

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 9th day of
August, 2005.

In the Matter of the Application of Aquila, Inc., for)	
Approval of Its Experimental Regulatory Plan and for)	
a Certificate of Convenience and Necessity)	
Authorizing It to Participate in the Construction,)	
Ownership, Operation, Maintenance, Removal,)	<u>Case No. EO-2005-0293</u>
Replacement, Control and Management of a Steam)	
Electric Generating Station in Platte County,)	
Missouri, or Alternatively for an Order Specifically)	
Confirming That Aquila, Inc. Has the Requisite)	
Authority under Its Existing Certificate(s))	

ORDER APPROVING STIPULATION AND AGREEMENT

Issue Date: August 9, 2005

Effective Date: August 19, 2005

Syllabus: This order approves the unopposed Stipulation and Agreement entered into among Aquila, Inc., the Staff of the Commission, the Office of the Public Counsel, and Sedalia Industrial Energy Users' Association, and grants Aquila authority with regard to its participation in the latan 2 generation plant and latan 1 environmental upgrades.

Background

On March 2, 2005, Aquila filed its Application with the Missouri Public Service Commission under §386.250, 393.140, 393.170, 393.230 and/or 393.240, RSMo (2000)

and Commission rules 4 CSR 240-2.060, 3.105 and 3.110. Aquila amended the Application on May 23, 2005, and again on June 10, 2005.

Aquila's Second Amended Application asked for authority to encumber its MPS assets. Aquila wants to use those assets as collateral to support a \$300 million senior secured term loan. That loan would be for construction financing for its ownership interest in Iatan Unit 2, and for environmental upgrades related to its existing ownership interest in Iatan Unit 1. Further, Aquila asked the Commission for a finding that encumbering those properties to secure its obligations under the term loan facility is not detrimental to the public interest.

On March 8, 2005, the Commission directed that notice of Aquila's Application be given to the public. Sedalia Industrial Energy Users' Association (SIEUA), the Missouri Department of Natural Resources, Union Electric Company d/b/a AmerenUE, Kansas City Power & Light Company, The Empire District Electric Company, and Calpine Central L.P., asked to intervene. The Commission granted all of the requests except for Calpine's.

On July 18, 2005, Aquila, Staff, Public Counsel, and SIEUA filed a Stipulation and Agreement. The Agreement purports to resolve all issues among the signatory parties. AmerenUE, KCPL, Empire and DNR (all the parties that did not sign the Agreement) stated that they do not oppose the Agreement, and do not request a hearing.

The Stipulation and Agreement

The Agreement suggests that the Commission approve Aquila's Second Amended Application. The Commission's approval would enable Aquila to put in place

construction financing related to its participation in Iatan Unit 2 and environmental upgrades to Iatan Unit 1. Iatan 2 is a proposed new coal-fired generation unit with 800-900 MW of capacity to be located at the Iatan site near Weston, Missouri. Iatan 2 is to be constructed by KCPL. Iatan Unit 1 is an existing generation unit in which Aquila holds an 18% ownership interest.

A summary of the Agreement, which is attached to this order, is as follows:

- Aquila would be obligated to invest in upgrading Iatan 1 and in building Iatan 2;
- Aquila would be limited to using the proceeds from the term loan facility solely for its participation in Iatan 1 upgrades and Iatan 2 construction;
- Aquila's successors would be obligated to fulfill Aquila's obligations under the Agreement;
- The parties reserve their rights concerning what costs, if any, the Commission may allow Aquila to recover from ratepayers for participating in the Iatan 1 and 2 projects.

On August 1, 2005, the Commission held a hearing concerning the Agreement.

Discussion

The Commission has the legal authority to accept the Agreement to resolve this case.¹ The Commission notes that "[e]very decision and order in a contested case shall be in writing and, except in default cases or cases disposed of by stipulation, consent

¹ Section 536.060, RSMo 2000.

order or agreed settlement . . . shall include . . . findings of fact and conclusions of law.”² Consequently, the Commission need not make findings of fact or conclusions of law in this order.

If no party objects to an agreement, the Commission may treat it as unanimous.³ Because all parties have either signed the Agreement or stated that they do not oppose it, the Commission will treat it as unanimous.

Aquila needs coal-fired generation to meet its energy and capacity requirements. It also needs to increase its baseload capacity to mitigate the effects of high natural gas prices, and as a cost-effective means of providing electric service to its Missouri jurisdictional customers. KCPL has identified Aquila as a “preferred potential partner in the Iatan 2 generating plant project” if Aquila has a “commercially feasible financing plan for meeting [its] financial commitments to participate in the ownership of the Iatan 2 plant by the later of August 1, 2005, or such date that KCPL shall issue its request(s) for proposal(s) related to Iatan 2.”⁴

On June 16, 2005, Aquila entered into a Letter of Intent (LOI) with KCPL for at least 140 MW ownership in Iatan 2. The LOI is contingent upon providing an acceptable financing plan and the execution of acceptable ownership, operating and common facility agreements. In the Agreement, Aquila agrees to participate at an ownership level of approximately 140 MW of the planned 800-900 MW generation capacity of Iatan Unit 2.

