

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE 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)
Installed and Operated in the City of)
Peculiar, Missouri.)

Case No. EO-2005-0156

MOTION FOR RECONSIDERATION

COMES NOW Aquila, Inc. ("Aquila" or "Company"), by counsel, and, pursuant to 4 CSR 240-2.160(2), respectfully requests that the Missouri Public Service Commission (the "Commission") reconsider its *Order Granting Motion to Suspend Procedural Schedule and Hearing* dated July 7, 2005. In support of its Motion for Reconsideration, Aquila states as follows to the Commission:

1. The Requested Relief. By its application which is the subject of this case, Aquila seeks (1) authorization of the acquisition by Aquila Networks – MPS of three natural gas-fired combustion turbines from an affiliate at a transfer value of \$70,796,850 and (2) authorization to enter into a sale and leaseback arrangement with the City of Peculiar and to subject the South Harper Facility ("South Harper") to the lien of an indenture to facilitate the issuance of tax-advantage Chapter 100 RSMo revenue bonds to finance its construction and operation. This request is not moot and the Commission should proceed with this case and reschedule the application for hearing as soon as possible.

2. The Consequences of Failure to Proceed. The turbines were transferred on November 30, 2004. The transaction is between Aquila and an affiliate. The transaction is unaffected by how Aquila Networks-MPS ultimately deploys or does not

deploy the equipment. The decision of the Court of Appeals does not impact the value of the turbines. Aquila must have a valuation determination from the Commission in order to know how to record the assets on its books in any event. This issue is also unaffected by the ultimate use of the equipment.

No party to this case has indicated any reservation about the use of Chapter 100 bonds. In fact, all parties that filed testimony have indicated that this source of funding is beneficial because it results in lower costs to customers. However, if the Commission does not approve the Chapter 100 financing by December 31, 2005, the existing agreements are subject to expiration. Approval of the Chapter 100 financing mechanism creates no potential for harm in the event that Aquila is ultimately prohibited from operating South Harper, because the financing arrangement can be unwound at any time.

By suspending this proceeding, the Commission may inadvertently indicate that it has doubt in the validity of its Order Clarifying Prior Certificates of Convenience and Necessity issued April 7, 2005, in Case No. EA-2005-0248. Suspension of this proceeding may send the message that the Commission has changed its position and now agrees that Cass County has primary jurisdiction over the placement and construction of not only power plants, but also substations, transmission lines and all other utility facilities in all portions of the county.

Suspension of the proceeding, days before the scheduled hearing, has eliminated the incentive for the parties to reach a settlement and will likely cause a duplication of the efforts which have been expended to date by all parties when the subject issues reappear in another docket. **Simply rescheduling the application for**

hearing could result in the resolution of any remaining issues thus promoting the efficient use of the resources of all concerned.

3. The Need for the South Harper Facility. South Harper is a three unit gas fired peaking power production plant, constructed by Aquila in Cass County to replace a power purchase agreement that expired on May 31, 2005. The plant is designed to generate 315 megawatts of electricity during times of peak demand, mainly during the hot summer months and is necessary to meet the increasing demand in Aquila's Missouri service area including the need for year-round peaking capability to satisfy the Company's native load¹. A newly constructed substation at Peculiar supports the South Harper plant and will supplement the nine other Aquila substations currently operating in unincorporated Cass County. There are operational and cost advantages inherent in a utility's ownership of generating facilities, and the Commission has stated its preference for company-owned generation instead of reliance on purchase power contracts to meet native load requirements. Without South Harper, Aquila will be required to purchase power from other sources, likely at much higher costs. Consequently, the transactions which are the subject of this proceeding have rate case implications.

4. Efforts to Cooperate with Cass County

In attempting to meet the service needs of its customers through the planning and construction of its peaking facility, Aquila made a great effort to work with Cass County and other local government officials during the summer of 2004 to develop a mutually acceptable construction plan².

¹ In this regard, Aquila is adding approximately 5000 new customers each year in the western Missouri service area, and electric load in this area has increased approximately 7.5 percent since 2002.

² In connection with the construction and development of the South Harper plant and substation, in addition to the authority requested from the Commission in the instant case, Aquila prepared to apply for,

In order to contain costs which are ultimately charged to customers, a detailed site selection study was conducted to locate feasible construction sites in close proximity to existing natural gas supply lines and electric transmission facilities. Relatively few sites meeting these criteria are available. Aquila initially desired to build its plant near Harrisonville. The Company initiated meetings in March 2004 with Cass County officials to discuss the planned construction of the generation facility at the Harrisonville site. After a series of meetings during the next three months, and based upon the recommendation of Cass County officials, Aquila filed an application for a Special Use Permit in June, 2004 rather than for zoning approval. This application was made in an effort to work with the County even though the Company's legal advice was that such approval was unnecessary. The Cass County Planning and Zoning Board, however, voted to deny Aquila's application on July 13, 2004.

