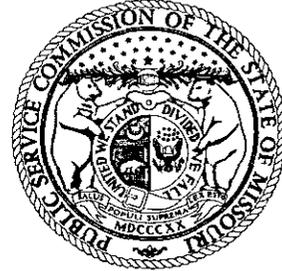


## Notice of *Ex Parte* Contact

TO: Data Center  
All Parties in Case No. **EO-2005-0156**  
**EA-2005-0248**

FROM: Chairman Jeff Davis  
Commissioner Connie Murray *cm*  
Commissioner Steve Gaw  
Commissioner Robert Clayton *RC*  
Commissioner Lin Appling *LA*

DATE: February 16, 2005



From February 2 through February 8, 2005, we received the attached documents via electronic mail from several individuals regarding Aquila. The Commission is currently considering the issues discussed in these documents in cases **EO-2005-0156 and EA-2005-0248**, both of which are contested cases. In contested cases, the Commission is bound by the same *ex parte* rule as a court of law.

Although communications from members of the public and members of the legislature are always welcome, those communications must be made known to all parties to a contested case so that those parties have the opportunity to respond. According to the Commission's rules (4 CSR 240-4.020(8)), when a communication (either oral or written) occurs outside the hearing process, any member of the Commission or Regulatory Law Judge who received the communication shall prepare a written report concerning the communication and submit it each member of the Commission and the parties to the case. The report shall identify the person(s) who participated in the *ex parte* communication, the circumstances which resulted in the communication, the substance of the communication, and the relationship of the communication to a particular matter at issue before the Commission.

Therefore, we submit this report pursuant to the rules cited above. This will ensure that any party to this case will have notice of the attached information and a full and fair opportunity to respond to the comments contained therein. Additionally, case number EO-2005-0156 contains notices of *ex parte* communication that may be relevant but were not filed in EA-2005-0248.

cc: State Senator Chris Koster  
State Representative Rex Rector  
Commissioners  
Executive Director  
Secretary/Chief Regulatory Law Judge  
General Counsel

**Finnell, Kay**

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**From:** Davis, Jeff  
**Sent:** Thursday, February 03, 2005 11:44  
**To:** Finnell, Kay  
**Subject:** FW: Another response to Aquila

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**From:** T&LBrodrick [mailto:brodrick@casstel.net]  
**Sent:** Wednesday, February 02, 2005 7:11 PM  
**To:** Jeff.davis@psc.mo.gov; Connie.murray@psc.mo.gov; Steve.gaw.@psc.mo.gov; Robert.clayton@psc.mo.gov; Linward.appling@psc.mo.gov  
**Subject:** Another response to Aquila

Dear Commissioners,

I am writing this email in response to this filing. My name is Tim Brodrick and I live at 23401 Knight rd. I am offended that the above brief questions how many people live in this area. I also do not see the relevance in the amount of money Aquila has already spent in preparing the site and on construction cost. Aquila knew from the start that we opposed this construction and the way it and the city of Peculiar tried to strong arm the people of this area. They have shown no regard to the laws of this county. They moved ahead with their plans at their own risk. Our community has also invested a large amount of money in a legal fund. The money we have invested from our own pockets, I'm sure, affected us more than the money a billion dollar company like Aquila put into preparing this site. Please don't use this irrelevant statement when considering Aquila's request.

My wife and I have 8 month old triplets that were born 2 1/2 months premature. The smallest was born at 1 pound 13 ounces and came home from the hospital on oxygen to assist her breathing. We fear the additional pollution generated by these three turbines will affect our children's health and the ability to enjoy time outdoors. We also fear Aquila doesn't intend to use these turbines as a means to produce extra electricity in only the hot summer months.

Thank you for your time and hearing my voice in this matter.

