

Exh. 33

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MAY 11 2006

Missouri Public
Service Commission

Case No. CV104-1443CC

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IN THE CIRCUIT COURT OF CASS COUNTY, MISSOURI

CASS COUNTY, MISSOURI,

Plaintiff,

v.

AQUILA, INC.,

Defendant.

ORDER

On this 15th day of January, 2006, the Court enters its Order, having convened on the 27th day of January, 2006 for a hearing, on the record, on the Motion to Extend Stay of Injunction ("Motion") filed by Defendant Aquila, Inc. ("Aquila"). Aquila appears by and through its attorney of record, J. Dale Youngs, and through its General Counsel Christopher M. Reitz. Plaintiff Cass County, Missouri ("County") appears by and through its attorney of record, Cindy Reams Martin, and through its County Attorney, Debra L. Moore.

On the pleadings adduced, and based upon the arguments of counsel on the record, the Court finds and orders as follows:

1. THE COURT FINDS that it entered a Judgment in this case on January 11, 2005.
2. THE COURT FURTHER FINDS that the Judgment permanently and mandatorily enjoined Aquila, and all others acting in concert with, at the direction of, on behalf of, under contract with, or otherwise in collaboration with Aquila, from constructing and operating the South Harper Plant and the Peculiar Substation, and ordered the removal, at Aquila's expense, of all improvements, fixtures, attachments, equipment, or apparatus of any kind or nature inconsistent with an agricultural zoning classification placed, affixed or constructed at anytime,

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whether before or after the Judgment, upon the South Harper Plant or the Peculiar Substation sites.

3. THE COURT FURTHER FINDS that the Judgment was stayed pending appeal pursuant to Rule 92.03, subject to Aquila posting a \$350,000.00 bond, and that subsequent to the posting of said bond, Aquila constructed and began operating the South Harper Plant and the Peculiar Substation while it appealed the Judgment.

4. THE COURT FURTHER FINDS that the Judgment was affirmed by the Missouri Court of Appeals for the Western District on December 20, 2005, and that neither Aquila nor the County sought rehearing or transfer of the Court of Appeals' opinion.

5. THE COURT FURTHER FINDS that the Court of Appeals issued its Mandate affirming the Judgment on January 11, 2006.

6. THE COURT FURTHER FINDS that the Judgment is final and non-appealable.

7. THE COURT FURTHER FINDS that Aquila filed its Motion on January 12, 2006, which Motion is opposed by the County.

8. THE COURT FURTHER FINDS that it has the jurisdiction and authority to hear the Motion, and to fashion a remedy that addresses the matters raised in the Motion and in the related pleadings filed by the parties.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Aquila's Motion is granted in part and denied in part. Aquila is ordered, beginning May 31, 2006, to commence dismantling the South Harper Plant, including the substation at the South Harper facility, and the Peculiar Substation, in their entirety, under penalty of contempt.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, as required by the Judgment, Aquila, and all others acting in concert with, at the direction of, on behalf of, under

contract with, or otherwise in collaboration with Aquila, are directed to immediately cease operation of the South Harper Plant in its entirety, and for all purposes, under penalty of contempt; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Aquila may continue to operate the substation at the South Harper facility and the Peculiar Substation until May 31, 2006, and that thereafter, as required by the Judgment, Aquila, and all others acting in concert with, at the direction of, on behalf of, under contract with, or otherwise in collaboration with Aquila, are directed to immediately cease operation of the substation at the South Harper facility and the Peculiar Substation in their entirety and for all purposes, under penalty of contempt; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the time permitted Aquila by this Order to delay the commencement of dismantling of the South Harper Plant and the Peculiar Substation until May 31, 2006, and to delay the cessation of the operation of the substation at the South Harper facility and the Peculiar Substation until May 31, 2006, is subject to and conditioned upon Aquila, Inc. posting a \$20,000,000.00 cash or surety bond in a form satisfactory to the Court for the security of the rights of Cass County, Missouri. The bond shall reflect that Aquila, Inc. is held and firmly bound unto Plaintiff Cass County, Missouri in the sum of \$20,000,000.00 for the payment of which Aquila, Inc. and its surety, if applicable, bind themselves, on the condition that in the event Aquila fails to comply with the terms of this Order, then the bond shall be available to satisfy such damages, if any, deemed by the Court to have been incurred by Plaintiff Cass County, Missouri; otherwise the obligation shall be void.

IT IS SO ORDERED.

Dated: 2/15/06


The Honorable Joseph P. Dandurand

Approved and Submitted As to Form:

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