

**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 Acquire, Construct, )  
Install, Own, Operate, Maintain, and )  
otherwise Control and Manage )  
Electrical Distribution Substation )  
And Related Facilities in Clay )  
County, Missouri (Near the City Of )  
Smithville). )

Case No. EA-2007-0244

**STIPULATION AND AGREEMENT**

As a result of discussions, the Staff of the Missouri Public Service Commission ("Staff"), the Office of the Public Counsel ("Public Counsel"), and Aquila, Inc., ("Aquila"), (collectively, the "Parties"), hereby submit the following stipulation and agreement ("Agreement") to the Missouri Public Service Commission ("Commission").

**I. FACTUAL SUMMARY AND PROCEDURAL BACKGROUND**

Aquila is an electrical corporation under the jurisdiction of the Commission as provided by law. On December 28, 2006, Aquila filed an application with the Commission, requesting a Certificate of Public Convenience and Necessity to construct, own, operate and manage an electrical distribution substation in Clay County, Missouri, near the City of Smithville (the "Pope Lane Substation"),

docketed as Case No. EA-2007-0244. The Commission issued an Order and Notice for interested parties to intervene by January 10, 2007, but no party intervened.

## II. STIPULATED FACTS

The Parties stipulate to the following facts:

1. Aquila is a Delaware Corporation with its principal office and place of business at 20 West 9<sup>th</sup> Street, Kansas City, Missouri 64105-1711.

2. Aquila is an electrical corporation and public utility subject to the Commission's jurisdiction under Missouri law. The Commission has authorized Aquila to conduct its business in its certificated areas in Missouri through its Aquila Networks--MPS and Aquila Networks--L&P operating divisions. As such, Aquila generates, transmits, distributes, and sells electric energy and power in those areas of Missouri certificated to it by the Commission.

3. Aquila needs to build an electrical distribution substation to accommodate increasing demand for electricity in Clay County, Missouri and proposes to build that substation ("The Pope Lane Substation") and related facilities in Clay County, Missouri, near the City of Smithville.

4. In 1923, Aquila's predecessor in interest secured from the Clay County Court a franchise to erect poles for the suspension of electric light and power wires along the public roads and highways. This order was filed with the Commission in its Case No. 8638. See Appendix A.

5. The Commission has authorized Aquila, or its predecessors-in-interest, to construct, reconstruct, locate, relocate, maintain and operate electric

transmission lines, power lines and all equipment connected therewith and to serve all persons throughout portions of Clay County, Missouri, pursuant to various orders, including its Report and Order in Case No. 8638 (*In the Matter of the Application of the Missouri Gas and Electric Service Company for an order authorizing it to construct, maintain and operate electric transmission lines in the counties of Lafayette, Ray, Carroll, Clay, Clinton, Platte and Buchanan, all in the State of Missouri*, 21 Mo. P.S.C. 54 (1934)). See Appendix G.

6. The Pope Lane Substation will be located on private property within the general electric service area the Commission certificated to one of Aquila's predecessors in Case No. 8638, legally described ( "Tract I") as follows:

Beginning at the Northwest corner of the Southwest Quarter of the Northwest Quarter of Section 14, Township 53 North, Range 33 West, Smithville, Clay County, Missouri; thence East, along the north line of said Quarter, 632.45 feet; thence South 0 Degrees 16 Minutes 10 Seconds East 1305.62 feet; thence North 89 Degrees 55 Minutes 31 Seconds West 663.08 feet to a point on the West line of said Quarter; thence North along said West line, 1303.80 feet to the Point of Beginning; except a tract of land, along the West side of said Quarter, conveyed to the State of Missouri for Route No. 169, recorded May 14, 1936 as document no. 589090 in book 311 at page 262; and except that part conveyed to the State of Missouri, acting by and through the Missouri Highway and Transportation Commission, recorded May 10, 1984 as document no. E79453 in book 1551 at page 533; and except any other part in road.

