

FILED³

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

MAY 11 2006

Missouri Public
Service Commission

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.)

Case No. EA-2006-0309

**OBJECTION TO AFFIDAVIT, MOTION IN LIMINE
OR, IN THE ALTERNATIVE, MOTION FOR
LEAVE TO FILE SUPPLEMENTAL
SURREBUTTAL TESTIMONY**

Comes now Aquila, Inc. ("Aquila"), by counsel, and for its Objection to Affidavit, Motion in Limine or, in the Alternative, Motion for Leave to File Supplemental Surrebuttal Testimony respectfully states to the Missouri Public Service Commission ("Commission") as follows:

1. Pursuant to Section 536.070(12), RSMo 2000 Aquila objects to the use in this proceeding of all portions of the "Affidavit with exhibits" of Michael C. Blaha filed in this case on April 19, 2006, by STOPAQUILA.org, apparently as "surrebuttal to the testimony of Mantel (sic), Wood and Fisher," on the ground that said "surrebuttal" is in the form of an affidavit, that it constitutes hearsay evidence and that it contains matters that are not the best evidence.

2. Aquila further objects and moves to strike said affidavit and "surrebuttal" testimony because it is not proper surrebuttal testimony, but is in reality a copy of the direct testimony of Michael C. Blaha prepared on October 14, 2005, and submitted on behalf of Calpine Central L.P. in Commission Case No. ER-2005-0436, the recently

Exhibit No. 37
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Date 11-26-06 Rptr FF

concluded electric rate case involving Aquila. How testimony prepared October 14, 2005, could be proper surrebuttal to testimony filed in this proceeding, a docket that was not initiated until January 25, 2006, is unclear. What is also unclear from the filing is whether Mr. Blaha will in fact appear and undergo cross-examination.

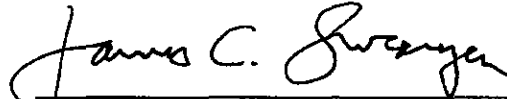
3. To the extent Mr. Blaha is not available for cross-examination, his prefiled testimony is not admissible. See *In the Matter of Springfield City Water Company*, MoPSC Case No. 13,198, Opinion (February 14, 1956) ("In our opinion, this exhibit and related testimony is not admissible as evidence because essentially it is based on hearsay, not verified or checked by the sponsoring witness, and the individual making such projection was not available for cross-examination with respect thereto. Consequently, the objection to that extent is sustained.")

4. Alternatively, should the Commission be willing to consider the receipt of said affidavit and "surrebuttal" testimony into evidence in this proceeding, over the objection of Aquila, requests that STOPAQUILA.org be ordered to produce Mr. Blaha for cross-examination or voir dire before the Commission issues an Order concerning this matter. If the Commission ultimately would decide to receive said affidavit and "surrebuttal" testimony into evidence, the Company requests, in the alternative, leave to file the supplemental surrebuttal testimony of its witness Jerry G. Boehm, a copy of which is attached to this pleading as Schedule 1.

WHEREFORE, Aquila prays that the Commission issue its order in limine that the said "Affidavit with exhibits" and testimony of Michael C. Blaha not be admitted into evidence or order that Mr. Blaha be produced for cross-examination or voir dire prior to a ruling on this motion. In the alternative, Aquila prays that it be granted leave to file the

supplemental surrebuttal testimony of its witness Jerry G. Boehm in the event Mr. Blaha's affidavit and "surrebuttal" testimony is received into evidence.

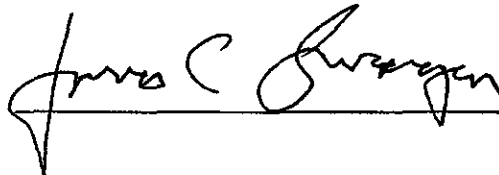
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered electronically, by first class mail or by hand delivery, on this 29th day of April 2006, to all parties of record.



