cass Counties and reduce the electrical voltage from an existing 161KV KCPL transmission line to the 12KV distribution voltage needed to safely and effectively serve the existing customers and the rapidly growing load on the northern side of the City of Raymore.

14. Aquila also contends that it is adding approximately 5,000 new customers annually in its Western Missouri service area, which includes this portion of Jackson and Cass Counties. As a result, Aquila avers that the electrical load demand in this area has surged by more than 7.5% during the past four years.

15. Aquila asserts that the current substation serving this area is located more than four miles to the south and does not have sufficient capability to provide reliable electrical service to the platted residential development in this area.

16. Further, Aquila believes that the Raymore North Substation will improve distribution reliability to electric utility consumers in southern Jackson County and northern Cass County, which are experiencing an influx in retail growth.

The Osceola Substation

17. In 1922, Aquila's predecessor in interest secured from the St. Clair County Court a perpetual franchise to erect poles for the suspension of electric light and power wires along the public roads and highways. This order was filed in 1937 with the Commission in its Case No. 9470.

18. The Osceola Substation and related facilities will be located in St. Clair County, Missouri. The Commission has authorized Aquila, or its predecessors-in-interest, to construct, operate, and maintain electrical facilities, transmission lines and distribution systems and to render electrical service throughout portions of St. Clair County, Missouri, pursuant to various Orders, including Case No. 9470. See Appendix A.

19. The Osceola Substation will be situated on a parcel of private property, within the general electric service area certificated to Aquila by the Commission in Case No. 9470, legally described as ("Tract II"):

A 660' by 660' parcel of land located in the Southeast quarter of the Northeast Quarter of the Southeast quarter, Section 21, Township 38 North, Range 25 West recorded at Book 317, Page 107 in the Recorder of Deeds office in the County of St. Clair, Missouri.

20. Aquila and KAMO Electric Cooperative, Inc. ("KAMO"), have agreed to enter into a purchase agreement in which KAMO has agreed to sell and Aquila has agreed to purchase Tract II in fee as legally described above. This agreement has not been executed, but KAMO has provided a letter of intent, indicating the terms and conditions of the transaction, which is attached as Appendix D.

21. Tract II abuts St. Clair County Road C on its eastern edge, and is located near the City of Osceola, as legally described above. The Osceola transmission substation and associated facilities are expected to occupy the majority of an approximately $\frac{3}{4}$ acre tract, with Aquila accessing Tract II through a driveway easement.

22. The Osceola Substation will promote public convenience and necessity in that it will serve customers in St. Clair and the surrounding counties bordering the Deepwater Arm of Truman Lake.

23. Aquila contends that this area is currently underserved by existing infrastructure and the electrical grid is subject to sudden and unpredictable service outages, and during peak demand periods, the transmission system consistently operates in a near-failure mode.

24. Aquila further contends that the Osceola Substation will stabilize this region and provide capability for growth and expansion.

25. In addition, Aquila asserts that the Osceola Substation will reduce the electrical voltage from an existing 161KV KAMO transmission line to 69KV and 34.5 KV transmission voltages needed to safely and effectively serve this region.

26. The estimated cost for the project is \$1.65 million. Aquila plans to finance construction of this substation with funds on hand or available to it through existing lines of credit. It will not be project-financed.

III. THE AGREEMENT

A. Approval of the Substations

Based on and subject to the conditions, limitations, stipulations and agreements set forth herein, and because construction of the Raymore North and Osceola Substations should be expedited, the Parties agree that the Commission should grant to Aquila permission and approval to construct, install, own, operate, maintain and otherwise control and manage the Raymore North and Osceola Substations in that the exercise by Aquila of the rights, privileges or franchises set forth in each of the Applications is necessary or convenient for the public service.

1. Raymore North Substation

The Parties agree that the Raymore North Substation will promote public convenience and necessity in that it will serve customers in both Jackson and Cass Counties. Moreover, the Parties agree that the current plans and specifications for the Raymore North Substation are attached and marked as Appendix E.

2. The Osceola Substation

The Parties agree that the Osceola Substation will promote public convenience and necessity in that it will serve customers in St. Clair and the surrounding counties bordering the Deepwater Arm of Truman Lake. Moreover, the Parties agree that the current plans and specifications for the Osceola Substation are attached and marked as Appendix F.

3. The Parties agree that the Commission should authorize Aquila to enter into, execute, deliver and perform the necessary arrangements and documents to facilitate the projects described above including the authority to make such limited modifications to the plans and specifications set forth in Appendices E and F as are reasonably necessary to effectuate construction of these two substations and that such modifications to Appendices E and F shall be provided to Staff as they are made and prior to completion of construction of these two substations.