Sincerely,

Tim and Lesley Brodrick

2/7/2005

**Finnell, Kay**

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**From:** Davis, Jeff  
**Sent:** Monday, February 07, 2005 9:00  
**To:** Finnell, Kay  
**Subject:** Ex parte communication

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**From:** Francis Dillon [mailto:dillon@casstel.net]  
**Sent:** Saturday, February 05, 2005 8:29 AM  
**To:** Jeff.davis@psc.mo.gov; Connie.murray@psc.mo.gov; Steve.gaw@psc.mo.gov; Robert.clayton@psc.mo.gov; Linward.appling@psc.mo.gov  
**Cc:** rex.rector@house.mo.gov; mogov@mail.state.mo.us  
**Subject:** EA-2005-0248

Dear Commissioners,

My name is Frank Dillon and I reside at 24211 S. Harper Rd. Peculiar, MO 64078.

I am very angry with the manner in which Aquila is behaving. They are not a good corporate citizen and a very undesirable neighbor. Based on their position, they can do whatever they please. Well then, why don't they build a coal fired plant or a nuclear power plant in my front yard. Would that be any different from their point of view as to what their "rights" are?

They want an expedited schedule for hearings with the MO PSC! I say they should not be heard at all. The of what they are doing is extremely questionable. The need for more electricity in this area is extremely questionable. The need for more electrical generating plants in the state of MO is extremely questionable. It is just fine with me if the Aries plant in Pleasant Hill becomes regulated (or not) and serves the surrounding communities instead of sitting idle or creating pollution in the area to provide electricity to other states. And by the way, I wonder if the Audrain plant is still on standby as reported by the Department of Energy information in January, 2004?

I also question the motives of some elected officials and their apparent support of the utilities. The apparent blatant disregard of the facts is appalling.

Cass County and the State of Missouri should not be allowed to become the dumping ground for pollution created by generating facilities.

The government should focus on efficiency and the reduction of pollutants, and it needs to be done NOW.

FRANK DILLON

## **Finnell, Kay**

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**From:** Davis, Jeff  
**Sent:** Wednesday, February 16, 2005 12:49 PM  
**To:** Finnell, Kay  
**Subject:** FW: Concerned voter

-----Original Message-----

From: Troy Floyd [mailto:tfloyd@heritagebenefit.com]  
Sent: Wednesday, February 02, 2005 9:38 AM  
To: jeff.davis@psc.mo.gov; connie.murray@psc.mo.gov; steve.gaw@psc.mo.gov;  
robert.clayton@psc.mo.gov; linward.appling@psc.mo.gov  
Subject: Concerned voter

Dear Commissioners,

I am writing this email in response to the StopAquila posting on the Web site, to the filing's. My name is Troy Floyd, and my residence address is 10602 E 241st Ter. (I live an 1/8 mile away from the unwanted Aquila construction site) And I insist my voice be heard in regards to how many people live in the area and my take on how my life is being changed without any vote or hearing.

I gladly support the StopAuila group for their intervention on our behalf. I agree that all pertinent facts/ information be put out the public.

Sincerely,

Troy Floyd

**Finnell, Kay**

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**From:** Davis, Jeff  
**Sent:** Wednesday, February 16, 2005 9:22 AM  
**To:** Finnell, Kay  
**Subject:** FW: Aquila Peaking Facility, Cass

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**From:** Glodowski, Kathee [LTD] [mailto:Kathee.Glodowski@mail.sprint.com]  
**Sent:** Tuesday, February 08, 2005 10:04 PM  
**To:** Jeff.davis@psc.mo.gov; Connie.murray@psc.mo.gov; "Steve.gaw."@psc.mo.gov; Robert.clayton@psc.mo.gov; Linward.appling@psc.mo.gov  
**Cc:** Nancy Manning  
**Subject:** Aquila Peaking Facility, Cass County

February 8, 2005

Chairman Jeff Davis  
Commissioner Connie Murray  
Commissioner Steve Gaw  
Commissioner Robert Clayton  
Commissioner Linward Appling

Dear Chairman Davis and Commissioners Murray, Gaw, Clayton and Appling:

This letter is in response to reply comments issued by Aquila in relation to Case No. EO-2005-0156. My name is Kathee Glodowski and I live at 7001 East 239<sup>th</sup> Street less than 2 miles from the unapproved site for the Aquila peaking facility in Cass County.

