BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Aquila, Inc. for a Specific Confirmation or in the Alternative, Issuance of a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Control, Manage and Maintain a Combustion Turbine Electric Generating Station and Associated Electric Transmission Substations in Unincorporated Areas of Cass County, Missouri Near the Town of Peculiar	)	Case No. EA-2005-0248

STAFF'S BRIEF

COMES NOW the Staff of the Missouri Public Service Commission and submits its brief in this case.

INTRODUCTION

Aquila Inc. is a Delaware Corporation[1] and a Missouri-regulated public utility company.[2] As an investor-owned electrical corporation (and gas corporation and heating company), Aquila is subject to the jurisdiction of the Commission.[3] Aquila is authorized by the Commission under its Certificates of Convenience and Necessity (CCNs) to conduct business in its certificated areas, which include most of Cass County, Missouri.[4]

This case involves Aquila's authority to site a 315-megawatt peaking power plant known as the South Harper facility in Cass County, southwest of Peculiar, Missouri.[5] The power will be generated by three 105 megawatt gas-fired combustion turbine generating units to provide

---

[1] Stipulated Fact 3.
[2] Stipulated Fact 10.
[3] *Id*.
[4] Stipulated Facts 27 and 28.
[5] Aquila App. at Appendix 4.

electric peaking power.[6] The site is adjacent to a Southern Star compressor station that will provide fuel.[7]

Aquila has a purchased power contract ending on May 31, 2005[8] and has expressed its interest in completing construction of the South Harper facility by June 2005.[9] Aquila has obtained the necessary permits from the Missouri Department of Natural Resources.[10] Aquila has also obtained building permits, but not zoning authority from Cass County.[11] Aquila has come to the Commission asking it to exercise its jurisdiction, asserting that Aquila does not need Cass County's approval because it has authorization to build the facility under its relevant CCN.

In its Application to this Commission (Aquila App.), Aquila made alternative requests for relief. The first request for relief is that the Commission confirm that Aquila has authorization under its current CCN to build and operate a natural gas fired electric generating station and an associated substation.[12] The second, alternative, request for relief is that the Commission issue a site-specific, or overlapping, CCN that authorizes Aquila to build the South Harper plant.[13]

Cass County, Missouri (Cass County) and StopAquila.org have challenged Aquila's right to proceed with construction of this facility in Cass County, claiming that Aquila must first comply with local zoning ordinances. As a first-class, non-charter county, Cass County adopted zoning ordinances pursuant to authority granted to it in Chapter 64 RSMo,[14] and Cass County

---

[6] Stipulated Fact 56.
[7] Aquila App. at Appendix 4.
[8] Stipulated Fact 58.
[9] Stipulated Facts 59, 60.
[10] Stipulated Fact 73.
[11] Stipulated Fact
[12] Aquila App. p. 2.
[13] Aquila App. p. 3.
[14] Statutory references are to RSMo 2000, unless otherwise noted.

claims that Aquila must comply with Cass County's zoning ordinances.[15] StopAquila.org is an unincorporated association of individuals, some of whom are Aquila customers, who oppose construction of the South Harper facility and who generally reside in Cass County.[16]

The Commission has jurisdiction over publicly-owned electrical corporations and has primary jurisdiction in matters involving utility companies.[17] The Commission has authority to issue an order determining the extent of the authority granted to Aquila under its current CCN. The Commission has primary jurisdiction over matters designated to it by the legislature in Chapters 386 and 393 RSMo.

I. PROCEDURAL HISTORY

On January 28, 2005, Aquila, Inc. filed its Application for confirmation that it has authority under its current CCN to construct electric generation facilities or, in the alternative, for an additional overlapping or site-specific CCN to construct the South Harper combustion turbine electric generating power station with associated electric transmission substations in Cass County, Missouri. On February 1, 2005, Aquila filed a Motion for Expedited Treatment and, in a separate pleading, a request for Protective Order, both of which the Commission granted on February 2, 2005. On February 1, 2005, StopAquila.org filed for intervention. On February 3, 2005, Cass County, Missouri, filed its application to intervene. On February 4, 2005, Aquila filed its Motion to Establish Procedural Schedule. On February 10, 2005, the Commission granted Cass County's and StopAquila.org's applications to intervene.

