

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

Case No. EO-2005-0156

**SUGGESTIONS IN OPPOSITION TO APPLICATION
OF CASS COUNTY, MISSOURI TO INTERVENE**

COMES NOW Applicant in the captioned case, Aquila, Inc. (hereinafter "Aquila") and offers the following suggestions in opposition to the Application to Intervene filed by the County of Cass, Missouri (hereinafter the "County"):

1. On December 30, 2004, the County caused to be filed an Application to Intervene in this proceeding. The County correctly states that the Application filed by Aquila seeks a determination associated with an affiliate transfer and approval of various aspects of tax-advantaged project financing available under Chapter 100 RSMo.

2. The standard for intervention in Commission proceedings is set forth at 4 CSR 240-2.075. Subsection (4) of that rule states that the Commission may authorize intervention on a showing that (A) the proposed intervenor has an interest different than that of the general public that may be adversely affected by a final order in the case; or (B) granting the proposed intervention would "serve the public interest." The County's proposed intervention does not meet either of the Commission's criteria. Consequently, the County's Application to Intervene should be denied.

3. The County is a political subdivision. (App. to Int. ¶1) Any interest it has in this case is no different of that of the general public. The responsibility to represent the interests of the public is statutorily vested in the Office of the Public Counsel (“OPC”). See, §386.700 and §386.710 RSMo 2000. OPC is actively reviewing the Application as evidenced by the filing on January 4, 2004, of its Request for Hearing. The County has no authority to represent the public interest in proceedings before the Commission. See, *State ex rel. Missouri Power & Light Company v. Riley*, 546 S.W. 2d 792 (Mo. App. 1977). Also, the fact that the project described in Aquila’s Application (hereinafter the “Project”) is located within the boundaries of Cass County confers no special standing on the County.

4. As to Aquila’s request for a Commission determination concerning the affiliate transfer, the County states no interest. Aquila’s request that the Commission determine that the transfer of the CTs provides no financial advantage to its unregulated affiliate is merely in furtherance of accurate corporate recordkeeping.

5. Likewise, the County is not party to any of the Chapter 100 financing documents that are being submitted to the Commission for its review and approval. Consequently, the County has no contractual or proprietary interest that would be adversely affected by a final order in this case. To the contrary, the proper party in interest, the City of Peculiar, Missouri, approved the Chapter 100 financing documentation at a meeting of its City Council on December 28, 2004.

6. Also, the County’s intervention would not serve the public interest. The County correctly states that it has initiated litigation against Aquila in the Circuit Court of Cass County alleging, among other things, that Aquila is in violation of the County’s

planning and zoning code authorized by Chapter 64 RSMo because Aquila's Certificate of Convenience and Necessity does not authorize or permit the construction of new electric plant as expressly contemplated by §393.170 RSMo 2000. The County alleges that Aquila has not acquired its approval for the construction of the South Harper Peaking Facility ("South Harper") currently underway in an unincorporated portion of Cass County. (App. to Int., ¶5)

7. At the outset, it should be noted that these claims by the County are an impermissible collateral attack on the Commission's orders in numerous cases, including its Case Nos. 1,074, 1,449, 3,171, 5,109, 9,470 and 11,892 wherein Aquila's predecessors in interest were certificated to provide electric service and to construct electric plant throughout portions of Cass County, including at the location of South Harper. The Commission determined in those cases that there was a need for service and that the public convenience would be served thereby. Those orders of the Commission are final and conclusive. §386.550 RSMo 2000. The County should not now, many years after the fact, be permitted to take action to undermine the Commission's prior determinations by claiming the tax-advantaged financing to fund the construction of needed plant additions is not in the public interest.

8. The proposed intervention suggests the County is opposed to the Chapter 100 financing of the Project but this is misleading. It is apparent that the County is opposed to the Project; not the manner in which it is financed. The County concedes that South Harper "is already in the process" of being constructed. (App. to Int., ¶4) The question in this case is not whether South Harper will be constructed but, rather, whether it will be financed in the most prudent and cost-effective manner possible. The

County's narrow local concerns do not justify its claim that tax-advanced financing of South Harper would not be in the public interest. (App. to Int., ¶6)

9. This case should not be allowed to become an alternative forum for the County to pursue the claim that its planning and zoning code supersedes this Commission's certification authority. The Commission is in no position to resolve claims arising out of Chapter 64 RSMo which deals with county planning and zoning codes. In the past, the Commission has been extremely reluctant to permit parties to intervene in its cases to pursue private advantage in other pending legal actions or in contract negotiations. This has been a wise policy that should again be employed in this case by denying the County's proposed intervention.

10. Denying the proposed intervention will not prejudice the County. The County, to the extent it believes it is entitled to relief, has an adequate opportunity to be heard in the proceeding it has initiated in Circuit Court of Cass County. Permitting the County to intervene in this proceeding merely to re-litigate the same claims that it has made in its lawsuit would be wasteful and duplicative. The County's intervention would cause undue delay in bringing a needed power production facility on-line thus impairing Aquila's ability to provide safe, adequate and reasonably priced electric service to the customers of its Aquila Networks-MPS division (including its many customers located throughout Cass County) and, consequently, would not serve the public interest.

WHEREFORE, for the reasons aforesaid, the County's proposed intervention should be denied.

Respectfully submitted,

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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 first class mail or by hand delivery, on this 7th day of January 2005 to the following:

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