7. Aquila holds deeds for Tract I in fee, and an easement for the transmission line interconnect. See Appendix B.

8. Attached as Appendix C is an aerial view of the site where Aquila proposes to build the Pope Lane Substation and Aquila's site development plan. Attached as Appendix F is a survey of the site where Aquila proposes to build the

Pope Lane Substation. Tract I consists of approximately 16.6 acres of land approximately 110 feet east of Missouri State Route 169 and approximately 506 feet north of Northwest 172<sup>nd</sup> Street in Clay County, Missouri near Smithville, as legally described above. The Pope Lane Substation and associated facilities will occupy approximately 2.5 of the approximately 16.6 acres of Tract I.

9. Under the Land Development Code of Clay County, Missouri (LDCCC), which incorporates by reference the Zoning Map of Clay County, the Tract of land where Aquila proposes to locate the Pope Lane Substation is zoned agricultural. See certified copies of the LDCCC and Zoning Map attached as Appendices D and E. Under the LDCCC, Minor Utility Service is permitted by right on agriculturally zoned land. LDCCC §151-4.3 B, p 53. Minor Utility Service is defined as “[s]ervices that are necessary to support principal development and involve only minor structures, such as lines and poles and specifically including electrical switching facilities and primary substations.” CCLDC § 151-15, p. 255. Therefore, under the LDCCC, it is a permissible to construct and operate the Pope Lane distribution substation on the above described Tract of land.

10. The Pope Lane Substation will promote public convenience and necessity in that it will serve customers in Clay County.

11. Aquila estimates the cost for this project is \$4.3 million. Aquila plans to finance construction of this substation with funds on hand or available to it through existing lines of credit. Aquila does not plan to project-finance this proposed substation.

12. Aquila contends, and the Staff does not dispute its contention, that Smithville development maps show more than 2,700 platted lots for development in the north area in the coming years.

13. To meet the demands of the growing Smithville community, Aquila needs to build a new substation and transmission line. Allowing Aquila to construct the new Pope Lane Substation (161kV to 12kV) will provide several benefits, including providing additional power for the rapidly growing area, reduce loads on existing substations, provide an alternate power source for local and regional customers, and increase system reliability.

14. Aquila asserts, and the Staff does not dispute, that the current substation serving this area, located south of Missouri Highway 92 on the west side of Missouri Highway 169, does not have sufficient capability to provide reliable electrical service to the platted residential development in this area.

15. The Pope Lane Substation will improve distribution reliability to electric utility consumers in Clay County, which is experiencing retail growth.

### **III. THE AGREEMENT**

#### **A. Approval of the Substation**

Based on and subject to the conditions, limitations, stipulations and agreements set forth herein, the Parties agree that the Commission should grant to Aquila permission and approval to construct, install, own, operate, maintain, reconstruct and otherwise control and manage the Pope Lane Substation in that the

exercise by Aquila of the rights and privileges set forth in the Application is necessary or convenient for the public service.

The Parties further agree that the Pope Lane Substation will promote public convenience and necessity in that it will serve customers in Clay County. Moreover, the Parties agree that the current site development plan for the Pope Lane Substation is attached in Appendix C. In addition, the Parties agree that the Commission should authorize Aquila to enter into, execute, deliver and perform the necessary arrangements and documents to facilitate the project described above including the authority to make such limited modifications to the site development plan shown in Appendix C as are reasonably necessary to effectuate the authority hereinabove granted.

**B. Other Similar Stipulation and Agreements Due to the Precedential Impact of *StopAquila.org v. Aquila, Inc.***

On October 9, 2006, Aquila, the Staff, and the Office of the Public Counsel entered into a Stipulation and Agreement regarding Aquila's Osceola and Raymore North substations in Case Nos. EA-2006-0499 and EA-2006-0500, respectively. The Commission approved the Stipulation and Agreement on October 19, 2006. In that Stipulation and Agreement, the parties agreed that the Western District Court of Appeals decision in *Harline v. Public Service Commission*, 343 S.W.2d 177 (Mo. App. 1960), and its progeny held that utility companies, such as Aquila, may construct and operate new electrical transmission and distribution lines within their Commission-certificated service areas without obtaining additional specific certificates of convenience and necessity from the Commission. However, the

Western District's recent opinion in *StopAquila.org v. Aquila, Inc.*, 180 S.W.3d 24 (Mo. App. W.D. 2005), created some uncertainty as to whether an electric utility may lawfully construct and operate any electrical substation within the utility's certificated service area without first obtaining from the Commission a § 393.170.1 RSMo. certificate of convenience and necessity that specifically authorizes the utility to construct and operate that particular substation.

