

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 19th day
of October, 2006.

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

ORDER APPROVING STIPULATION AND AGREEMENT

Issue Date: October 19, 2006

Effective Date: October 29, 2006

Procedural History

On June 23, 2006, Aquila, Inc. filed an application with the Missouri Public Service Commission requesting a certificate of convenience and necessity as described in the caption of this order. On August 15, Kansas City Power & Light Company was granted its request to intervene. Although Aquila also filed a motion for expedited treatment, the process was stalled in order to allow the parties and opportunity to reach an agreement, which is now before the Commission. Although it did not join in the Agreement, KCPL filed a notice informing the Commission that KCPL does not oppose the Agreement. The Stipulation and Agreement was filed on October 10, as was KCPL's notice.

The Stipulation and Agreement

The parties agree that in Case No. 9470, the Commission granted authority to Aquila's predecessors-in-interest to construct and operate electric facilities, transmission

lines and distribution systems throughout portions of St. Clair County, Missouri. The parties further agree that the area in which Aquila proposes to construct its substation is within its certificated area. The estimated cost of the project is \$1.65 million, which will be funded by cash or credit. The parties finally agree that the substation will promote public convenience or necessity for customers in St. Clair and the surrounding counties bordering the Deepwater Arm of Truman Lake.

Precedential impact of *StopAquila.org v. Aquila, Inc.*¹

The parties agree that under case law, prior to the *StopAquila.org v. Aquila, Inc.* case, utility companies such as Aquila and KCPL could construct and operate a substation within its service territory without approval from the Commission. This conclusion rests on the premise that if the Commission has granted to the company a certificate of convenience or necessity to operate in a particular service area, then the subsequent granting of such authority to build a substation in that same area would be redundant. However, since *StopAquila.org v. Aquila, Inc.*, Aquila has taken the position that Commission authority is now necessary for Aquila to build a substation in its service area.

Staff, OPC and KCPL do not believe the courts most recent ruling requires Aquila to obtain Commission approval prior to building the substation. However, because of the necessity for expedited construction of the substation due to imminent increased demand, the parties agree that the Commission should grant the requested authority to Aquila. In this regard, the parties agree that by granting the requested certificate, the Commission is not establishing a regulatory policy or precedent but is rather responding to the specific facts of this case.

¹ *StopAquila.org v. Aquila, Inc.*, 180 S.W.3d 24 (Mo. App. W.D. 2005).

Discussion

Under Section 393.170.1, RSMo 2000, electric corporations are required to obtain Commission approval prior to constructing an electric plant. In light of *StopAquila.org*, the parties agree that there is uncertainty as to whether Aquila, by previous order of the Commission, presently has the authority to build the substation. However, no party takes issue with this uncertainty. Rather, the parties agree that the Commission should grant the requested authority regardless of how Missouri courts may resolve this issue. Because the parties have not presented this issue to the Commission for resolution, the Commission need not answer that legal question.

The Commission recognizes that if Aquila need not request authority to build the substation, then granting the authority would at worst simply be redundant. However, if on the other hand, Aquila does need to requested authority from the Commission to build the substation, then the Commission must determine whether construction of the substation is necessary or convenient for the public service. The parties have stipulated that construction of the proposed substation is necessary in order for Aquila to meet expected demand.

Conclusion

The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of issues raised in this case.² The Commission notes that every decision and order in a contested case shall be in writing and, except in default cases or cases disposed of by stipulation, consent order or agreed settlement, shall include

² Section 536.060, RSMo 2000.

findings of fact and conclusions of law.³ Consequently, the Commission need not make findings of fact or conclusions of law in this order.

Commission rule 4 CSR 240-2.115 (2)(C) states that if no party objects to the Stipulation and Agreement, the Commission may treat the agreement as unanimous. Because KCPL has indicated that it does not oppose the agreement, the Commission will treat the agreement as unanimous.

The Commission has reviewed the facts of this case and the Stipulation and Agreement and finds that the agreement is reasonable. The Commission will therefore approve the agreement, direct that the parties to the agreement comply with its terms and, finding that it is necessary for the public interest, will grant Aquila a certificate of convenience or necessity to construct and operate the proposed substation.

IT IS ORDERED THAT

1. The Stipulation and Agreement between Aquila, Inc., the Staff of the Commission and the Office of the Public Counsel is approved.
2. The parties to the agreement shall abide by its terms.
3. Aquila, Inc. is granted a certificate of convenience or necessity to Acquire, construct, install, own, operate and maintain a distribution substation and related facilities in St. Clair County, near the city of Osceola, as more fully described in the Stipulation and Agreement.

³ Section 536.090, RSMo 2000.

4. This order shall become effective on October 29, 2006.
5. This case may be closed on October 30, 2006.

BY THE COMMISSION

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, and Appling, CC., concur.
Gaw C., dissents, with separate dissenting
opinion to follow.
Clayton, C, dissents.

Jones, Senior Regulatory Law Judge