

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 7th day of
July, 2005.

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 GRANTING MOTION TO SUSPEND
PROCEDURAL SCHEDULE AND HEARING**

Issue Date: July 7, 2005

Effective Date: July 7, 2005

On December 6, 2004, Aquila, Inc., asked for authority to sell and lease back three natural gas-fired combustion turbines. The Commission scheduled a hearing on Aquila's application for July 13 and 14.

On June 23, the Office of the Public Counsel filed a Motion to Suspend Procedural Schedule and Hearing and Request for Expedited Treatment. Public Counsel stated that the Circuit Court of Cass County enjoined Aquila from building the generating station. Further, Public Counsel stated that Aquila appealed the injunction, and that the Court of Appeals recently affirmed the circuit court.

In light of the Court of Appeals' opinion, Public Counsel states that Aquila's application is moot, and asks that the Commission suspend the hearing. Cass County supports Public Counsel's motion.

Aquila objects, stating that the Western District's opinion is not final. Also, Aquila points out that Cass County asked the Commission to suspend the procedural schedule in January because of the Western District appeal. The Commission denied Cass County's request, stating that it was aware of the risk that the case could be moot, and would proceed knowing that risk. Aquila suggests that the same logic applies now, and that the Commission should again deny a motion to suspend.

Staff concurs with Aquila. Staff says that the circumstances now are not significantly different than the circumstances present in January, when the Commission denied Cass County's motion to suspend. Staff further states that the only contested issue appears to be the value of the three turbines.

The circumstances now are far different than they were when the Commission denied Cass County's motion to suspend in January. The Court of Appeals recently affirmed the circuit court's injunction. Unless the Court of Appeals grants rehearing and reverses the circuit court, or the Supreme Court grants transfer and reverses the circuit court, the Commission's efforts to hear this case would be wasted. The wiser course of action is to suspend the hearing until the Court of Appeals and the Supreme Court of Missouri have ruled on Aquila's post-opinion applications for rehearing and transfer in the injunction case.

IT IS THEREFORE ORDERED:

1. That the Office of the Public Counsel's Motion to Suspend Procedural Schedule and Hearing is granted.
2. That the hearing scheduled for July 13-14, 2005, is canceled.

3. That this order shall become effective on July 7, 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., Gaw and Clayton, CC., concur
Murray and Appling, CC., dissent

Pridgin, Regulatory Law Judge