On February 15, 2005, the Parties to the case submitted a Joint Response to Commission Order suggesting two procedural schedules. One contemplates that the Commission would issue

---

[15] Stipulated Facts 1, 4, and 6.
[16] Stipulated Fact 2.
[17] *MCI Metro Access Transmission Services, Inc. v. City of St. Louis*, 941 S.W.2d 634, 644 (Mo. App. 1997).

its order clarifying that Aquila has the authority under its current CCN to build electric power plants in its currently certificated area. (Aquila App. p. 2.) The second is an alternative procedural schedule based on Aquila's alternative request for a site specific or overlapping CCN. (Aquila App. p. 3.)

Both StopAquila.org and Cass County filed Motions to Dismiss. Aquila responded on February 9, 2005, and supplemented its response on March 2, after the Commission held an on-the-record presentation. Staff responded on March 9, 2005. The Parties filed a Joint Stipulation of Facts On March 10.

In the on-the-record presentation held on Friday, February 25, 2005, Aquila expressed its preference that the Commission proceed with Aquila's first request for a clarification order, that Aquila already has the specific authority it needs under its current CCN to proceed with construction. Notably Aquila, is not asking the Commission to construe § 64.235 RSMo, the zoning statute that is the subject of Aquila's Western District appeal from the Cass County judgment.

II. DISCUSSION

A. The Commission has jurisdiction over Aquila's utility operations in Missouri and has jurisdiction to determine Aquila's authority under its Commission-approved CCNs.

The Commission's jurisdiction to regulate publicly-owned utility companies is found in Chapters 386, 392 and 393 RSMo, known as the Public Service Commission Law or PSC Law, Section 386.010 RSMo. Under its enabling statutes, the Commission has broad powers of supervision and regulation over electric, gas, water and sewer utilities. The Legislature has placed within the Commission's jurisdiction "generally all matters relating to rights, facilities,

service, and other correlated matters of a public service company."[18] Under Chapter 386, the Commission has extensive jurisdiction:

> [The] Commission shall be vested with and possessed of the powers and duties in this chapter specified and also all powers necessary or proper to enable it to carry out fully and effectually all the purposes of this chapter

Section 386.040.

> [T]he jurisdiction, supervision, powers and duties of [the commission] shall extend. . . (1) to the manufacture, sale, distribution of . . . electricity for light, heat and power, within the state and to persons or corporations owning, leasing, operating or controlling the same

Section 386.020(1).

> To all public utility corporations and persons whatsoever subject to the provisions of this chapter as herein defined

Section 386.250(5).

> To such other and further extent, and to all such other and additional matters and things, and in such further respects as may herein appear, either expressly or impliedly.

Section 386.250(7).

Missouri courts have long recognized that, in the PSC Law, the Legislature delegates a large area of authority and discretion to the Commission and "many of its decisions necessarily rest largely in the exercise of a sound judgment."[19] Moreover, the PSC Law is to be broadly construed to effect the public interest. As remedial statutes the PSC Law is read under "the long standing doctrine that the statute is to be liberally construed for the public's, *ergo* the

---

[18] *State ex rel. Cirese v. Ridge*, 138 S.W.2d 1012 (1940).
[19] *State ex rel. Dyer v. Public Serv. Comm'n*, 341 S.W.2d 795, 802 (Mo. 1960), *cert. denied*, 366 U.S. 924, 81 S.Ct. 1351 (1961).

consumer's, protection."[20] Specifically addressing the PSC Law, in *De Paul Hospital School of Nursing*,[21] the court recognized that the PSC Law is referable to the police power of the state:

> [T]he Public Service Commission Law of our own state has been uniformly held and recognized by this court to be a remedial statute, which is bottomed on, and is referable to, the police power of the state, and under well-settled legal principles, as well as by reason of the precise language of the Public Service Commission Act itself, is to be liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities. *State ex rel. Laundry, Inc. v. Public Service Commission*, 327 Mo. 93, 34 S.W.2d 37, 42--3(2, 3) (Mo.1931). In its broadest aspects, the general purpose of such regulatory legislation is to substitute regulated monopoly for destructive competition. But the dominant thought and purpose of the policy is the protection of the public while the protection given the utility is merely incidental.