In reading the Aquila response I take issue with several statements included in the reply comments. The StopAquila Organization is not incorporated nor is it required of a group of impacted citizens working together to stop a Corporation who creates their own rules and shows a total disregard for our County zoning and building regulations. Aquila continues to build it's facility in a County location and in an area in which it is not even the power service provider to those of us impacted. Aquila has refused to obtain approval, zoning or building permits and only recently asked to be allowed to build at the last hearing. That request was denied. Aquila continues to build in complete disregard of the Court.

Aquila worries about a list of "members" of the StopAquilaOrg yet ignores building and zoning requirements. They know who our Attorney is and any request for data should be directed to the Attorney.

Aquila worked with City Officials in Peculiar to annex county land without a vote of either Peculiar residents or residents of the County in a completely underhanded manner in hopes of allowing Aquila to build the facility. That was the driving force in the establishment of the Stop Aquila Organization. We had no one to represent those of us who have to live with the facility.

Attempts by the StopAquilaOrg. resulted in a cease order from Cass County which Aquila continues to ignore. If we need building permits to put in a septic tank, build any type of structure and comply with zoning rules, Aquila should be forced to do the same. By allowing the continued building of the facility a precedent is being set in the County and basically no one should be required to obtain permits. Aquila believes it is above the laws of the County which are designed to protect those of us who live in the County.

Aquila indicates they have sustained substantial costs in building this facility. Mayor Lewis has said in town meetings they (Aquila) do this at their own risk and the decision to continue was Aquila's. Aquila had representation at these meetings also. Since Aquila has met with community resistance from the beginning it was

2/16/2005

foolish on their part to continue to throw money at a project under these circumstance but they have not exhibited good Corporate decisions and probably intended to whine about it when it would perhaps do them the most good.

Aquila has not abided by County rules and regulations and what specifically, will hold them accountable for the hours they say they will operate or anything else they say? They have proved they are not good Corporate citizens and can not be trusted. Who monitors Aquila and ensures they are in compliance?

If Aquila needs this facility so badly, why did they sell their other facility last April? Why should a Corporation with questionable ethics be allowed to destroy our rural way of life and lifestyle? How is a Corporation allowed to come in to an area where they do not provide service and destroy our lifestyle and no Government agency sees fit to stop them? We who live in the area, gain nothing, are in no way compensated and will in some cases have property values seriously impacted. And for what, so they can sell power to another State? The facility is no more needed than it is wanted.

Aquila indicates they are upgrading their transmission lines. They certainly are, they have torn up fields, pastures and roads in replacing the common wood telephone poles with huge metal poles approximately two feet in diameter. The previous poles were taller than the typical 30 - 35 foot class 3 poles most people are familiar with however they were nothing in comparison to the huge metal giants that have replaced them. These transmission lines are worked on seven days a week. Another indication of the concern Aquila has for the residents of the area.

What about our rights to decide what is permitted in the area in which we reside? I urge you to help us maintain our quiet country lifestyle, they aren't making any more areas like this and once it is destroyed there is no turning back.

Sincerely,

Kathee Glodowski

**Finnell, Kay**

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**From:** Davis, Jeff  
**Sent:** Wednesday, February 16, 2005 12:49 PM  
**To:** Finnell, Kay  
**Subject:** FW: Aquila's proposed power plant in

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**From:** JOSEPH HENRY [mailto:joseph\_4051@msn.com]  
**Sent:** Sunday, February 06, 2005 8:01 AM  
**To:** jeff.davis@psc.mo.gov; connie.murray@psc.mo.gov; steve.gaw@psc.mo.gov; robert.clayton@psc.mo.gov; linward.appling@psc.mo.gov; pscinfo@psc.mo.gov  
**Subject:** Aquila's proposed power plant in Peculiar

My name is Andrea Henry, and I live at 24112 South Tanaine Lane in Peculiar, Missouri. I am writing to address your recent decision to side with Aquila against local residents, collectively known as StopAquila.org, on the issue of the Peculiar peaking station at 243rd Street and South Harper Road. Your allegations that the citizens of Cass County who live in this area should have no grounds to oppose the matter, because we are "unincorporated" and "have no proprietary interest", is appalling. My husband and I invested dearly in our home, less than 1/2 mile from the proposed site, because we knew the rural setting would be appealing to a future buyer. Aquila has already stunted the residential real estate market in the area. The residents here are not Aquila customers, yet we will suffer if we move away, and we will suffer if we stay. We DO have a proprietary interest, but your decision says that only corporate interests matter. I don't know how you can say this in good conscience.