**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI
SUPPLEMENTAL SURREBUTTAL TESTIMONY OF JERRY G. BOEHM
ON BEHALF OF AQUILA, INC.
D/B/A AQUILA NETWORKS-MPS
CASE NO. EA-2006-0309**

1 Q. Please state your name and business address.

2 A. My name is Jerry G. Boehm. My business address is 10750 East 350 Highway, Kansas
3 City, Missouri 64138.

4 Q. Are you the same Jerry G. Boehm who submitted surrebuttal testimony in this case on
5 behalf of Aquila Inc. ("Aquila") before the Missouri Public Service Commission
6 ("Commission")?

7 A. Yes.

8 Q. What is the purpose of your supplemental surrebuttal testimony?

9 A. The purpose of my supplemental surrebuttal testimony is to address the purported
10 affidavit filed by Michael C. Blaha by STOPAQUILA.org purported as surrebuttal
11 testimony to the testimony of Mantel (sic), Wood and Fisher.

12 Q. Do you agree with the assumptions provided by Michael C. Blaha, in regards to the South
13 Harper Peaking Facility?

14 A. No. The presumption that South Harper is not cost effective and should have been
15 supplanted with market purchases is not only incorrect but is based upon numerous
16 speculative and highly debatable assumptions.

17 Q. Do you agree with Mr. Blaha's analysis methods used to support his claims?

18 A. No. Mr. Blaha's arguments contain two errors.

19 Q. Please explain Mr. Blaha's first error.

1 A. The first error is that he argues for the operating efficiency of a combined cycle unit
2 while ignoring Calpine's overpricing of the power from the Aries plant. His arguments
3 about combined cycle efficiencies were valid but they had little resemblance to the
4 pricing and conditions Calpine offered to Aquila. So from Aquila's position, any
5 advantage of cost savings from the operation of an efficient plant was lost to Calpine's
6 overpricing. (Blaha Testimony Page 4, line 15- Page 5, Line 3)

7 Q. Please explain Mr. Blaha's second error.

8 A. The second error is that his straight-up comparison of the operating efficiencies between
9 a combined cycle plant and a simple cycle plant is all that is needed to determine the best
10 fit for an integrated operating system. This assumption is wrong. This analysis method
11 may be useful for a rough estimate of the value of a resource but it lacks the refinement
12 needed to determine if a resource will be a benefit to the loads and resources for which it
13 is applied. In my direct testimony I discussed Mr. Blaha's method (Resource Screening;
14 Jerry Boehm Direct Testimony Page 5, Line 4-15) as well as the additional analysis that
15 Aquila performed in order to do a more thorough and accurate evaluation of all of the
16 proposed resources (Production Costing Modeling; Jerry Boehm Direct Testimony Page
17 5, Line 15 – Page 6, Line 3). Specifically, Mr. Blaha's analysis compares the isolated
18 operations of a combined cycle unit with those of a CT (Resource Screening). It does not
19 take into account dispatchability or unit run times. He doesn't test the Aries units'
20 performance under expected hourly load and market conditions. To do this Mr. Blaha
21 would need to run a multi-unit production costing program that simulates the hourly
22 dispatch of the Aquila Networks – MO system for at least one year. Had he performed
23 this important test he may have discovered the Aries characteristic of having a lower heat

1 rate would be outweighed by its inability to quick start and its higher costs incurred for
2 operating under daily short run time periods.

3 Q. Do you agree with Michael C. Blaha's assertion that Aquila did not provide any
4 significant feedback to Calpine's proposals?

5 A. No. In evaluating the decision of whether to replace the Aries contract with owned
6 generation, PPAs, or some combination of both, we did a prudent review of the
7 costs/benefits of all scenarios. This review included not only the tangible costs, but also
8 other factors such as the credit worthiness of potential counterparties. While examining
9 offers for PPAs, we were in constant communication with Calpine to the extent
10 permissible given that it is a competitive bidding process and some information must
11 remain confidential.

12 Q. Does this conclude your supplemental surrebuttal testimony?

13 A. Yes.