Aquila, Inc., is a public utility company subject to the jurisdiction of this Commission.[22] Acting within its jurisdiction, the Commission has made various grants of authority to Aquila. The history of Aquila's grants of authority from the Commission are found in Stipulated Facts 16-30. Pertinent to this discussion, Aquila has been providing electric service in Cass County for almost 90 years.[23]

In the regulation of public utility companies in Missouri, the Commission has primary jurisdiction. In fact, the Commission has exclusive jurisdiction in the first instance.[24] Missouri's courts have regularly applied the doctrine of primary jurisdiction when addressing issues involving public utilities. In *Cirese v. Ridge*, the Missouri Supreme Court determined that the Commission had primary jurisdiction;l therefore, the Circuit Court did not have concurrent jurisdiction, and was without jurisdiction until the Commission had resolved the issue:

---

[20] Section 386.610 (The provisions of this chapter shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities).
[21] *De Paul Hosp. Sch. of Nursing, Inc. v. Southwestern Bell Tel. Co.*, 539 S.W.2d 542, 548 (Mo.App. 1976) (citations omitted).
[22] Section 386.250(1).
[23] Stipulated Fact 11.
[24] *State ex rel. Cirese v. Ridge*, 138 S.W.2d 1012 (1940).

> [T]he Kansas City Light and Power Co. contends that the circuit court has concurrent jurisdiction over said subject matter. We do not think so. Generally the courts, including this court, favor the regulation of public utilities by Public Service Commissions. *In State ex inf. Kansas City Gas Co.*, 163 S.W. 854, 860 we state that "he who reads it [Public Service Commission Law], and does not see that the yearning of the lawmaker was to have the courts trust the commission in the first instance to solve such business problems as those presented in this case, reads it to still less purpose." In substance, we have so stated in many opinions.

The Court went on to explore the rationale behind the doctrine of primary jurisdiction and explained:

> It is [up to the legislature] to determine what the policy of the [state] shall be, or it may designate an agency of the government to determine that policy. . . [T]he Legislature has the power to determine who shall promulgate and enforce its declared public policy, and, when an agency of the government is selected or created for that purpose, no other body, judicial, executive, or municipal, can step in, and by decree, order, ordinance, or otherwise, actively enforce the policy, or do other acts in relation thereto, except possibly to sustain the legislatively created or designated body . . . . There has been placed under the regulation, supervision, and control of the commission generally all matters relating to rights, facilities, service, and other correlated matters of a public service company. . . . Courts were not intended to be the administrative tribunal for this purpose.[25]

The policy of primary jurisdiction particularly applies where administrative knowledge and expertise are necessary to determine technical, intricate fact questions, and where uniformity is important to the regulatory scheme.[26] This case is not exclusively a matter of law. It also involves questions of fact concerning what rights and privileges Aquila was granted by its Commission-ordered CCNs. In making such a finding, the Commission would be acting within its primary jurisdiction under Chapter 386. Additionally, in interpreting its enabling statutes, the

---

[25] *Id*. at 1014.

[26] *Main Line Hauling Co. v. Public Serv. Comm'n,* 577 S.W.2d 50, 51 (Mo.App. 1978)(holding that the doctrine did not apply because the substantive issue presently for consideration can be resolved as a pure question of law).