Aquila initially proposed this site to the citizens of Peculiar, and to you at the Public Service Commission, as the most economically feasible option because of its existing natural gas source. Now we find that the natural gas supply is NOT sufficient and they are having to buy natural gas elsewhere and run more lines to the site. This completely discredits the reason they gave for building there. Further, Aquila chose to start construction illegally so they were well aware of the potential for litigation. How does this fulfill Aquila's obligation to to the PSC to provide power to their customers at the lowest possible cost?

Further, because Aquila has numerous options statewide to buy or take part ownership in existing power facilities to service their customers, I would appreciate you telling me why this peaking facility is needed in Peculiar.

Thank you,  
Andrea Henry

2/16/2005

**Finnell, Kay**

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**From:** Davis, Jeff  
**Sent:** Thursday, February 03, 2005 11:44 AM  
**To:** Finnell, Kay  
**Subject:** FW: Aquila Inc.--Harper Road Peak Generating

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**From:** Chuck Jackson [mailto:[chuck05jackson@yahoo.com](mailto:chuck05jackson@yahoo.com)]  
**Sent:** Wednesday, February 02, 2005 10:57 PM  
**To:** Jeff.davis@psc.mo.gov; Connie.murray@psc.mo.gov; Steve.gaw@psc.mo.gov; Robert.clayton@psc.mo.gov; Linward.appling@psc.mo.gov; nmanning@casstel.net  
**Subject:** Aquila Inc.--Harper Road Peak Generating Station

Dear Commissioners,

I am writing to you today as a concerned citizen of Cass County, MO and as a member of the group StopAquila.org. Apparently Aquila believes and would like to convince your commission that nearby residents of the above mentioned generating station don't really exist. I would submit my E-mail as proof of my existence along with my many neighbors who are also opposed to this construction project. Since early October 2004, we have been engaged in a struggle to have our voices heard and our rights as Missouri citizens preserved while we attempt to fight off this corporation who is ILLEGALLY building this power station in our RESIDENTIAL area. One visit to our website will show you the aerial photography of the site in question and the MANY homes in the surrounding 1-mile radius.

I myself live with my girlfriend at the corner of 243rd and Chadwick approximately 1/2-mile from the construction site. I witness daily the steady stream of concrete trucks and other vehicles belonging to Aquila, Capital Electric, and various sub-contractors who are at work on this project. I awake each morning to the sound of these heavy vehicles speeding by my home on a now deteriorating gravel road which was 243rd street. I hear the sound of rock being crushed at the site. I hear diesel engines running all day long. Soon I expect to hear the ever more annoying sounds of generators running at "peak" capacity, even though Aquila insists this plant will only operate during peak season. I do not believe anything Aquila is representing and my hope is that your commission will see through their attempts to fool you as well.

Please, I implore you, help us defeat this corporate giant who is determined to ruin my neighborhood. I do not want this generating station in my back yard and neither do my friends and neighbors. Tell Aquila to go elsewhere!

Respectfully,

Charles Jackson  
24215 S. Chadwick  
Peculiar, MO 64078  
816-779-5095

[chuck05jackson@yahoo.com](mailto:chuck05jackson@yahoo.com)

Do you Yahoo!?

Yahoo! Search presents - Jib Jab's 'Second Term'

**Finnell, Kay**

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**From:** Davis, Jeff  
**Sent:** Tuesday, February 22, 2005 2:21 PM  
**To:** Finnell, Kay  
**Subject:** FW: Response to Aquila's Request for a Site-specific Certificate of Convenience and Necessity  
**Attachments:** Aquila South Harper App.pdf

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**From:** Stephenson, Natalie S [CC] [mailto:Natalie.Stephenson@mail.sprint.com]  
**Sent:** Tuesday, February 08, 2005 1:22 PM  
**To:** Jeff.davis@psc.mo.gov; Connie.murray@psc.mo.gov; Steve.gaw@psc.mo.gov; Robert.clayton@psc.mo.gov; Linward.appling@psc.mo.gov; wess.henderson@psc.mo.gov  
**Subject:** Response to Aquila's Request for a Site-specific Certificate of Convenience and Necessity

Dear Sirs and Madam:

As a deeply interested party, residing two blocks east of Aquila's proposed South Harper peaking facility, I have reviewed Aquila's application (attached below) and present the following observations for your consideration:

It seems to me that in evaluation of this application, there are simply two questions that must be answered.

