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March 7, 2006

FILED⁴

MAR 07 2006

The Honorable Colleen M. Dale
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102-0360

Missouri Public
Service Commission

Re: Case No. EA-2006-0309

Dear Judge Dale:

Enclosed for filing in the referenced matter please find the original and five copies of the Proposed Procedural Schedule of Cass County, Missouri, Stopaquila.org and Nearby Residents.

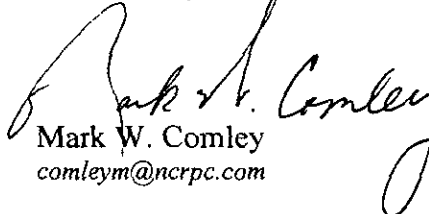
Would you please bring this filing to the attention of the appropriate Commission personnel.

Please contact me if you have any questions. Thank you.

Very truly yours,

NEWMAN, COMLEY & RUTH P.C.

By:


Mark W. Comley
comleym@ncrpc.com

MWC:ab

Enclosure

cc: Office of Public Counsel
General Counsel's Office
James C. Swearngen
Cindy Reams Martin
Debra L. Moore
Gerard Eftink

John B. Coffman
Matthew B. Uhrig
Stuart Conrad
David Linton
Sid Douglas

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED⁴

MAR 07 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 Production and)
Related Facilities in Unincorporated Areas)
of Cass County, Missouri Near the)
Town of Peculiar.)

Missouri Public
Service Commission

Case No. EA-2006-0309

PROPOSED PROCEDURAL SCHEDULE
OF CASS COUNTY, MISSOURI, STOPAQUILA.ORG,
AND NEARBY RESIDENTS

Come now jointly, Cass County, Missouri, StopAquila.Org, Frank Dillon, Kimberly Miller and James E. Doll and for their proposed procedural schedule submit the following to the Commission:

1. Pursuant to Commission order dated February 22, 2006, the parties were directed to prepare and file a proposed procedural schedule in this matter by Tuesday, March 7, 2006. At the prehearing conference held on March 2, 2006, all parties were encouraged to file a single proposal but if one could not be agreed on, the parties were asked to endeavor to supply not more than two for the Commission's consideration. The parties have worked earnestly to meet the Commission's request.

2. Although this is the second application of its kind to have been filed in the last twenty five years before this Commission, it is the first case of its kind after the Western District Court of Appeals decision in *Cass County, Missouri v. Aquila, Inc.* 180 S.W.3d 24 (Mo.App. W.D.2005) (WD 64985) a decision which will serve as a polestar in its disposition. The present

application therefore holds a historic place; one which demands more than average attention to procedure and substance.

3. The procedural schedule proposed takes into account that several parties intend to file motions to dismiss this application on grounds including that it seeks approval for construction of the South Harper Generating Station and the Peculiar Substation retroactively, and seeks that approval without proof of compliance with local zoning. It is only if those motions are denied that the balance of the procedural schedule will be relevant. Therefore, the parties submit that dispositive motions should be addressed in the early stages of this application in the interest of saving time and expense for the parties.

4. In *Cass County*, the Court of Appeals ruled that in a hearing before the Commission on this application, current conditions, *including county zoning*, are to be considered. Cass County contends that the Commission has no zoning power, and has no authority to superimpose a zoning districting that differs from the one the County has already established. Aquila appears to have a contrary view of the Commission's authority. Should the Commission deny the motions to dismiss, Cass County's presentation will necessarily include a comprehensive record regarding the processes under which its local zoning was adopted, its Master Plan approved and its ordinances enforced, all as part of the Commission's consideration of local zoning. Cass County will require adequate time in marshalling the evidence for this record and in turn, the other parties will expect adequate time for their discovery with respect to Cass County's evidence. The schedule proposed herein also accounts for the "zoning issues" element of the evidence in this case.

5. The proposed schedule is approximately thirty to forty-five days longer than the schedule followed in the last case before this Commission in which a utility filed an application

for a certificate to construct a generating plant. In *In the Matter of the Application of Missouri Power & Light Company*, 18 Mo. P.S.C. (N.S.) 116 (1973) the time taken from application to decision in that matter was approximately four months. If there were assurance that the Commission would consider zoning issues in this case identically to the manner in which it considered zoning in *Missouri Power & Light* then this case would have the same time span, if that long. Otherwise, Cass County submits the local zoning issues deserve the additional month or more the parties to this pleading propose.