4. KCPL has authorized the Parties to represent that KCPL does not oppose this Stipulation and Agreement.

B. Precedential Impact of *StopAquila.org v. Aquila, Inc.*

The Parties agree the Western District Court of Appeals decision of *Harline v. Public Service Commission*, 343 S.W.2d 177 (Mo. App. 1960) and its progeny² hold that utility companies, such as Aquila and intervening party KCPL, may construct and operate new electrical transmission and distribution lines within their Commission-certificated service areas without obtaining from the Commission additional specific certificates of convenience and necessity under § 393.170.1, RSMo., to construct and operate the lines. At least since *Harline* the Commission and utilities have neither required nor sought specific certificates of convenience and necessity authorizing new electrical substations constructed within the utility's certificated service area. The Western District's recent opinion in *StopAquila.org v. Aquila, Inc.*, 180 S.W.3d 24 (Mo. App. W.D. 2005), however, has created uncertainty as to whether an electric utility may lawfully construct and operate any electrical

² See *The Empire District Electric Company v. Cox*, 588 S.W.2d 263 (Mo. App. 1979).

substation within the utility's certificated service area without first obtaining from the Commission a § 393.170.1, RSMo., certificate of convenience and necessity that specifically authorizes the utility to construct and operate the electric substation.

The Staff, Public Counsel and KCPL believe the holding in *StopAquila.org* does not require Aquila to seek a specific certificate of convenience and necessity from the Commission to construct and operate electrical substations, notwithstanding the *StopAquila.org* decision. Aquila, however, interprets the *StopAquila.org* holding as new binding precedent requiring additional approval from the Commission for Aquila to construct and operate new electric substations.

Although Staff, Public Counsel and KCPL do not believe it is necessary for the Commission to approve construction and operation of the Raymore North and Osceola Substations, because of the need for the expedited construction of these substations, the Parties agree that the Commission should exercise its discretion and issue certificates of convenience and necessity under §393.170.1 RSMo that authorize Aquila to construct and operate each of these two electrical substations, so that Aquila will begin constructing them immediately. The Parties also agree that an order of the Commission granting the authority requested by Aquila in each of the captioned cases does not establish regulatory policy or precedent but, rather, is a decision driven by the specific and unique facts of these cases.

The recommendation of the Parties is not inconsistent with similar past actions taken by the Commission. On several occasions, the Commission has granted an electric utility a "footprint" certificate to construct and operate a power

plant within the utility's previously certificated service area. *See Re Missouri Power and Light Company*, 18 Mo. P.S.C.(N.S.) 116 (1973); *Re The Empire District Electric Company*, 21 Mo. P.S.C.(N.S.) 351 (1977). In each of these cases, the Commission (or a member thereof) expressed doubts about the need for the relief requested, but nevertheless the Commission exercised its regulatory discretion and issued the requested certificates of convenience and necessity.

C. Future “Test Case”

As a result of the ambiguity created by the Western District Court of Appeals opinion in *StopAquila.org*, the Parties agree that within sixty (60) days of the last Commission's Order authorizing Aquila to construct and manage the Raymore North and Osceola Substations, Aquila will apply for a certificate of public convenience and necessity under § 393.170.1, RSMo., to construct and manage another electric substation that can act as a “test case” for the court to clarify whether utilities must obtain a certificate of convenience and necessity specifically authorizing the construction of a new substation within two years before the substation is built. The Parties anticipate the subject of the “test case” will be a substation Aquila plans to build near the intersection of 172nd Street and U.S. Highway 169, which Aquila refers to as the “Pope Lane” substation; however, this agreement does not require Aquila to use the “Pope Lane” substation as its test case. The Parties further agree that at that time, the Commission may issue an order addressing whether electric utilities must request and secure an overlapping, site-specific certificate of convenience and necessity to construct and operate a new

electric transmission or distribution substation within its existing service area, which would allow an aggrieved party to seek judicial review of the issue. For example, if the Commission were to dismiss Aquila's application on the grounds it is not required because the company has an area service certificate, which the Commission interprets as already authorizing the substation's construction, Aquila would appeal the Commission's decision in the appropriate jurisdiction.

D. The Agreement Is In the Public Interest

The Parties agree that the terms of the Agreement are in the public interest and should be approved by the Commission. The pending applications to construct and manage the Raymore North and Osceola Substations require expedited approval so that Aquila may begin construction immediately and place the substations in service prior to the 2007 peak demand season. Aquila asserts that expedited approval will allow Aquila to provide safe, reliable, and affordable electrical services to its customers served by those substations during the 2007 peak demand season. Therefore, it is in the public's interest not to delay construction of these substations. To resolve the issues presented in *StopAquila.org* as discussed *supra*, Aquila has agreed to bring a "test case" within sixty (60) days after the Commission enters its last Order in these cases, when timing is not as critical to commencing construction of the substation.

