

Van Hooser, Olsen & Eftink, P.C.

ATTORNEYS AT LAW

704 W. Foxwood Drive, P.O. Box 1280 • Raymore, Missouri 64083-1280

Phone (816) 322-8000 • FAX (816) 322-8030

Ernest H. Van Hooser

Daniel W. Olsen*

Gerard D. Eftink

*Licensed in Missouri and Kansas

Kansas Office:

221 E. Crossroads Lane

Suite 202 F

Olathe, KS 66062

(913) 345-8180

January 18, 2005

VIA FACSIMILE: 573-751-1847

Missouri Public Service Commission
Secretary of the Commission
c/o Data Center
P.O. Box 360
Jefferson City, MO 65102-0360

FILED³

JAN 21 2005

Missouri Public
Service Commission

Re: Application in Case No.: EO-2005-0156

Dear Public Service Commission:

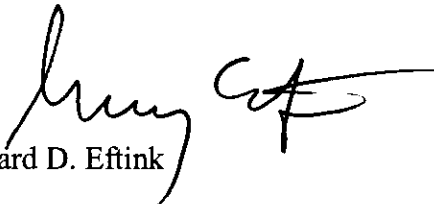
Enclosed are an original and one copy of the following documents for filing:

1. Motion to Suspend Proceedings filed by StopAquila.org; and
2. StopAquila.Org's Response to Aquila, Inc's Suggestions in Opposition to Application of StopAquila.Org to Intervene.

We have also this date emailed copies to all counsel of record and faxed copies of these documents to your office.

Sincerely,

VAN HOOSER, OLSEN & EFTINK, P.C.



Gerard D. Eftink

GDE/alb
Enclosures

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

FILED³

JAN 21 2005

Missouri Public
Service Commission

In the Matter of the Application of Aquila,)
Inc., for Authority to Acquire, Sell and)
Lease Back Three Natural Gas-Fired)
Combustion Turbine Power Generation)
Units and Related Improvements to be)
Installed and Operated in the City of)
Peculiar, Missouri)

Case No. EO-2005-0156

MOTION TO SUSPEND PROCEEDINGS
FILED BY STOPAQUILA.ORG

COMES NOW STOPAQUILA.ORG, et al., and moves to suspend these proceedings pending the outcome of appeals in two related cases:

- 1.) Cass County, Missouri v. Aquila, Inc., Case No. CV104-1443CC in the Circuit Court of Cass County, Missouri, and
- 2.) STOPAQUILA.ORG et al. v. Aquila, Case No. CV104-1355CC in the Circuit Court of Cass County, Missouri.

In support thereof STOPAQUILA.ORG submits the following:

1. The present PSC case arose upon Aquila's filing of an application to obtain from the Commission (i) a determination that its acquisition for its regulated Missouri electric utility operations from an affiliated entity of three (3) 105 megawatt natural gas-fired combustion turbines for the purpose of constructing an electric generation station in an area near the City of Peculiar, in unincorporated Cass County, Missouri does not provide a financial advantage to the unregulated affiliate, (ii) authorization to enter into a sale and leaseback arrangement with the City of Peculiar to facilitate the issuance of tax-advantaged Chapter 100 revenue bonds to finance the construction and operation of a power generation station and, (iii) authorization to

cause said electric generation station to be subjected to the lien of the Indenture as security for the benefit of the holders of the revenue bonds.

2. In November 2004 STOPAQUILA.ORG et al. filed its suit (CV104-1355CC) in the Circuit Court of Cass County to enjoin the City of Peculiar from issuing "Chapter 100 bonds" to finance the construction of this project, because the City proposed to issue the bonds without a vote of the public. STOPAQUILA.ORG et al. argued that a vote of the public is required, according to the Missouri Constitution, Article VI, Section 27 and 27(a).