The Staff and Public Counsel believe the holding in *StopAquila.org* does not require Aquila to seek a specific certificate of convenience and necessity from the Commission for authority construct and operate each particular electrical substation. Aquila, however, interprets the *StopAquila.org* holding as new binding precedent requiring additional approval from the Commission for Aquila to construct and operate new electric substations. Because of the need for the expedited construction of the Osceola and Raymore North substations, the parties agreed that the Commission should exercise its discretion and issue certificates of convenience and necessity under §393.170.1 RSMo. authorizing Aquila to construct and operate each of those two electrical substations so that Aquila could begin constructing them immediately. Accordingly, the Commission granted the request, and approved the Stipulation and Agreement.

### C. Future "Test Case"

As part of the agreement in the Raymore North and Osceola substations matters, Aquila believed that the uncertainty created by the *StopAquila.org* case needed to be resolved. So the parties agreed that if the Commission approved the

Raymore North and Osceola substations applications, Aquila would apply for a certificate of public convenience and necessity under § 393.170.1, RSMo., to construct and manage another electric substation to serve as a "test case" for the courts to clarify whether utilities must obtain a certificate of convenience and necessity specifically authorizing the construction of each new substation.

While the parties anticipated that the "test case" would be the Pope Lane Substation as described herein, Aquila does not believe that there will be enough time for the Commission to rule and for the matter to proceed through the appellate process before construction needs to begin to meet the pre-peak 2008 in-service date. Instead, the Parties agree to use the Cole Camp substation application as the "test case." The Cole Camp substation case involves a transmission substation and is docketed as Case No. EA-2007-0245. Aquila filed it simultaneously with its Pope Lane Substation application. The Cole Camp substation does not need to be in-service until pre-peak 2009, which will allow sufficient time for Aquila to seek judicial review of site-specific certificates of convenience and necessity to clarify whether one is required each time a utility constructs and operates a new electric transmission or distribution substation within a utility's existing service area. Accordingly, the Parties agree that the Pope Lane Substation application should be treated like the Raymore North and Osceola substation applications and approved by the Commission.



**D. The Agreement Is In the Public Interest**

The Parties agree that the terms of this Agreement are in the public interest and should be approved by the Commission. Aquila asserts that approval will allow Aquila to provide safe, reliable, and affordable electrical services to its customers served by the Pope Lane Substation during the 2008 peak demand season.

**IV. THE EFFECT OF THE AGREEMENT**

A. This Agreement is being entered into for the purpose of disposing of the issues that are specifically addressed in this Agreement. In presenting this Agreement, none of the Parties to this Agreement shall be deemed to have approved, accepted, agreed, consented or acquiesced to any ratemaking principle or procedural principle, including, without limitation, any method of cost or revenue determination or cost allocation or revenue related methodology or any depreciation procedure, method or technique; and none of the Parties shall be prejudiced or bound in any manner by the terms of this Agreement (whether this Agreement is approved or not) in this or any other proceeding, other than a proceeding limited to enforce the terms of this Agreement, except as otherwise expressly specified herein.

B. This Agreement has resulted from extensive negotiations and the terms hereof are interdependent. If the Commission does not approve this Agreement without modification, then the Agreement shall be void and no Signatory shall be bound by any of the agreements or provisions herein, except as specifically provided herein.

