

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

Application of Aquila, Inc. for an Order Authorizing)
Applicant (if and to the Extent the Transaction)
Described Herein Would Impose a Mortgage or)
Encumbrance under Section 393.190, (RSMo.)) to)
Execute, Deliver and Perform the Agreements and)
Instruments Necessary to Assume a Lease and) **Case No. EO-2007-0172**
Related Documents Pertaining to the Aries Combustion)
Turbine Generator Facility Owned by a Subsidiary of)
Calpine Corp. and Cass County, Which Was)
Constructed as Part of a Revenue Bond Project under)
Chapter 100 RSMo)

ORDER ADDING PARTY, DIRECTING NOTICE, AND **DIRECTING FILING**

Issue Date: November 1, 2006

Effective Date: November 1, 2006

On October 31, 2006,¹ Aquila, Inc. ("Aquila") filed an application with the Commission seeking a determination that assumption of a lease and related documents pertaining to the purchase of the Aries combustion turbine facility ("Aries Facility") in Cass County, Missouri, does not require Commission approval pursuant to Section 393.190, RSMo 2000. In the alternative, Aquila seeks expedited approval of its referenced assumption of the lease.

MEP Pleasant Hill, L.L.C. ("MEP") owns and leases real estate and real property, including a 580 megawatt gas-fired combined cycle electric generating facility in Pleasant Hill, Cass County, Missouri, i.e. the Aries Facility. The Aries Facility has been in commercial operation as part of an Industrial Revenue Bond project approved

¹ All dates throughout this order refer to the year 2006 unless otherwise noted.

by Cass County, Missouri, pursuant to Chapter 100, RSMo. MEP is a wholly owned subsidiary of Calpine Corporation. Calpine and its debtor affiliates, including MEP, filed for bankruptcy relief in the United States Bankruptcy Court for the Southern District of New York.

On September 22, Aquila entered into an Asset Purchase and Sale Agreement (“APA”) with MEP where it will acquire the Aries Facility. Aquila does not believe that this transaction disposes of, or encumbers the whole or part of its franchise, works, or system, necessary or useful in the performance of its duties to the public, and therefore believes the transaction does not require Commission approval pursuant to Section 393.190, RSMo 2000.

After entering the APA, MEP filed a motion with the Bankruptcy Court to establish bidding procedures for the sales of the Aries Facility. Those procedures, set on October 12, culminate with a sales hearing scheduled for December 6. Under the APA, the Aries Facility transaction can close no sooner than the third business day following the entry of the Bankruptcy Court’s Sale Order, or on December 11. Consequently, if the Commission determines that its approval is required, then Aquila moves the Commission to expedite its approval prior to December 8 so that it may purchase the Aries Facility in accordance with the APA.

Should the Commission be unable to enter an order in this matter by December 8, Aquila requests an Interim Order by December 8 tolling the time period during which any penalties may arise from assuming the Lease and acquiring the Bond from the closing date and up to thirty days after the Commission’s final order. This would allow Aquila sufficient time to unwind the Chapter 100 Industrial Revenue Bond and own the Aries Facility outright.

Although MEP is a party to the agreement, they did not join in the application. Because MEP is a necessary party to the APA, to have a full and fair adjudication of this matter, the Commission will add MEP District as a party to the case.

The Commission has determined that proper parties should be given notice and opportunity to intervene in this matter. The Data Center of the Commission shall send a copy of this order to the county commissioners of the counties in Aquila's service area. In addition, the Information Office of the Commission shall make notice of this order available to the media serving Aquila's service area and to members of the General Assembly who represent Aquila's service area.

Proper persons wishing to intervene shall have ten days from the date of this order to file an application to intervene with the Secretary of the Commission and shall send a copy of the application to intervene to all parties as directed below. Any requests for hearing shall also be filed by that date.

If a hearing is request, the Commission will also require the parties to file a proposed procedural schedule. The requirement of a hearing has been fulfilled when all those having a desire to be heard are offered an opportunity to be heard. If no proper party is granted intervention, and neither the Commission's Staff nor the Office of the Public Counsel requests a hearing, the Commission may determine that a hearing is not necessary.

The Commission Staff shall also file its recommendation or preliminary response as directed below.

IT IS ORDERED THAT:

1. MEP Pleasant Hill, L.L.C. is made a party to this case.

2. The Data Center shall send a copy of this order to the county commissioners of the counties in Aquila's service area.

3. The Information Officer of the Missouri Public Service Commission shall make notice available to the members of the General Assembly representing the service area of Aquila, Inc., and to the media which serve Aquila, Inc.'s service area.

4. Any interested person wishing to intervene in this case shall file an application to intervene on or before November 13, 2006, with:

Secretary
Missouri Public Service Commission
Post Office Box 360
Jefferson City, Missouri 65102

and serve a copy on:

Paul A. Boudreau
Brydon, Swearengen & England, P.C.
312 East Capitol Avenue
Post Office Box 456
Jefferson City, Missouri 65102

and

Denny Williams
Aquila, Inc.
20 West Ninth Street
Kansas City, Missouri 64105

and

Office of the Public Counsel
Post Office Box 2230
Jefferson City, Missouri 65102

5. Any requests for a hearing shall be filed on or before November 13, 2006.

6. Should a hearing be requested, the parties shall file a proposed procedural schedule on or before November 15, 2006, and such procedural schedule shall provide for a hearing to take place on or before November 22, 2006.

7. No later than November 15, 2006, the Staff of the Missouri Public Service Commission shall file its recommendation or a preliminary response to the application.

8. This order shall become effective on November 1, 2006.

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)

Harold Stearley, Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 1st day of November, 2006.