First, should the privileges granted to Aquila's predecessor generations ago, which I understand are relevant to transmission lines only, be construed as a permit to plop down an acid-rain-spewing, noisy, noxious power plant in the midst of a residential/agricultural community? I think not. This assertion is tantamount to me declaring that the Second Amendment "right to bear arms" gives me the right to erect nuclear missiles in my back yard. This is a ridiculous notion, one that does not stand up in court.

Consequently, this leaves only the question of "necessity and convenience."

From the outset of this "project," Aquila and the City of Peculiar represented that the intent of the South Harper power plant was to serve only as "a peaking facility that is (to be) used only when there is a high demand for electricity, such as on hot, humid summer days when everyone turns on their air conditioners," a testimony still found on Aquila's website today. Furthermore, the project's reported intent was to serve the Lee's Summit area during peak demand and/or to sell the electricity on the wholesale market.

To my knowledge and recollection, there was no mention of the plant serving Cass County residents, nor selling power in a retail environment, until law suits were filed against Aquila. Subsequently, the company suddenly found the "necessity and convenience" of producing a newfound "need" formulated from Cass County population-growth statistics. As you probably know, the immediate area surrounding the plant is serviced by Osage Valley Electric Co-op, who has not predicted an additional need for electricity until 2025. Likewise, I question how Aquila intends to fulfill the great consumer need it professes with the South Harper plant, which is only permitted to operate up to 2,000 hours per calendar year under current air permit restrictions. These observations lead me to conclude that Aquila is misrepresenting its true intentions to the commission in an attempt to justify the reckless endeavor it has

2/22/2005

Moreover, with regard to Aquila's "Critical Timing Considerations," it seems Aquila would have us believe the Aries facility in Pleasant Hills will turn into a pumpkin at midnight June 30, 2005. Or, perhaps, the contract to which Aquila refers is one of those James Bond self-destructing contracts -- non-renewable and non-negotiable? This 'drop-dead' date, I believe, is one of Aquila's own self-imposition as the result of questionable financial dealings prematurely placed in motion with the City of Peculiar, and will not climax into "the night the lights went out" in Missouri.

In sum, Aquila's apparent inability or unwillingness to manage their assets, contracts, and expenditures in a fiscally sound manner, or operate under the rules and regulations designed to promote the public welfare, does not a public "need" create.

Contrary to the assertions Aquila represents in its tardily submitted application, long after the utility began construction, spent \$14 million, and had its hand forced in the court of law, I submit for your consideration that Aquila has neither the right, the necessary permission, nor is there any serious or immediate public need to proceed any further with the destruction and degradation of this specific piece of countryside. I urge you to reject this application and tell Aquila that this self-serving behavior -- (reminiscent of the "charges of false reporting and attempted manipulation of gas prices," for which Aquila reportedly agreed to pay \$26.5 million in settlement last year (Power Economics, February 2004)) -- will not be tolerated by the commission nor the public for which it serves. Thank you for your consideration.

Sincerely,

Natalie Stephenson

Peculiar, Missouri

<<Aquila South Harper App.pdf>>

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

In The Matter of the Application of Aquila, )  
Inc. for Specific Confirmation or, in the )  
Alternative, Issuance of a Certificate of )  
Convenience and Necessity Authorizing )  
it to Construct, Install, Own, Operate, )  
Control, Manage, and Maintain a )  
Combustion Turbine Electric Generating )  
Station and Associated Electric )  
Transmission Substations in )  
Unincorporated Areas of Cass County, )  
Missouri Near the Town of Peculiar. )