C. If the Commission does not unconditionally approve this Agreement

without modification, and notwithstanding its provision that it shall become void, neither this Agreement, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any Signatory has for a decision in accordance with Section 536.080 RSMo 2000 or Article V, Section 18 of the Missouri Constitution, and the Parties shall retain all procedural and due process rights as fully as though this Agreement had not been presented for approval, and any suggestions or memoranda, testimony or exhibits that have been offered or received in support of this Agreement shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

D. If the Commission unconditionally accepts the specific terms of this Agreement without modification, the Parties waive, with respect to the issues resolved herein: their respective rights (1) to call, examine and cross-examine witnesses pursuant to Section 536.070(2), RSMo 2000; (2) their respective rights to present oral argument and/or written briefs pursuant to Section 536.080.1, RSMo 2000; (3) their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2, RSMo 2000; (4) their respective rights to seek rehearing pursuant to Section 386.500, RSMo 2000 and (5) their respective rights to judicial review pursuant to Section 386.510, RSMo 2000. These waivers apply only to a Commission order respecting this Agreement issued in this above-captioned proceeding, and do not apply to any matters raised in any prior or subsequent

Commission proceeding, or any matters not explicitly addressed by this Agreement. This Agreement contains the entire agreement of the Parties concerning the issues addressed herein.

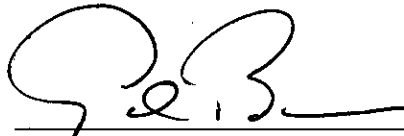
E. If the Commission has questions for the Parties' witnesses or Parties, the Parties will make available, at any on-the-record session, their witnesses and attorneys on the issues resolved by this Agreement, so long as all parties have had adequate notice of that session. The Parties agree to cooperate in presenting this Agreement to the Commission for approval, and will take no action, direct or indirect, in opposition to the request for approval of this Agreement.

Parties

WHEREFORE, for the foregoing reasons, the undersigned Parties respectfully request the Commission determine that exercise of Aquila's right, privilege or franchise to construct the Pope Lane Substation is necessary or convenient for the public service, issue an order approving the Agreement and authorizing Aquila to construct, install, own, operate, maintain and otherwise control and manage the Pope Lane Substation, all subject to the specific terms and conditions contained in the Agreement.

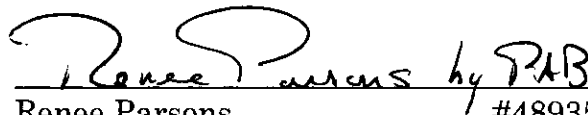
Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND



Paul A. Boudreau #33155  
Brydon, Swearengen & England, P.C.  
312 East Capitol Ave.  
Jefferson City, MO 65102  
Phone: (573) 635-7166  
Fax: (573) 635-0427  
[paulb@brydon.law.com](mailto:paulb@brydon.law.com)

AQUILA, INC.



Renee Parsons #48935  
20 West Ninth Street  
Kansas City, MO 64105  
Phone: (816) 467-3297  
Fax: (816) 467-9297  
[Renee.parsons@aquila.com](mailto:Renee.parsons@aquila.com)

PUBLIC SERVICE COMMISSION STAFF



Nathan Williams #35512  
Deputy General Counsel  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-8702 (Telephone)  
(573) 751-9285 (Fax)  
E-mail: [nathan.williams@psc.mo.gov](mailto:nathan.williams@psc.mo.gov)

ATTORNEY FOR  
THE STAFF OF THE MISSOURI  
PUBLIC SERVICE COMMISSION

OFFICE OF THE PUBLIC COUNSEL



Mike Dandino 24590  
Governor Office Building  
200 Madison Street, Suite 650  
P.O. Box 2230  
Jefferson City, MO 65102-2230

**Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 10<sup>th</sup> day of July, 2007.

/s/ Nathan Williams

**Index of Appendices  
Available for viewing at the  
Missouri Public Service Commission Data Center**

- A Clay County franchise filed in Case No. 8638
- B General Warranty Deed
- C Site Aerial view and Site Development Plan
- D Land Development Code of Clay County, Missouri
- E Zoning Map for Clay County, Missouri
- F Site survey
- G Case No. 8638 Report and Order