

**BEFORE THE PUBLIC SERVICE COMMISSION
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)	Case No. EO-2005-0156
Installed and Operated near the City of Peculiar,)	
Missouri)	

Staff's Suggestions in Support of Stipulation and Agreement

COMES NOW the Staff of the Missouri Public Service Commission and for its suggestions in support of the Stipulation and Agreement filed in this case September 1, 2005 states:

1. On December 6, 2004 Aquila filed an application with the Commission regarding its new electricity generating station located near Peculiar, Missouri commonly known as the "South Harper Station." In its application Aquila sought authorizations to enter into a Chapter 100 financing arrangement with the City of Peculiar, Commission valuation of three combustion turbines and associated plant, and a Commission determination that Aquila's acquisition of the three combustion turbines and associated plant from one of its affiliates was the least cost option. Later Aquila amended its application limiting it to requests for Commission authorizations to enter into a Chapter 100 financing arrangement with the City of Peculiar and Commission valuation of the three combustion turbines and associated plant.

2. Aquila, the Staff of the Public Service Commission, the Office of the Public Counsel and the City of Peculiar, Missouri, are the signatories to the Stipulation and Agreement; the City of Peculiar, Missouri and the County of Cass, Missouri, are not.

3. Commission Rule 4 CSR 240-2.115 provides that parties in a contested case have

seven days from the date a stipulation and agreement is filed to object to the agreement. The County of Cass filed on September 8, 2005, a pleading indicating it neither support nor opposed the Stipulation and Agreement. As of the time and date of the filing of these suggestions, the City of Peculiar has made no filing opposing the Stipulation and Agreement. Consequently, under Commission Rule 4 CSR 240-2.115(2), the Stipulation and Agreement filed in this case may be treated by the Commission as a unanimous stipulation and agreement.

4. The Chapter 100 financing entails transfer from Aquila to the City of Peculiar of ownership of the South Harper Station, lease-back of the station to Aquila, Inc. with an option to purchase, and payments to Peculiar in lieu of property tax payments through tax-advantaged Chapter 100 RSMo 2000 revenue bonds.

5. Section 393.190.1 RSMo 2000 provides:

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 or 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. The permission and approval of the commission to the exercise of a franchise or permit under this chapter, or the sale, assignment, lease, transfer, mortgage or other disposition or encumbrance of a franchise or permit under this section shall not be construed to revive or validate any lapsed or invalid franchise or permit, or to enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or to waive any forfeiture. Any person seeking any order under this subsection authorizing the sale, assignment, lease, transfer, merger, consolidation or other disposition, direct or indirect, of any gas corporation, electrical corporation, water corporation, or sewer corporation, shall, at the time of application for any such order, file with the commission a statement, in such form, manner and detail as the commission shall require, as to what, if any, impact such sale, assignment, lease, transfer, merger, consolidation, or other disposition will have on the tax revenues of the political subdivisions in which any structures, facilities or equipment of the corporations involved in such disposition are located. The commission shall send a copy of all information

obtained by it as to what, if any, impact such sale, assignment, lease, transfer, merger, consolidation or other disposition will have on the tax revenues of various political subdivisions to the county clerk of each county in which any portion of a political subdivision which will be affected by such disposition is located. Nothing in this subsection contained shall be construed to prevent the sale, assignment, lease or other disposition by any corporation, person or public utility of a class designated in this subsection of property which is not necessary or useful in the performance of its duties to the public, and any sale of its property by such corporation, person or public utility shall be conclusively presumed to have been of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser of such property in good faith for value.

6. Section 393.190 RSMo 2000 does not expressly provide a standard of review; however, in its Report and Order issued February 24, 2004 in the case *In the Matter of the Application of Aquila, Inc. for Authority to Assign, Transfer, Mortgage or Encumber Its Utility Franchise, Works or System in Order to Secure Revised Bank Financing Arrangements*, Case No. EF-2003-0465, the Commission stated, at page six, “The Commission has already concluded that it should approve Aquila’s request if doing so would not be detrimental to the public interest.”¹ (footnote 10 in original) The Commission, on page six of the Report and Order, further stated, “The Commission concludes a detriment to the public interest includes a risk of harm to ratepayers.” And in the context of that case the Commission concluded on page seven of the Report and Order, “The detriment to the public interest is the unreasonable risk of harm to Missouri ratepayers compared to the minimal benefit Aquila would receive.”

