

NEWMAN, COMLEY & RUTH

PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW
MONROE BLUFF EXECUTIVE CENTER
601 MONROE STREET, SUITE 301
P.O. BOX 537
JEFFERSON CITY, MISSOURI 65102-0537
www.ncrpc.com

TELEPHONE: (573) 634-2266
FACSIMILE: (573) 636-3306

ROBERT K. ANGSTEAD
ROBERT J. BRUNDAGE
MARK W. COMLEY
CATHLEEN A. MARTIN
STEPHEN G. NEWMAN
JOHN A. RUTH
ALICIA EMBLEY TURNER

June 29, 2005

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

FILED

JUN 29 2005

Missouri Public
Service Commission

Re: Case No. EO-2005-0156

Dear Judge Roberts:

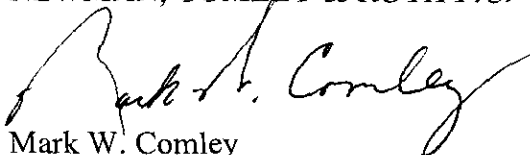
Please find enclosed for filing in the referenced matter the original and five copies of a Cass County's Response to Order Directing Filing and to Office of Public Counsel's Motion to Suspend Procedural Schedule.

Please contact me if you have any questions regarding this filing. 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
Paul A. Boudreau
Debra L. Moore

FILED

JUN 29 2005

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

CASS COUNTY'S
RESPONSE TO ORDER DIRECTING FILING AND TO
OFFICE OF PUBLIC COUNSEL'S MOTION TO SUSPEND
PROCEDURAL SCHEDULE

COMES NOW the County of Cass, Missouri (hereinafter Cass County), by and through its attorneys, and for its response to the Commission's order directing filing of June 28, 2005, and to the Office of Public Counsel's (OPC) recent motion to suspend the procedural schedule respectfully submits the following:

1. In its motion, OPC has accurately chronicled the history of this matter and its relationship to Judge Dandurand's Final Judgment in Case No. CV104-1443, Circuit Court of Cass County; and the appeal of that judgment in Case No. WD 64985, Missouri Court of Appeals, Western District. To review, Judge Dandurand entered an order by which Aquila was enjoined from constructing and operating the South Harper Plant and the Peculiar Substation. If at the end of the appellate process the judgment is affirmed, Aquila must demolish the South Harper Plant and the Peculiar Substation, both of which Aquila has continued to build under the contingency of its bond.

2. Cass County contended in January, 2005, that sufficient cause existed for the Commission to suspend proceedings in this case pending the outcome of the appeal of Judge

Dandurand's Final Judgment.¹ On June 21, 2005, as OPC has already reported, the Western District affirmed Judge Dandurand's judgment.

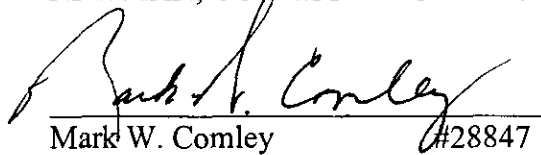
3. The Western District's opinion has added much more weight to the risk that the Commission will engage in a meaningless exercise if it does not suspend the proceedings in this matter. Cass County agrees with OPC that even though post opinion motions are available to Aquila, it is more likely than not that those motions will be denied by both the court of appeals and the Missouri Supreme Court. More than sufficient cause exists for the Commission to suspend these proceedings.

WHEREFORE, Cass County respectfully requests the Commission to grant OPC's motion and suspend all proceedings involving this application until the Final Judgment is final and unappealable.

Respectfully submitted,

NEWMAN, COMLEY & RUTH P.C.

By:



Mark W. Comley #28847
601 Monroe Street, Suite 301
P.O. Box 537
Jefferson City, MO 65102-0537
(573) 634-2266
(573) 636-3306 (FAX)
comleym@ncrpc.com

¹ See Cass County's Motion to Suspend, filed January 13, 2005.

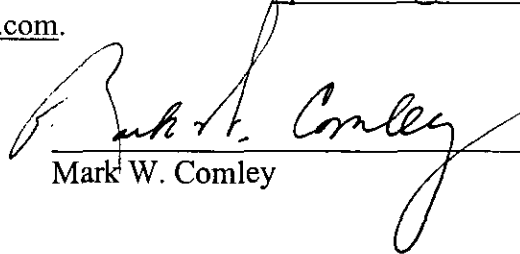
Debra L. Moore #36200
Cass County Counselor
Cass County Courthouse
102 E. Wall
Harrisonville, MO 64701

(816) 380-8206
(816) 380-8156 (FAX)
dmoore@casscounty.com

ATTORNEYS FOR CASS COUNTY, MISSOURI

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 29th day of June, 2005, to the Office of General Counsel at gencounsel@psc.state.mo.us; Office of Public Counsel at ppcservice@ded.state.mo.us; and Paul A. Boudreau at paulb@brydonloaw.com.


Mark W. Comley