Commission would be acting within its jurisdiction. The Commission's interpretation of its enabling statute and the statutes it is charged with administering is entitled to great weight.[27]

Aquila is asking this Commission to exercise its jurisdiction and issue an order interpreting the Commission's past orders concerning Aquila's CCN. The Commission is entitled to interpret its own orders and to give them a proper meaning.[28] The Courts have determined that when the Commission does so it is not acting judicially, but as a fact-finder. "It will not do to say that the commission cannot interpret its own orders. Denial of the power of the commission to ascribe a proper meaning to its orders would result in confusion and deprive it of power to function. In interpreting its orders it does not act judicially, but as a fact-finding agency."[29] The Commission acts within its jurisdiction when it interprets the statute under which it acts and its own past orders. Not only is the Commission's interpretation of its enabling statutes entitled to great weight, but its findings of fact will not be disturbed absent a lack of competent and substantial evidence.[30]

B. The Commission has jurisdiction to grant a clarification order.

In its request for a clarification order, Aquila requests that the Commission make a finding that Aquila has the specific authority in its relevant CCN to construct plant in its certificated area under its current operational authority from this Commission. Before the Commission will issue a CCN, a utility company must demonstrate that it has the required local consent or permission, a local franchise to operate in a particular area. Franchises that are not of

---

[27] *State ex rel. Jackson County v. Public Serv. Comm'n*, 532 S.W.2d 20, 22 (Mo. banc 1975); *Foremost-McKesson, Inc. et al., v. Davis, et al*. 488 S.W.2d 193, 197 (Mo. 1966).
[28] *State ex rel. Beaufort Transfer Co. v. Public Serv. Comm'n*, 312 S.W.2d 363 (Mo.App. 1958); *State ex rel. Orscheln Bros. Truck Lines v. Public Serv. Comm'n* 110 S.W.2d 364 (1937).
[29] *State ex rel. Orscheln Bros. Truck Lines v. Public Serv. Comm'n*, 110 S.W.2d 364, 366 (1937).
[30] *State ex rel. Inman Freight System v. Public Service Comm'n.,* 600 S.W.2d 650, 654(Mo.App. 1980).

limited duration are perpetual in nature. "In absence of any general law limiting duration of franchises for operation of an electrical system on the roads and highways of a county, the grant of a franchise for that purpose, without specifying a period of duration, is a grant in perpetuity."[31] A utility franchise is "local permission to use the public roads and rights-of-way in a manner not available to or exercised by the ordinary citizen."[32]

Over a number of years the Commission granted Aquila's predecessors a variety of CCNs. Each grant of a CCN required proof of a utility franchise from the "proper municipal authorities"[33] before the Commission would issue a CCN. In addition to the CCN's issued to predecessors of Aquila, in 1922, the Commission issued a Financing Order to West Missouri Power Company (one of Aquila's predecessors) and ordered that the company could sell stock "for the reimbursement of moneys heretofore or hereafter actually expended from income of the Company for the acquisition of property, the construction, completion, extension or improvement of the plants or distribution systems of said Company . . . ."[34] This order indicates that Aquila's predecessors had authority to construct plant in its then certificated areas.

In the 1938 Commission order granting Aquila a certificate of convenience and necessity to serve most areas of Cass County, among other areas, the Commission carefully reviewed the communities and areas for which Aquila had obtained a local franchise. (Commission Case No. 9470)(This Order was filed in this case on February 25, 2005, in *Response of Aquila Inc. To The Commission Order Directing Filing*.) The Commission stated that Aquila had obtained a franchise for service in Cass County. (Case No. Report and Order p. 2.) In 1950, the

---

[31] *Missouri Public Service Co. v. Platte-Clay Elec. Co-op., Inc*., 407 S.W.2d 883, 888 (Mo. 1966).
[32] *State ex rel. Union Electric Co., v. Public Serv. Comm'n*, 770 S.W.2d 283, 285 (Mo App. 1989).
[33] Section 393.170.2.
[34] *In the Matter of the Application of the West Missouri Power Company for Permission to Issue Preferred Stock*, Case No. 3171, March 21, 1922)

Commission issued its Report and Order in Case No. 11,892, (also filed in this case on February 25, 2005) in which the Commission issued a CCN for Aquila's predecessor permitting it to:

> own, maintain and operate all properties and assets, and to acquire, hold and exercise all contracts, franchises, permits and rights now held and possessed by Missouri Public Service Corporation; including, without limitation, all rights to construct, own and maintain electric utility facilities in the areas in the State of Missouri described and designated in the order of this Commission entered in case No. 9470 on January 18, 1938.