7. Unlike the situation in Case No. EF-2003-0465 where Aquila was seeking authority to encumber assets, here Aquila is seeking authority to transfer ownership of the South Harper Station as part of a Chapter 100 financing arrangement with the City of Peculiar where Aquila will lease-back the newly built station from the city with an option to purchase it for the sum of \$1,000 plus payment in full of all outstanding bonds related to the Chapter 100 financing.

¹ See *Order Denying Motion for Summary Disposition* (issued October 9, 2003)(Gaw, C., concurring).

Here Aquila will reap a financial advantage in that it will avoid taxes on the property transferred to the city and, instead, will make payments to the City of Peculiar less than the avoided taxes while retaining most of the benefits of ownership of the property.

8. Further, unlike the situation with Aquila's Greenwood Energy Center where, after leasing the center for a term of years, Aquila purchased the units it had built from the lessors at a fair market price, Aquila has the option to purchase the South Harper Station by payment in full of all outstanding bonds related to the Chapter 100 financing plus paying the nominal sum of \$1,000.

9. Additionally, Aquila agrees to

- record the land and improvements at the South Harper Station as a regulatory asset on the books of Aquila Networks – MPS in a manner similar to other utility plant it owns;
- record the investment described above in accordance with the Uniform System of Accounts as adopted by the Commission for record-keeping purposes;
- file with the Commission for approval before it transfers any of its rights under the lease with Peculiar, including the right to purchase the South Harper Station at the end of the lease, if, at such time, the South Harper Station is necessary or useful in the performance of regulated utility service;
- book each payment in lieu of tax ("PILOT") to operating expense during the 30-year period of the loan, as each such payment is made; and
- depreciate the combustion turbines and generators at the annual rate of 3.33%, which is the present depreciation rate set in Case No. ER-2004-0034 for Account No. 344 (Other Production Plant – Generators) and the related auxiliary equipment will be

depreciated at the annual rate of 2.63%, which is the present depreciation rate set in Case No. ER-2004-0034 for Account No. 345 (Accessory Electric Equipment).

10. In light of the foregoing protections and considerations, it would not be detrimental to the public interest if Aquila lawfully enters into the proposed Chapter 100 financing arrangement with the City of Peculiar.

11. In the Stipulation and Agreement, the signatory parties also agree to the value for the three combustion turbines and associated plant (which they specifically identify) at the South Harper Station to be used both for (1) recording the transfer value of those assets on the regulatory books and records of Aquila's Aquila Networks-MPS division and (2) establishing the value of that property for purposes of Aquila's pending general electric rate case, Case No. ER-2005-0436. Although they agree to a value, the parties expressly reserve their rights to challenge inclusion of the property in rate base in Aquila's rate case.

12. The value the signatory parties agree to is the transfer value the Staff recommends to the Commission on page 31 at lines 23-to-26 of the rebuttal testimony of Staff witness Cary G. Featherstone prefiled in this case on June 13, 2005: \$66,760,000.

13. The Stipulation and Agreement includes the typical provisions that limit the scope and effect of the Stipulation and Agreement to the specific matters addressed and not beyond.

14. The Stipulation and Agreement is not effective unless approved by the Commission without modification.

15. The Stipulation and Agreement includes a provision in which the parties expressly acknowledge their reliance on information provided by Aquila in entering into the agreement and that a determination by the Commission that Aquila knew or should of known of material and relevant information it did not provide to the other signatory parties, the agreement

terminates. It also expressly provides that there are no other agreements between the signatory parties addressing the matters addressed in the Stipulation and Agreement.

16. The Stipulation and Agreement includes stipulation of the record before the Commission, and, waiver of rights to cross-examine witnesses, present oral argument, submit written briefs, reading of the transcript by Commissioners and judicial review.

17. The Stipulation and Agreement requires the Staff to file suggestions in support of the Stipulation and Agreement and contemplates the Commission may require the Staff to file a memorandum regarding the Stipulation and Agreement. The signatory parties also anticipate the Commission may hold an on-the-record presentation regarding the Stipulation and Agreement.

18. Because the Stipulation and Agreement addresses all issues in the case, by entering into it, the Staff's pending motion in limine is moot.

WHEREFORE, the Staff respectfully offers to the Commission the foregoing suggestions in support of the Stipulation and Agreement filed September 1, 2005.

Respectfully submitted,

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/s/ Nathan Williams

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 14th day of September 2005.

/s/ Nathan Williams