Recognizing its obligation to provide service within its certificated area, Aquila attempted to comply with the wishes of the County and abandoned the Harrisonville site in favor of another location. In consultation with and at the invitation of the City of Peculiar, Aquila proceeded with the purchase of an alternate site for its plant at 243rd Street and Harper Road, approximately two miles southwest of Peculiar.

The City of Peculiar intended to annex the South Harper site, thereby removing it from the jurisdiction of unincorporated Cass County, and issue Chapter 100 bonds to help finance the project. The Peculiar Board of Aldermen completed a first reading of

applied for, and/or obtained all required authorizations from local, state, and federal authorities, including but not limited to, County driveway permits, County building code permits, a Prevention of Significant Deterioration ("PSD") air permit, acid rain permit, review of threatened and endangered species, wetland determinations, cultural resources review, permits under the National Pollutant Discharge Elimination System ("NPDES") and Stormwater Pollution Protection Plan ("SWPPP") for construction activity, NPDES hydrostatic testing permit amendment, NPDES and SWPPP operating permits, and baseline noise study.

the annexation proposal, but during the second reading encountered resistance to the annexation plan. Citing potential legal challenges and delays to construction, in late October 2004, the Board decided not to proceed with the second and final reading, believing that Aquila already had the needed construction authority from the certificate issued by the Commission.

No other feasible construction sites were readily available to allow the construction of peaking facilities to meet the summer 2005 peaking requirements, which Aquila was obligated to provide. Therefore, while Aquila was, and continues to remain, open to working with the County toward settlement of potential land use issues, the Company felt duty-bound to proceed with the construction of the South Harper plant pursuant to its rights and obligations under the Commission-issued certificate in order to meet its duty to serve its Cass County and other customers at reasonable cost.

5. Timing Considerations and the Status of the Facility. In order for Aquila to continue to provide service during the summer 2005 cooling season South Harper was scheduled to be in-service by June 30, 2005. South Harper is now nearly complete at a cost in excess of \$145 million. Units one, two and three have been synchronized into the grid and the plant is generating electricity for Aquila's customers.

6. The South Harper Facility and Aquila's Authority. South Harper and the related substation are located on property in Cass County owned by Aquila. Prior to any construction, the Commission, through certificates of public convenience and necessity, had authorized Aquila to construct, operate and maintain electric facilities and to render electric service throughout portions of Cass County. The Commission confirmed this by its April 7, 2005, Order in Case No. EA-2005-0248.

7. Cass County Litigation and the Stay of the Court's Order. Shortly after land-clearing activities for construction of South Harper began, petitions for injunctive relief were filed by Cass County, Missouri and an association of individuals, challenging the right of Aquila to construct the plant and the substation. The Cass County Circuit Court issued an injunction enjoining Aquila from continuing with construction. However, the court's judgment also provided for the injunction to be stayed during the pendency of any appeals. Aquila posted a surety bond pursuant to the court's order, and the injunction remains stayed at this time. **In continuing with the construction and operation of South Harper, Aquila has not violated the Cass County Circuit Court's injunction nor any other court order.**

8. The Appellate Decision. The decision of the Court of Appeals holding that all of Aquila's "rights" and "privileges" to construct power plants and substations within Cass County flow from and are subject to the 1917 consent ("franchise") issued by the County under Section 229.100, is erroneous and contrary to existing law³. The Court's decision would end nearly a century of comprehensive statewide public utility regulation in Missouri by transferring to county authorities the direct power to approve or refuse to permit utilities to construct utility plants, substations, and other infrastructure on private property. Aquila has moved the Court of Appeals to reconsider and reverse its decision or, alternatively, to transfer the case to the Missouri Supreme Court.

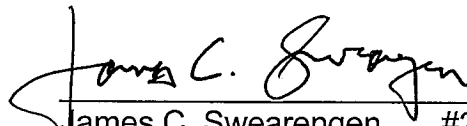
9. Power May Need to be Purchased at a Higher Cost with Regulatory Consequences. Ultimately, if Aquila is ordered to dismantle South Harper and the substation, the Company will be required to purchase power in order to continue to

³ Counties under Section 229.100 have only the authority to give utility companies permission to use county roads and highways.

provide service to its customers. Aquila has requested a "true-up" in its pending electric rate case, Case No. ER-2005-0436, to capture for rate-making purposes the costs of South Harper and related facilities. **If South Harper cannot be utilized, the costs associated with a replacement source of power must be recognized in rates. In either event, a true-up is necessary and recovery of prudently incurred costs allowed.**

WHEREFORE, for the good cause shown above, Aquila, Inc. respectfully requests that the Missouri Public Service Commission reconsider its *Order Granting Motion to Suspend Procedural Schedule and Hearing* dated July 7, 2005, and thereafter proceed with this case by rescheduling the matter for hearing as soon as practicable.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "James C. Swearengen", is written over a horizontal line.

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ATTORNEYS FOR AQUILA, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, hand delivery, or electronic transmission, on this 13TH day of July, 2005, to counsel for all parties in the captioned-proceeding, Case No. EO-2005-0156, as well as to counsel for all parties in Aquila's pending electric rate case, Case No. ER-2005-0436.

