

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE 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 otherwise Control and Manage, and)
otherwise Control and Manage Electrical)
Production and Related Facilities in)
Unincorporated Areas of Cass County,)
Missouri Near the Town of Peculiar)

Case No. EA-2006-0309

**RESPONSE TO AQUILA’S MOTION TO SET EARLY PREHEARING CONFERENCE,
TO ESTABLISH PROCEDURAL SCHEDULE AND FOR ISSUANCE OF
PROTECTIVE ORDER**

COMES NOW the Office of the Public Counsel and for its Response to Aquila’s Motion to Set Early Prehearing Conference, to Establish Procedural Schedule and for Issuance of Protective Order states as follows:

1. On January 25, 2006, Aquila, Inc. filed an application asking that the Commission grant it a certificate of convenience and necessity for the South Harper generating facility and associated substation.
2. On February 15, Aquila filed a motion that, *inter alia*, sought approval of a procedural schedule, sought the setting of a prehearing conference, and sought the issuance of a protective order.
4. On February 16, the Commission set a deadline of February 22 for responses to Aquila’s February 15 motion.

5. On February 17, Public Counsel filed a motion for reconsideration of the order setting February 22 as the deadline for responses to Aquila's February 15 motion. The February 22 deadline is unreasonable.

6. On February 22, the Commission issued an order setting a prehearing conference, in which it acknowledged Public Counsel's Motion for Reconsideration, but did not rule on the motion or otherwise change the February 22 deadline.

7. In this response, Public Counsel will not respond to all the discussion and argument in Aquila's February 15 motion; this response will address only the specific relief requested in Aquila's February 15 motion.

In its Application, Aquila asks that the Commission grant it two site-specific certificates of convenience and necessity (CCN). Aquila also asks the Commission to explicitly find that the granting of these CCNs are "required by the public convenience and necessity." To make such a finding in the context of this case, the Commission must first find that the construction of a 315MW gas-fired generating station and related substation is required by the public convenience and necessity. Aquila must therefore show, and the Commission must find, among other things: 1) that the addition of 315MW of supply is appropriate (as opposed to 300MW, 500MW, or some other amount of supply); that the addition of gas-fired generation is appropriate (as opposed to coal-fired generation, or renewable-resource-based generation, or demand-side resources); and 3) that these specific sites are appropriate (as opposed to sites elsewhere in Cass County, or outside of Cass County). The expedited schedule Aquila proposes in its February 15 motion is way too short to address these questions, particularly since the need for expedited treatment can be entirely attributed to Aquila's "act first, ask for permission later" approach to

the entire South Harper project. Accordingly Public Counsel opposes Aquila's proposed procedural schedule.

In its February 15 motion, Aquila requests that the Commission issue a protective order. Public Counsel does not object to the issuance of the Commission's standard protective order.

In its February 15 motion, Aquila also requests that the Commission schedule an early prehearing conference. Public Counsel supports this request.

WHEREFORE, Public Counsel respectfully requests that the Commission: 1) reject Aquila's proposed procedural schedule; 2) issue its standard protective order; 3) issue an order setting an early prehearing conference; and 4) grant other such relief as the Commission deems reasonable.

Respectfully submitted,

OFFICE OF THE Public Counsel

/s/ Lewis R. Mills, Jr.

By:_____

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 22 day of February 2006:

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