Case No. \_\_\_\_\_

**APPLICATION**

COMES NOW Aquila, Inc., (hereinafter "Aquila" or "Applicant") pursuant to §393.170 RSMo 2000, 4 CSR 240-2.060 and 4 CSR 240-3.105(B), and for its Application to the Missouri Public Service Commission ("Commission") states as follows:

**General Information About Applicant**

1. Applicant is a Delaware Corporation with its principal office and place of business at 20 W. 9<sup>th</sup> Street, Kansas City, Missouri 64105-1711. Applicant is authorized to conduct business in Missouri through its Aquila Networks-MPS and Aquila Networks-L&P operating divisions and as such is engaged in providing electrical, natural gas and industrial steam utility service in those areas of the State certificated to it by the Commission. A Certificate of Authority for a foreign corporation to do business in the State of Missouri evidencing Aquila's authority under the law to conduct business in the State of Missouri was filed with the Commission in Case No. EU-2002-1053 and said documents are incorporated herein by reference in accordance with 4 CSR 240-

2.060(1)(G). Additionally, copies of the registrations of fictitious names of Aquila Networks-MPS and Aquila Networks L&P were filed in Case No. EU-2002-1053 and said documents are incorporated herein by reference in accordance with 4 CSR 240-2.060(1)(G).

2. Aquila has pending actions or final unsatisfied judgments or decisions against it involving customer service or rates having occurred within three (3) years from the date of this Application.

3. Aquila has no annual report or assessment fees that are overdue.

4. All pleadings, notices, orders and other communications and correspondence regarding this Application and proceeding should be directed to:

Mr. Dennis R. Williams  
Aquila Networks  
10700 East 350 Hwy  
Kansas City, MO 64138  
(816) 737-7857

Paul A. Boudreau  
Brydon, Swearngen & England, P.C.  
312 East Capitol Avenue  
P.O. Box 456  
Jefferson City, Missouri 65102  
(573) 635-7166

#### **Relief Requested**

5. This Application is being filed by Aquila to confirm specifically that it possesses, or in the alternative, obtain from the Commission a certificate of convenience and necessity to construct, own, operate and manage an electrical power production facility and associated electric transmission substations to be located on two discrete tracts of property near the City of Peculiar in Cass County, Missouri, more

specifically described in paragraphs 23 and 24, *infra*. Each of these facilities is located within the geographic area previously certificated to Aquila's predecessors-in-interest pursuant to the Commission's prior decisions and orders in numerous cases, including its Case Nos. 1,074, 1,449, 3,171, 5,109, 9,470, and 11,892.

6. Because of the litigation described below in Paragraphs 13-16, Aquila requests that the Commission either confirm specifically that Aquila's existing certificate of convenience and necessity authorizes it to construct and operate the South Harper Facility and Peculiar Substation at their respective locations as described in Paragraphs 23-24, *infra*, or in the alternative, grant Aquila a site-specific certificate of convenience and necessity for the same purpose without regard to the existence of Aquila's prior certificates and orders. Such action would be consistent with the Commission's 1977 decision in Case No. EA-77-38 regarding The Empire District Electric Company's LaRussell Energy Center.

7. This Application does not ask that the Commission make a determination as to the prudence of constructing the electrical facilities sought to be certificated, the correctness of Applicant's resource planning decisions, or pre-approval of any of the costs associated with the South Harper Facility or the Peculiar Substation. Applicant anticipates that the Commission will include in the report and order its customary determination that any decision in this case is not binding for ratemaking purposes and that the Commission reserves the right to consider the ratemaking treatment to be given the projects in a subsequent proceeding or proceedings. Finally, Applicant is not requesting the Commission to make any findings in respect to the matters specifically

presented to it in Case No. EO-2005-0156, relating to an affiliate asset transfer and Chapter 100 financing considerations.

