

**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. EO-2005-0156
Related Improvements to be Installed and)
Operated near the City of Peculiar, Missouri)

MOTION TO STAY

COMES NOW the Office of the Public Counsel (**Public Counsel**), by and through one of its attorneys, and respectfully moves the Commission to enter its Order staying further action in the above-entitled cause in order that further investigation into additional information recently discovered by Public Counsel may be further investigated, and in support thereof states as follows:

1. On December 6, 2004 Aquila, Inc. (**Aquila**) filed its Application regarding its new electricity generating station located near Peculiar, Missouri, commonly known as the "South Harbor Station (**the Project**).” In particular, the Application requests that the Commission enter an order and decision, among other requests, to:

(E) Authorizing Aquila to sell and convey to (the City of) Peculiar (**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.

2. On September 1, Aquila, the Staff of the Commission and Public Counsel filed a Stipulation and Agreement in this case purportedly resolving all issues in this case. The County of Cass, Missouri (**Cass County**) and Peculiar are parties in this case but did not sign the Stipulation and Agreement; however, both Cass County and Peculiar subsequently separately filed with the Commission a Notice of Position in which each party states that it neither opposed nor supported the nonunanimous Stipulation and Agreement.

3. On September 21, 2005 the Commission conducted a hearing on Aquila's Application and the Stipulation and Agreement.

4. Subsequent to the hearing held by the Commission, Public Counsel discovered that many of the actions for which Aquila sought Commission approval in its Application had already been undertaken by Aquila on December 30, 2004, shortly after the filing of its Application in this matter which occurred on December 6, 2004, and approximately five months prior to the filing of Aquila's First Amended application on June 3, 2005 in which Aquila "restated, ratified and confirmed" the relief being sought as specified in Paragraph 1 of this motion.

5. Specifically, Public Counsel has discovered a Special Warranty Deed between Aquila and Peculiar for the property upon which the Project is located, which Special Warranty Deed was recorded with the Recorder of Deeds of Cass County, Missouri on December 30, 2004 in Book 02543 at Page 0252. A copy of the Special Warranty Deed is attached hereto as "**Attachment A**", and is incorporated herein by reference. Public Counsel further discovered a Memorandum of Lease Agreement between Peculiar and Aquila which was recorded with the Recorder of Deeds of Cass County, Missouri on December 30, 2004 in Book 02543 at Page 0266, a copy of which is attached hereto as "**Attachment B**" and is incorporated herein by reference.

6. In addition, Public Counsel has discovered that on December 30, 2004 the City of Peculiar, Missouri, as Issuer, entered into a Trust Indenture with Commerce Bank, N.A., as Trustee, issuing taxable industrial revenue bonds, Series 2004, in the aggregate maximum principal amount of \$140,000,000 for the "Aquila Project". A copy

of the Trust Indenture is attached hereto as “**Attachment C**” and is incorporated herein by reference.

7. Section 393.190.1 RSMo 2000 provides, in pertinent part, as follows:

393.190.1 No gas corporation, electrical corporation, water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole of any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same shall be void. ...

8. Section V(C) of the Stipulation and Agreement states as follows:

C. The Signatory Parties enter into this Agreement in reliance upon information provided to them by Aquila. In the event that the Commission finds that Aquila failed to provide the Signatory Parties with material and relevant information in its possession, or which should have been available to Aquila through reasonable investigation, or in the event that the Commission finds that Aquila misrepresented facts relevant to this Agreement, this Agreement shall be terminated.

9. That at the time Public Counsel entered into the Stipulation and Agreement and at the time of the Commission hearing on September 21, 2005, Public Counsel was unaware that the bond financing, the sale and conveyance by Aquila to Peculiar of the real estate and facilities by Special Warranty Deed and the lease of the real estate and facilities from Peculiar to Aquila had already occurred.

10. That Public Counsel believes that further action in this matter should be stayed pending further investigation; and that all of the parties should be granted an opportunity to further investigate this information and file comments with the

Commission regarding this or any other additional information and the implications, if any, on this matter.

WHEREFORE, Public Counsel respectfully requests that the Commission enter its order staying further action in this matter in order to allow the parties to further investigate the information herein set forth and for such other and further relief as to the Commission shall seem just and proper under the circumstances.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Mark D. Wheatley

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 22nd day of September 2005:

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