The issue before this Commission is whether these grants of authority give Aquila specific permission to build additional electric utility facilities in Cass County or whether Aquila must obtain from the Commission an additional site-specific CCN to build the South Harper facility. The *Harline* case is relevant to these issues.[35] *Harline* is instructive concerning what grants of authority Aquila has under its relevant CCNs and whether the Commission may issue a site-specific or overlapping CCN. The *Harline* Court specifically addressed the issue of Aquila's authority under its relevant CCN. In *Harline* the Court posed the "basic issue for decision" as "[m]ust a public utility obtain an additional certificate of convenience and necessity from the Commission to construct each extension and addition to its existing transmission lines and facilities within a territory already allocated to it under a determination of public convenience and necessity?"[36]

Aquila's requests for relief in this case pose nearly the same issue for decision. Aquila asks the Commission to determine that its current CCN is sufficient and that it contains adequate authorization for Aquila to construct South Harper. The *Harline* case not only provides guidance in what authority Aquila has under its relevant CCN, it is nearly controlling authority.

---

[35] *State ex rel. Harline v. Public Service Commission,* 343 S.W.2d 177 183 (Mo. App.1960).
[36] *Id*.

Harline supports the interpretation that the CCN granted in the 1938 Order No. 9470 granted Aquila authority to construct whatever facilities it needs to comply with its duty to serve the public. The *Harline* Court concluded that the Company had a legal duty to serve the public in its certificated area and that the Company could perform its duty to render electric service by extending lines and building new facilities as required with no further grant of authority from the Commission, citing the Company's corporate charter and Section 393.130.[37] Further, the Court concluded that the Company could fulfill its duty to provide electric service to its customers in its certificated area only if it continued to build facilities.[38]

In a 1979 Union Electric case Union Electric[39] filed a request similar to Aquila's request in this case. Union Electric asked the Commission for authority to construct two combustion turbine generation peaking units in its certificated area.

In its Report and Order in the Union Electric case, this Commission relied on *Harline*,[40] which addresses the CCN issued to Aquila's predecessor company, and this Commission's January 19, 1938 order in Case No. 9420. In concluding that UE did not need a CCN to construct electric plant in its certificated area the Commission stated that, while it was *dicta*, the Eastern District "assumed that proposed plant to be constructed within a certificated area does not need the approval of the Commission."[41]

The Commission's further discussion of *Harline* in the Union Electric case demonstrates the Commission's understanding of the Court's decision. The Commission determined: "that a

---

[37] *Id*. at 181.
[38] *Id.* at 177.
[39] Case No. EA-79-119, *In the Matter of Union Electric Company for permission and authority to construct, operate and maintain two combustion turbine generating units in the State of Missouri*, 24 Mo. P.S.C. (N.S.) 72 (1980).
[40] 343 S.W.2d 177.
[41] *Id*. *citing State ex rel. Utility Consumers Council v. Public Serv, Comm'n,* 562 S.W.2d 688, 690 (Mo. App. 1978).

certificate is only needed when an electric corporation starts in business or if it attempts to expand its authority in an entirely new area . . . . Accordingly, the Commission is of the opinion that it is not necessary for electric utilities to come before us to obtain permission to build plant within their certificated areas."[42]

The Commission then discussed the function of CCNs, noting that a utility company's powers are actually corporate powers:

> The threshold question to be addressed in this proceeding is whether electric utilities under the Commission's jurisdiction must obtain our approval through the issuance of a certificate of convenience and necessity before it can build plant within its certificated area.
>
> Initially, it is relevant to discuss what function a certificate of convenience and necessity fulfills in the administrative process. A certificate of convenience and necessity does not grant a utility any powers it does not already possess. On the other hand, a certificate cannot take away any right or power then existing to the utility. The corporate powers of a utility are not found in a certificate of convenience and necessity. *State ex rel. City of Sikeston v. Missouri Utilities Company, 53 SW2d 394, 399* (Mo. banc 1932). A certificate only permits a utility to utilize those rights and privileges already conferred upon it. *State ex rel. Harline v. Public Service Commission, 343 SW2d 177 (Mo. App. KCD 1960)*
>
> .