IV. THE EFFECT OF THE AGREEMENT

A. This Agreement represents a negotiated settlement. This Agreement is based on the unique circumstances presented by Aquila to the signatory Parties.

This Agreement shall not be construed to have precedential impact in any other Commission proceeding. Except as specified herein, the signatory Parties to this Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Agreement, or in any way condition its approval of same.

B. The provisions of this Agreement have resulted from negotiations among the signatory Parties and are interdependent. If the Commission does not approve and adopt the terms of this Agreement in total, it shall be void and no party hereto shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof.

C. When approved and adopted by the Commission, this Agreement shall constitute a binding agreement among the signatory Parties hereto. The signatory Parties shall cooperate in defending the validity and enforceability of this Agreement and the operation of this Agreement according to its terms.

D. This Agreement does not constitute a contract with the Commission. Acceptance of this Agreement by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forego the use of any discovery, investigative or other power which the Commission presently has. Thus, nothing in this Agreement is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right to access

information, or any statutory obligation. Nothing in this Agreement is intended to impinge, restrict or limit in any way Public Counsel's discovery powers, including the right to access information and investigate matters related to Aquila.

E. This Agreement contains the entire agreement between the signatory Parties on the matters addressed herein. There are no other generally applicable agreements or arrangements that pertain to these matters. Silence in this Agreement on a particular topic or issue indicates that the signatory Parties reached no agreement on the handling of that topic or issue.

F. This Agreement shall become effective upon Commission approval without modification by final Commission order. Such order becomes "final" either by issuance of a Commission order on rehearing or, if no rehearing, on the effective date of the order.

G. This Agreement is being entered into for the purpose of disposing of all issues in these two cases and the matters specifically addressed in this Agreement. None of the Parties to this Agreement shall be deemed to have approved, accepted, agreed, consented or acquiesced to any ratemaking principle or procedural principle, including, without limitation, any method of cost determination or cost allocation or revenue related methodology, and none of the signatories shall be prejudiced or bound in any manner by the terms of this Agreement in this or any other proceeding, whether this Agreement is approved or not, except as otherwise expressly specified herein.

H. All Parties further understand and agree that the provisions of this Agreement relate only to the specific matters referred to in the Agreement and no Party waives any claim or right which it otherwise may have with respect to any matters not expressly provided for in this Agreement.

V. COMMISSION APPROVAL OF THE AGREEMENT

A. The Staff may file with the Commission suggestions or a memorandum in support of this Agreement. Aquila shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within ten (10) days of receipt of the Staff's memorandum, a responsive memorandum, which shall also be served on Staff. However, it is further understood and agreed that this is the entire agreement between the parties. No representations, promises, or understandings contained within the suggestions, memorandum, or responsive memorandum that may be filed in support of this Agreement shall be construed as a supplement or provision to this Agreement unless such representation, promise, or understanding is contained herein.

B. The Staff may also provide, at any Agenda meeting at which this Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests; however, the Staff shall, to the extent reasonably practicable, provide other Parties with advance notice of when the Staff shall respond to the request, once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to

matters that are privileged or protected from disclosure pursuant to any Protective Order issued in this case.

C. If the Commission accepts the specific terms of the Agreement, the Parties waive, with respect to the issues resolved herein: their respective rights pursuant to Section 536.070(2), RSMo 2000 to call, examine and cross-examine witnesses; their respective rights to present oral argument and/or written briefs pursuant to Section 536.080.1 RSMo 2000; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo 2000; and their respective rights to judicial review pursuant to Section 386.410 RSMo 2000.

D. To assist the Commission in its review of this Agreement, the Parties also request the Commission advise them of any additional information that the Commission may desire from the Parties relating to the matters addressed in this Agreement, including any procedures for furnishing such information to the Commission.

WHEREFORE, for the foregoing reasons, the undersigned Parties respectfully request the Commission determine that exercise of Aquila's right, privilege or franchise to construct the Raymore North and Osceola electric substations is necessary or convenient for the public service, issue an order in each of these cases approving the Agreement and authorizing Aquila to construct, install, own, operate, maintain and otherwise control and manage the Raymore North and Osceola Substations, all subject to the specific terms and conditions contained in the Agreement.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND

/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, on the 9th day of October, 2006, to the following:

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