² Section 536.090, RSMo 2000.

³ Commission Rule 4 CSR 240-2.115(2)(C).

⁴ Case No. EO-2005-0329, Stipulation and Agreement, §III.B.9, page 51.

The Agreement gives Aquila an opportunity to participate as an owner of at least 140 MW of coal-fired generation to be built in Missouri for its regulated electric operations in Missouri, and to finance construction of environmental upgrades to Iatan Unit 1. The Agreement also contains provisions to restrict Aquila's use of the loan proceeds for anything other than the Iatan projects. Also, in the event of a sale of all or any portion of Aquila's interest in Iatan Units 1 or 2, the Agreement provides for the assumption of liabilities and use of the proceeds of any such sale to "pay down" financing related to the purchased facility.

The Agreement allows Aquila to encumber its Aquila Networks – MPS division's assets as security for a five-year loan to be used solely for Aquila's participation in the construction of Iatan Unit 2 and environmental upgrades to Iatan Unit 1. Construction is planned to be complete in 2010. The loan has a term of five years; thus, when the loan expires near the time construction is complete, Aquila Networks – MPS division assets will no longer be encumbered by the loan.

The Commission's authority over Aquila's encumbering its Missouri assets that are necessary or useful in serving the public is found in Section 393.190, RSMo 2000. That statutory section does not include an explicit standard of review. However, this Commission recently stated in an Aquila financing case, "[t]he Commission has already concluded that it should approve Aquila's request if doing so would not be detrimental to the public interest."⁵ The Commission has reviewed this Agreement under that same standard of not detrimental to the public interest.

⁵ *In the Matter of Aquila, Inc.*, Case No. EF-2003-0465, Report and Order, p. 6 (February 24, 2004).

The Commission notes that Aquila's request is different from its request to encumber assets in Case No. EF-2003-0465. In the present case, the request is specifically for the purpose of providing service to Aquila's ratepayers through investment in new generation. In Case No. EF-2003-0465, the loan was a result of the unregulated activities of Aquila.

The Agreement strikes a reasonable and appropriate balance between the interests of Aquila's customers and shareholders in relation to Aquila's participation in building Iatan 2 and upgrading Iatan 1. There is no indication that the Agreement, if approved, would have a negative impact on Aquila's credit ratings. Also, Aquila should experience lower debt costs by using secured financing.

The Commission has reviewed the Second Amended Application, the Agreement, and the evidence. Based upon its review, the Commission concludes that the Agreement is not detrimental to the public interest. The Commission will therefore approve the Agreement and direct that the signatory parties comply with its terms.

By approving the Agreement, the Commission does not authorize the exercise of any creditor's remedy to foreclose on or sell assets encumbered if Aquila is in default on its obligations under the term loan. The specific terms of the mortgage document are being negotiated and were not available at the time of the hearing. Consequently, the Commission has not had the opportunity to review specific terms, including the standard terms typically associated with the exercise of any creditor's remedy that would involve the taking, sale or assignment of any of Aquila's franchise, works or system. The Commission wishes to make clear that it is not waiving its authority, including its authority under Section 393.190.1, RSMo 2000, to review the transfer, sale or

assignment of any of Aquila's franchise, works or system necessary or useful in serving the public. The Commission will order Aquila to file and serve all parties in this case with a copy of the executed mortgage document and provide all parties to the mortgage document a copy of this Order Approving Stipulation and Agreement.

IT IS THEREFORE ORDERED:

1. The encumbrance of the electric utility properties of the Aquila Networks – MPS division of Aquila to support a senior secured five-year multi-draw term loan consistent with that described in the Appendix to the July 18, 2005 Stipulation and Agreement is not detrimental to the public interest and is authorized and approved.

2. That the Stipulation and Agreement entered into between Aquila, Inc., the Staff of the Commission, the Office of the Public Counsel, and Sedalia Industrial Energy Users' Association on July 18, 2005, is approved.

3. That the Second Amended Application filed by Aquila, Inc., on June 10, 2005, is approved subject to the agreements, limitations, conditions and obligations set forth in the July 18, 2005 Stipulation and Agreement.

4. That the parties to the Stipulation and Agreement shall comply with its terms.

5. That Aquila, Inc., shall file and serve all parties in this case with a copy of the executed mortgage document and Aquila shall provide all parties to the mortgage document a copy of this order.

6. That this order shall become effective on August 19, 2005.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton and Appling, CC., concur

Pridgin, Regulatory Law Judge