24 Mo. P.S.C. (N.S.) 72 (1980).

In further discussion of *Harline*, in the Union Electric case, the Commission noted that:

> In the *Harline* case, the court held that all corporate powers of a utility are derived from the State by virtue of its charter, which includes all enacted statutes. A utility derives from *Section 351.385, RSMo 1978* all powers necessary or convenient to affect (*sic*) any or all purposes for which it is formed. *Section 393.010, RSMo 1978* confers on the utility the special power to manufacture, sell and furnish electricity.

Considering that the utility company derives its powers from the Legislature in these statutory sections, the Commission then posed the question of what is the purpose of a CCN:

---

[42] 24 Mo.PS.C. (N.S.) at 78.

> Having considered the above, then of what value is a certificate of convenience and necessity? The Commission is delegated the statutory authority to grant or deny an application for a certificate, after hearing, to protect the public interest. The statutory power gives the Commission a tool to regulate competition between utilities and to avoid the needless duplication of electric facilities. Thus, when a certificate is granted for a certain area, the Commission has determined through findings of fact and conclusions of law that the utility should operate within the certificated area. The certificate is the triggering mechanism that allows the utility to use the powers it already possesses.

24 Mo.P.S.C. (N.S.) 77.

The Commission explained that *Harline* had interpreted Section 393.170 and what emerged was that Commission approval "as expressed in a [CCN] is only required . . . (1) for any new company or additional company to begin business anywhere in the state, or (2) for an established company to enter new territory."[43]

Staff reads the decision in the Union Electric case,[44] in combination with *Harline*, [45] to mean that Aquila does not need further authorization from the Commission, that Aquila has the legal duty to serve its certificated area, and that it may engage in the necessary construction to do so under its current powers granted by statute and exercised under its relevant CCN. In the Union Electric case the Commission determined "that a certificate is only needed when an electric corporation starts in business or if it attempts to expand its authority in an entirely new area. . . Accordingly, the Commission is of the opinion that it is not necessary for electric utilities to come before us to obtain permission to build plant within their certificated areas."[46] But, even though the company is not required to come to the Commission for authority to construct generating facilities, the Commission may, in the proper circumstance, grant a utility company

---

[43] 24 Mo.P.S.C. (N.S.) at 79.
[44] 24 Mo. P.S.C. (N.S.) 72.
[45] 343 S.W.2d 177.
[46] *Id.*

authority to construct generating facilities or other plant in its certificated area. So the Commission may issue a site specific CNN in certain circumstances.

C. The Commission has jurisdiction to issue a site-specific or overlapping CCN.

Even though there are no specific statutes addressing overlapping or site specific CCNs, the Commission addressed this issue in the 1979 Union Electric case.[47] In a similar request for a CCN, as noted above, Union Electric applied to the Commission for authority to construct, operate and maintain two combustion turbine generating units within its certificated service area. The Commission reviewed Union Electric's reasons for building the additional units. In its published order, the Commission determined that the "threshold question to be addressed in this proceeding is whether electric utilities under the Commission's jurisdiction must obtain our approval through the issuance of a certificate of convenience and necessity before it can build plant within its certificated area."[48]

In the Union Electric case, the Commission declined to issue a CCN because UE had not made a timely application. The Commission did, however, leave open the possibility that a utility company might request authorization from the Commission for a CCN for electric generating plant construction in its certificated areas if a timely application were made.[49]

There is no specific statutory section concerning the issuance of an overlapping or site specific CCN. In terms of granting a new CCN, §393.170 provides guidance. This statutory section specifies the standard that the Commission is to use to determine whether a certificate should be granted. The standard is whether granting such approval is necessary or convenient for the public interest. Specifically, in pertinent part, the statute says:

---

[47] 24 Mo.P.S.C. (N.S.) 72.
[48] 24 Mo. P.S.C. (N.S.) 72 (1980).
[49] 24 Mo.P.S.C. (N.S.)at 79.

