

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 1st day of
February, 2007.

In the Matter of the Application of Aquila, Inc., for)	
Authority to Acquire, Sell and Lease Back Three)	
Natural Gas-Fired Combustion Turbine Power)	<u>Case No. EO-2005-0156</u>
Generation Units and Related Improvements to be)	
Installed and Operated in the City of Peculiar,)	
Missouri.)	

ORDER DENYING MOTION FOR REHEARING

Issue Date: February 1, 2007

Effective Date: February 1, 2007

Syllabus: This order denies the Office of the Public Counsel's Motion for Rehearing.

On December 19, 2005, the Commission issued a Report and Order that permitted Aquila, Inc., to enter into a Chapter 100 financing agreement with the City of Peculiar regarding Aquila's South Harper facility and related Peculiar Substation. The Office of the Public Counsel filed a Motion for Rehearing on December 29, 2005.

In its motion, OPC alleges that the Commission erred by finding that Section 393.190 did not apply to the transaction between Aquila and the city. The Commission ruled that the turbines and associated equipment were not "necessary or useful" because they were not providing electricity at the time of the transaction.

Further, OPC requests rehearing on the Commission's ruling that it should not impose sanctions against Aquila for failing to be forthcoming in its pleadings. OPC states that Aquila failed to adequately inform OPC that it had entered into the Chapter 100 agreement with the city before OPC, Staff and Aquila signed a stipulation that OPC later

wanted to withdraw from. Staff largely concurs with OPC's Section 393.190 analysis, but not its sanctions analysis.

Aquila responded on January 17, 2006, reminding the Commission that it had previously ruled that such a financing arrangement did not come within the purview of Section 393.190 because it was not disposing of necessary or useful parts of the company's franchise, works or system.¹ Aquila argues that the statute's purpose is not to prevent companies from taking advantage of laws that allow Aquila to minimize its tax liability, thereby reducing the ratepayers' cost of service, but instead to " . . . ensure the continuation of adequate service to the public served by the utility."²

In response to OPC's motion for sanctions, Aquila reasons that because the Commission correctly concluded that the financing transaction was not covered by Section 393.190, there was no provision of law that Aquila violated. Further, OPC cites a data request response that Aquila gave OPC on March 23, 2005, in which it stated that the city currently holds legal title of the property under the Chapter 100 agreement with Aquila. Finally, Aquila cites a June 29, 2005 pleading in which it stated that the Chapter 100 financing was already in place.

The Commission held this motion in abeyance pending the outcome of a lawsuit that Stopaquila.org filed against the City of Peculiar. The lawsuit alleged that the city improperly approved the financing arrangement with Aquila without first obtaining voter approval. On December 19, 2006, the Supreme Court of Missouri ruled that the city did not need voter approval for the Chapter 100 financing arrangement at issue here.³

¹ *In re Application of Arkansas Power & Light Co.*, Case No. EO-81-216 (January 23, 1981).

² *See State ex rel. Fee Fee Trunk Sewer, Inc., v. Litz*, 596 S.W.2d 466, 468 (Mo. App. 1980)

³ *See Stopaquila.org, et. al. v. City of Peculiar*, SC87302 (Opinion issued December 19, 2006)(mandate issued January 8, 2007).

Section 386.500 RSMo 2000 allows the Commission to grant rehearing if in its judgment, sufficient reason therefore be made to appear. Upon review of the parties' motions, the Commission finds no reason to depart from its analysis in the Report and Order. Again, this transaction appears to be outside of the scope of the type contemplated by Section 393.190. Aquila is not ceding control over those assets; the only reason for the transaction is for Aquila to gain a tax advantage. Further, although perhaps not artfully, Aquila put OPC on actual notice of the December 30, 2004 transaction in March, 2005, some six months before OPC's request to stay the proceedings and deny Aquila's requests.

The Commission finds no sufficient reason for rehearing, and will deny the motion.

IT IS ORDERED THAT:

1. The Motion for Rehearing filed by the Office of the Public Counsel is denied.
2. This order shall become effective on February 1, 2007.
3. This case shall be closed on February 2, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

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

Pridgin, Senior Regulatory Law Judge