3. The Circuit Court denied relief to STOPAQUILA.ORG et al., and an appeal is being filed with the Court of Appeals. STOPAQUILA.ORG et al. will ask for an expedited appeal schedule, and it is assumed by the undersigned that a decision by the Court of Appeals could be issued by about May 1, 2005. The issues on appeal of this case are not complicated. There is no transcript of testimony of witnesses. The Court of Appeal will decide this particular case on the record and on its interpretation of the Constitution. The undersigned is the attorney of record for STOPAQUILA.ORG et al.

4. On December 1, 2004, Cass County filed in the Circuit Court of Cass County a Petition for Declaratory Judgment, and for Temporary Injunction, Preliminary and Permanent Injunctive Relief against Aquila in which Cass County seeks to enforce its police power under Section 64.235, RSMo 2000. Among other things, this section requires all improvements constructed on area in unincorporated Cass County to be first approved by the County (arguably this can be exempted by the express language in the statute). Aquila has not acquired Cass County approval for construction of this plant, nor has it acquired special authorization from this Commission. The case was assigned Case No. CV104-1443CC.

5. On January 11, 2005, the Circuit Court of Cass County entered judgment against Aquila and in favor of Cass County for the relief requested in the Petition. The Court's judgment says:

Aquila, Inc., and all others acting in concert with, at the direction of, or behalf of, under contract with, or otherwise in collaboration with Aquila, Inc., are **mandatorily and permanently enjoined from constructing and operating the South Harbor Plant, and from constructing and operating the Peculiar Substation, and are ordered to remove, at Aquila, Inc.'s expense, all improvements, fixtures, attachments, equipment or apparatus of any kind or nature inconsistent with an agricultural zoning classification placed, affixed or constructed at anytime, whether before or after this Judgment, upon the South Harper Power Plant or Peculiar Substation sites described in the evidence.**

6. Aquila has appealed and has posted an appeal bond by which to suspend the injunction entered by the Court. If the Final Judgment is affirmed on appeal, the injunction shall require all the work done by Aquila on the plant shall be torn down.

7. Until the question of whether the City of Peculiar could lawfully issue the bonds without a vote of the public, and the question of whether the South Harbor Plant can be lawfully constructed have been resolved, there is no immediate or compelling reason for this application to proceed.

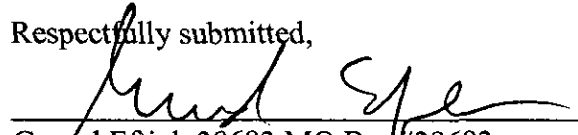
- A. If the City has to have an election to issue bonds, then it is likely that the next election would be in August. If there has to be an election, the outcome is not certain.
- B. If as a result of the appeal of CV104-1443CC the judgment of the circuit court is affirmed, the relief requested by Aquila in this application becomes immediately moot.

C. Any action this Commission may take on Aquila's application may be rendered meaningless by subsequent orders and opinions issued on the appeal of these two cases.

8. In the interest of conserving its resources, and preventing a potential waste of time and expense, the Commission should suspend all proceedings involving this application until the above two cases are finally decided on appeal and, if an election is required, such election is held.

WHEREFORE, STOPAQUILA.ORG et al. respectfully requests the Commission to suspend all proceedings involving this application until the above two cases are finally decided on appeal and, if an election is required, such election is held..

Respectfully submitted,


Gerard Eftink 28683 MO Bar#28683
VAN HOOSER, OLSEN & EFTINK, P.C.
704 West Foxwood Drive
P.O. Box 1280
Raymore Mo 64083
Attorneys for STOPAQUILA.ORG et al.

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 18th day of January, 2005, to the Office of General Counsel at gencounsel@psc.state.mo.us; Office of Public Counsel at opcservice@ded.state.mo.us; Paul A. Boudreau at paulb@brydonloaw.com, Mark Comley at comley@ncrpc.com, Debra Moore at dmoore@casscounty.com, John B. Coffman at jcoffman@ded.mo.gov and Denny Williams at denny.Williams@aquila.com

By: 