> The commission shall have the power to grant the permission and approval herein specified [granting a certificate] whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary.

Section 393.170 RSMo.

To determine how the statute is to be applied, it is necessary to examine what the phrase "necessary or convenient for the public interest" means. The Courts have continually held that the PSC Law is remedial, and as such should be liberally construed with a view to the public welfare. The PSC Law is to be "liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities." §386.610, RSMo. While substantial justice is part of the statute, the Courts have been clear that the public interest is the foremost concern in certificate of convenience and necessity cases. "In the determination of these matters, the rights of an applicant, with respect to the issuance of a certificate of convenience and necessity, are considered subservient to the public interest and convenience."[50]

In the context of a Commission proceeding involving a request for permission and authority under §393.170, it is the "interest of the public as a whole" that is at issue.[51] It is clear that the public interest—the public interest as a whole—with which public utility regulation and the Commission's jurisdiction is primarily concerned, is directed at a broad segment of the public. Within that segment, the Commission's interest and duty is primarily directed to the interests of all the regulated utility ratepayers.[52]

---

[50] *State ex rel. Missouri Pac. Freight Transport Co. v. Public Service Comm'n*, 295 S.W.2d 128, 132(Mo. 1956).
[51] *See*, *e.g. State ex rel. Public Water Supply Dist. No. 8 of Jefferson City v. Public Serv. Comm'n,* 600 S.W.2d 147, 156 (Mo.App. 1980).
[52] *State ex rel. Capital City Water Co. v. Public Serv. Comm'n*, 850 S.W. 2d, 903, 911(Mo. App. W. D. 1993)(The Commission's principal interest is to serve and protect ratepayers.)

The case law indicates that the Commission will, in general, give more weight to its role of protecting utility patrons than is given to the utility itself, but there is no case that says that that the public interests of one customer or customer group should or may take precedence over the public as a whole and the need for reliable, adequate and safe electric service at just and reasonable rates. "[T]he Commission's primary duty is to protect the interests of ratepayers." *State ex rel. Capital City Water Co. v. Public Serv. Comm'n*, 850 S.W.2d 903, 911 (Mo. App. W.D. 1993) (emphasis added). As a governmental entity, the Commission's powers are an extension of the state's sovereignty. *State ex rel. Chicago, Rock Island & Pacific Railroad Co. v. Pub. Serv. Comm'n,* 312 S.W.2d 791, 796 (Mo. banc 1958). It is the Commission's duty to see to it that substantial justice is done between patrons and public utilities. §386.610, RSMo. The Commission's principal interest is to serve and protect ratepayers.[53] It is this interest, as well as the Legislature's recognition of the need for uniform regulation of utility companies, and the Commission's expertise in utility regulation that have led the Courts to recognize the primary jurisdiction of the Commission. It is important that the interests of Aquila's patrons, all of its ratepayers, be considered. It is within the Commission's jurisdiction to issue an order verifying or determining that Aquila has the CCN it requires to build the South Harper plant near Peculiar in Cass County, Missouri.

WHEREFORE Staff recommends that the Commission recognize its jurisdiction in this matter and find that Aquila has authority under its relevant CCN to build plant in its certificated area.

---

[53] S*tate ex rel. Capital City Water Co. v. Missouri Public Service Com'n*, 850 S.W.2d 903, 911(Mo.App. W.D. 1993) citing S*tate ex rel. Crown Coach Co. v. Pub. Serv. Comm'n,* 179 S.W.2d 123, 126(1944)

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ Lera L. Shemwell
Lera L. Shemwell
Senior Counsel
Missouri Bar No. 43792

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-7431 (Telephone)
(573) 751-9285 (Fax)
lera.shemwell@psc.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record this 21st day of March 2005.

/s/ Lera L. Shemwell
Lera L. Shemwell