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June 2, 2004

FILED³

MAY 11 2006

Missouri Public
Service Commission

The Honorable Rex Rector
Representative - 124th District
23400 Cottage Lane
Harrisonville, MO 64701

Dear Representative Rector:

Exhibit No. 83
Case No(s) EA-2006-0309
Date 4-28-06 Rptr KF

Thanks for your inquiry regarding Aquila's plans to build an electric generation plant in Cass County. Staff in the Commission's Energy Department and General Counsel Division prepared answers to your questions. Most can be answered briefly, but those relating to local and state jurisdiction issues require more details. This letter will address the "short" answers first.

Who owns the Aries plant, and what is its tax status?

Aries has a complex ownership structure that includes Calpine (a California-based energy corporation), Cass County and the entities financing the plant. The Commission does not know if the plant pays taxes or is tax-exempt. Aquila no longer owns any part of Aries.

Who owns the plant at Greenwood, Missouri?

Aquila owns the electric generation unit at Greenwood.

Does Aquila have a certificate in the area where it plans to build a generation plant?

Aquila has a certificate issued by the Public Service Commission in 1938 to serve the geographic area that is the planned location for the new plant.

Does the Commission have any regulatory authority before a plant is built and in operation?

The Commission has no statutory authority to approve or disapprove an electric utility's decision on plant location if it is located within its service territory. Nonetheless, the Commission reviews the prudence and reasonableness of the costs of plant construction in the first rate case following the plant's being placed in service.

Letter to Rep. Rector, Page 2
June 2, 2004

Does the Commission have ratemaking flexibility that allows a company to recover the cost of additional land needed to buffer residences from a plant?

The Commission does not have a minimum standard for the buffer between a plant and its neighboring properties. It has no statutory authority to order a company to establish a buffer of any size. When a company seeks recovery of expenses that include the plant, the Commission may determine the prudence of buffer-related costs, given the conditions present during plant construction.

Do property owners have any recourse if they believe they will be or have been damaged by plant construction?

The Commission has no statutory authority to address damage to property owners. They must pursue their claims thorough the court system.

Does Aquila have to abide by county zoning requirements? Are there state laws that supersede a county's authority in this area?

Without more facts relating to the county zoning question, we cannot provide a generic answer. Generally, however, the courts and the Commission, in past decisions, have viewed local government as being preempted by the state authority of a public utility to exercise its certificate of convenience and necessity granted by the Commission under Chapter 386, RSMo (the Public Service Commission Law).

State laws that confer jurisdiction in the Commission to regulate public utilities may result in state preemption of local regulations and ordinances. Attempts by a municipality to infringe on the Commission's jurisdiction have been denied by the Missouri Supreme Court. In the two cases *Union Electric v. City of Crestwood*, the Supreme Court held that a city ordinance that invaded the area of regulation that the General Assembly vested in the Commission exceeded the city's authority. 499 S.W.2d 480 (Mo. 1973) and 562 S.W.2d 344 (Mo. banc 1978)

The Commission itself has held that under state law, "municipal and local political subdivisions are prohibited from imposing unique terms and conditions ... which are different from, or in addition to, those already contained in ... tariffs and the rules of this Commission." *Please see the attached legal analysis for more details on Commission and court cases.*

I hope this addresses your concerns, but please call me at 573-751-5472 if you have more questions. Thanks for consulting us.

Sincerely,

Toni Messina
Legislative Liaison

C: Commissioners, Bob Quinn, Wess Henderson, Warren Wood, Dan Joyce, Steve Dottheim