

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Aquila, Inc., for)	
Permission and Approval and a Certificate of)	
Public Convenience and Necessity Authorizing it to)	<u>Case No. EA-2006-0499</u>
Acquire, Construct, Install, Own, Operate, Maintain,)	
and Otherwise Control and Manage Electrical)	
Distribution Substation and Related Facilities in)	<u>Case No. EA-2006-0500</u>
Kansas City, Jackson County, Missouri (Near the)	
City of Raymore).)	

DISSENTING OPINION OF COMMISSIONERS
ROBERT M. CLAYTON III AND STEVE GAW

The applications filed by Aquila asked for a Certificate of Public Convenience and Necessity to construct, own, operate and manage an electrical distribution substation in Kansas City, Missouri in case number EA-2006-0499, and an electrical transmission substation near Osceola, Missouri in St. Clair County in case number EA-2006-0500. It appears from the record that no zoning requirements exist for the siting of the substation in St. Clair County¹. However, implicit within these applications is the reference to the pending application with the Kansas City Planning and Zoning Board for a land use permit. If this Board, or ultimately any proper county authority approached, denies Aquila's request for a land use permit, then the Commission's authority to issue a certificate and grant such use may be challenged.


This majority Order should have made it clear that the Commission was not attempting to confiscate the City of Kansas City or St. Clair County's siting authority. If it was, the Commission did not hold a hearing as required under §393.170.3 and therefore, this Order is legally flawed. The proper procedure, which appears to be the intended process for Aquila, is to go to the Kansas City Planning and Zoning Board or the County authority, apply for the permit, and attach that approval to the Commission application for a Certificate of Convenience and Necessity. If Aquila was seeking to pre-empt that process and either entity's siting authority by

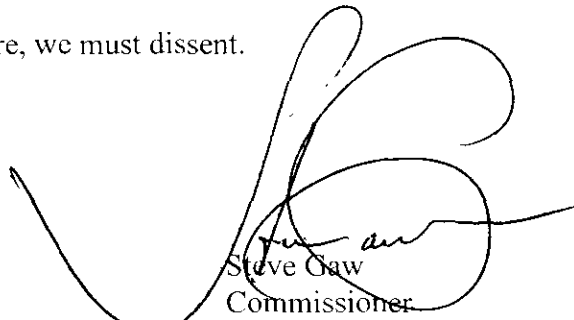
¹ If St. Clair County does not have zoning laws and regulations or if the area where the substation is to be constructed is already zoned for such use, then receiving county approval would not be necessary.

obtaining land use approval from the Commission, then an appropriate hearing would still be required pursuant to §393.170². However, if Aquila was not seeking to pre-empt the City or County's authority, then, if the Commission felt it needed a determination on land use, a hearing should have been held and the appropriate city or county authority joined as a party to guard against any improper extensions of authority. No evidence was offered or information stipulated, and there was no joining of the City of Kansas City or St. Clair County in this case. The appropriate process in this matter was to issue an approval of the substations pursuant to §393.170 as to the need for the facilities only, subject to the approval needed, if any, of the local zoning requirements in two political subdivisions³.

It is particularly disturbing that the majority Order in this case stands on the basis that it provided all of the authority necessary to site the facilities. This notion is opposite to the rationale of the same majority of Commissioners in the Aquila South Harper case⁴. There, the majority went to great lengths to assure the parties that the Commission preempted local zoning authority only after the required hearing of evidence on appropriate land use. This Order should make clear that no preemption of local authority was authorized. There is a cloud of uncertainty in this Order that stems from misapplying the prior Aquila South Harper decision and ignoring local use planning. If a local land use permit is not granted or other issue arises, this majority Order is vulnerable to challenge. Therefore, we must dissent.

Respectfully submitted,


Robert M. Clayton III
Commissioner


Steve Gaw
Commissioner

Dated at Jefferson City, Missouri,
on this 6th day of December, 2006.

² See the Dissenting Opinion of Commissioners Clayton and Gaw in PSC case no. EA-2006-0309.

³ If Aquila wished to have the Commission examine the land use issue (which it appears to be deferring to Kansas City) then it should have requested a hearing before the Commission and joined Kansas City as a party.

⁴ PSC case no. EA-2006-0309, Aquila's Application for Certification of Public Convenience and Necessity.