6. Finally, the Commission's approval of a procedural schedule in this matter should be driven by a determination of the time fairly required to afford all parties due process, and not by a deadline (May 31, 2006) that has been imposed by the Cass County Circuit Court on Aquila due to its self created hardships. That deadline bears no rational relationship to the process the Commission should follow in order to comply with its obligations in this case.

7. The parties jointly propose the following procedural schedule for remainder of this case:

Local Public Hearing	Week of March 20
Dispositive Motions due	March 24, 2006
Response to Dispositive motions	April 4, 2006
Oral Argument on Motions	April 7, 2006
Recommended date of disposition On Motions	April 20, 2006

The following deadlines are contingent upon the Commission's rulings on the dispositive motions.

Rebuttal Testimony	May 15, 2006
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Surrebuttal Testimony	June 5, 2006
Prehearing briefs	June 20, 2006
Hearing	June 26-30, July 5-7, 2006 ¹

8. The members of the public in Cass County have a significantly high interest in attending the local public hearing. The parties herein suggest that the hours of the local public hearing should be set in a way to maximize citizen input. Toward that end, the parties suggest that the hearing cover at least six hours from a point mid afternoon to 8:00 p.m. in the evening. This schedule for the hearing will allow citizens with evening employment obligations to also participate, while at the same time, accommodate those who have employment obligations until 5:00 p.m.

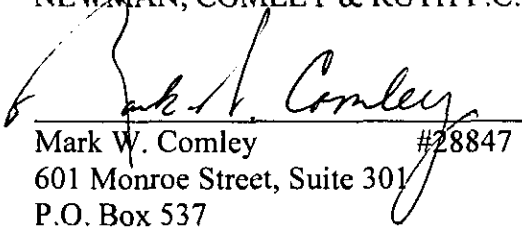
9. Counsel for the Office of Public Counsel and counsel for intervener, Sedalia Industrial Energy Users' Association, have authorized the undersigned to represent to the Commission that they do not object to the procedural schedule proposed herein.

WHEREFORE, the parties respectfully request the Commission approve their proposed procedural schedule.


Respectfully submitted,

NEWMAN, COMLEY & RUTH P.C.

By:

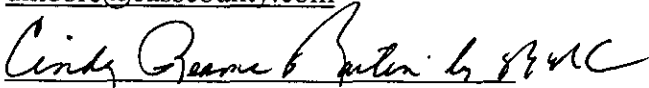

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¹ These dates are currently open on the Commission's calendar.



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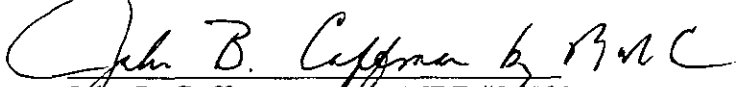
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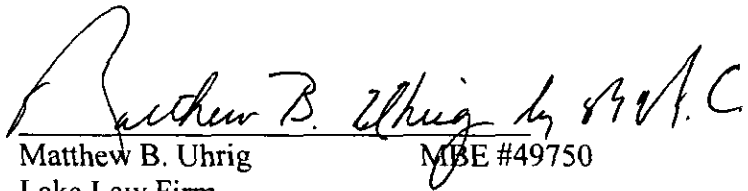
ATTORNEY FOR STOPAQUILA.ORG AND INDIVIDUAL
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MILLER, AND JAMES E. DOLL

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 7th day of March, 2006, to:

General Counsel's Office at gencounsel@psc.mo.gov;
Office of Public Counsel at opcservice@ded.mo.gov.;
James C. Swearngen at LRackers@brydonlaw.com;
Stuart Conrad at stucon@fcplaw.com and
David Linton at djlinton@earthlink.net;

and by U.S. Mail, postage prepaid, to E. Sid Douglas, 2405 Grand Blvd., Suite 1100, Kansas City, MO 64108.