

**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 Convenience and Necessity )  
Authorizing it to Acquire, Construct, )  
Install, Own, Operate, Control, Manage )  
and Maintain and otherwise Control and )  
Manage Electrical Production and Related )  
Facilities in Unincorporated Areas of Cass )  
County, Missouri Near the Town of )  
Peculiar. )

Case No. EA-2006-0309

**STAFF’S SURREPLY TO STOPAQUILA.ORG’S REPLY TO  
AQUILA’S SUGGESTIONS IN OPPOSITION TO MOTION  
TO DISMISS AND STAFF’S RESPONSE TO MOTION TO DISMISS**

COMES NOW the Staff of the Missouri Public Service Commission and for its Surreply to StopAquila.org’s Reply to Aquila’s Suggestions in Opposition to Motion to Dismiss and Staff’s Response to Motion to Dismiss, states:

1. At some point responsive pleadings need to end. Normally the Staff would not file a surreply; however, StopAquila.org has in its reply (StopAquila’s Reply to Aquila’s Suggestions in Opposition to Motion to Dismiss and Staff’s Response to Motion to Dismiss) so mischaracterized the Staff’s Response in Opposition to StopAquila.org’s Motion to Dismiss or Deny Application of Aquila that, like “fighting words,” the Staff cannot allow StopAquila’s mischaracterization to go unchallenged.

2. On page 7 of its reply, filed March 21, 2006, StopAquila states, “The Response filed by the Staff speaks as if Aquila already has an exemption that would completely relieve it from having to comply with any County control.” Later on that same page StopAquila.org goes further stating, “Staff argues that Aquila already has an exemption (which is wrong) so it would

be ridiculous to require it to comply with any requirements of the County to get consent of the County.”

3. Both of these statements are patently inaccurate representations of the Staff’s position. The point the Staff made in its response regarding the §64.235<sup>1</sup> zoning exemption was that the language of the exemption based on Public Service Commission authorization would be meaningless verbiage if StopAquila’s position is accepted that the Public Service Commission cannot issue Aquila a certificate of convenience and necessity specifically for construction of the South Harper Facility and associated Peculiar Substation without Aquila having first obtained county zoning approval. In other words, if a utility must have county commission authority to get the exemption, directly or as a precondition to Public Service Commission authorization, then it is meaningless to include Public Service Commission authorization in the zoning statute as a basis for the exemption.

4. In particular in paragraph 6 of its response the Staff stated, “[I]f Aquila must comply with Cass County’s zoning ordinances before the Public Service Commission can specifically authorize Aquila to construct the South Harper Facility or Peculiar Substation, then Aquila cannot avail itself of the exemption based on Public Service Commission authorization found in §64.235, since compliance with the zoning ordinances would be required to obtain the specific authorization from the Public Service Commission that would permit non-compliance with the zoning ordinances.

5. The Staff does not suggest, that “Aquila already has any exemption that would completely relieve it from having to comply with any County control.” (Reply at p. 7.) Instead, the Staff reads the December 20, 2005 Opinion of the Western District Court of Appeals as

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<sup>1</sup> All statutory references are to RSMo (2000) and the Cumulative Supplement (2004) unless otherwise indicated.

holding that *if* the Commission authorizes construction of the South Harper Facility and associated Peculiar Substation, *then*, under §64.235, Aquila would be exempt from Cass County's zoning ordinances.

6. Staff has not replied to all of StopAquila's misstatements, only the most egregious. The Commission should not interpret the lack of further reply as Staff's agreement with any of StopAquila's arguments.

**WHEREFORE** the Staff, in surreply to StopAquila.org's Motion to Dismiss or Deny Application of Aquila, opposes the motion and recommends the Commission deny the motion.

Respectfully submitted,

/s/ Lera L. Shemwell

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 24<sup>th</sup> day of March 2006.

/s/ Lera Shemwell