### **South Harper Site and Timing Considerations**

8. In October of 2004, Aquila began land clearance and site preparation on a parcel of property in an unincorporated area in Cass County, Missouri, near the City of Peculiar at East 243<sup>rd</sup> Street and South Harper Road for the installation of a peaking power production facility comprising three (3) natural gas-fired combustion turbines ("CTs") and an associated electric transmission substation (the "South Harper Facility"). Also, Aquila has begun land clearance activities in preparation for the construction of a related electric transmission substation on approximately ten (10) acres of a fifty-five (55) acre parcel of property at a location one-half mile west of 71 Highway and one-half mile south of the intersection of 203<sup>rd</sup> Street and Knight Road, approximately 2 miles northwest of Peculiar at a location adjacent to the intersection of an existing 345 kV electric transmission line and an existing 69 kV electric transmission line, each of which is owned by Applicant (the "Peculiar Substation").

9. The Commission has authorized Applicant to construct, operate and maintain electric facilities and to render electric service throughout portions of Cass County, Missouri, to further the public convenience and necessity pursuant to the Commission's prior decisions, including in Case Nos. 1,074, 1,449, 3,171, 5,109, 9,470 and 11,892 (hereinafter the "Certificate"). The location of the South Harper Facility and the Peculiar Substation are both within the general electric service area certificated to Aquila by the Commission in its Case Nos. 9,470 (1938) and 11,892 (1950). As such, Applicant concluded that a separate and overlapping certificate of convenience and

necessity for the construction and operation of the South Harper Facility and the associated Peculiar Substation would be duplicative and unnecessary.<sup>1</sup> Applicant's understanding of the law in this regard is in full accord with the Commission's long-standing policy summarized in a letter dated November 5, 2004, to Mrs. Nanette L. Trout and signed by the Executive Director of the Commission. A copy of said letter is attached hereto, marked **Appendix 1**, and incorporated herein for all purposes.

10. The South Harper Facility is being constructed to replace a power purchase agreement ("PPA") that expires May 31, 2005. The current PPA is for 500 megawatts ("MW") of capacity during the summer months and 200 MW in the winter. With increasing demand in Aquila's Missouri service area and the need for year-around peaking capability, the South Harper Facility's three (3) 105 MW simple cycle CTs will provide flexibility to meet the needs of Aquila's customers. Aquila's Western Missouri service area includes the majority of Cass County, a first class non-charter county, which is one of the fastest growing areas served by Aquila.<sup>2</sup> Aquila is adding approximately 5,000 new customers per year in this area, and the total system demand for electricity at peak times hit an all-time high of approximately 1,861 MW in 2003. Electrical load in this area is up approximately 7.5% since 2002. Aquila's capacity needs of approximately 200 – 250 MW will be met with PPAs that resemble base load power supply.

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<sup>1</sup> See, *State ex. rel. Harline v. Public Service Commission*, 343 S.W.2d 177 (Mo. App. 1960) [A public utility is not required to obtain an additional certificate to construct facilities within a territory already allocated to it.]; *The Empire District Electric Company v. Cox*, 588 S.W.2d 263 (Mo. App. 1979); [Utilities do not have to come before the Commission to obtain authority to build a plant within their respective certificated areas.]; *Re Union Electric Company*, 24 Mo.P.S.C.(N.S.) 72 (1980) [Application for certificate to construct and operate two combustion turbine generating units within an existing certificated territory dismissed as unnecessary.]

<sup>2</sup> The Missouri Office Administration has identified Cass County as one of the top ten fastest growing counties in the State showing a population increase of 8.2% over the three (3) years between April 1, 2000 and July 1, 2003. (OA News Release, April 9, 2004)

### **Critical Timing Considerations**

11. The timeframe to complete construction activities at the South Harper Facility and the Peculiar Substation so that commercial operations can begin as scheduled by June 30, 2005 is very tight and unforgiving. June is only four (4) calendar months off and several interim key dates are imminent. Site preparation activities, including the pouring of concrete foundations for the CTs, are nearing completion. The installation of the first two CTs is scheduled to commence as early as the end of February or early March. The third CT is scheduled to be installed shortly thereafter. These activities absolutely cannot be delayed if the process of commissioning the CTs is to begin on schedule by mid-May. If these dates are not met, the CTs may not be on line producing power when needed for the upcoming Summer cooling season.

12. Applicant's financial commitment to this undertaking has been significant to date. Project costs through December of 2004 have totaled almost \$14 million and significant additional expenditures of approximately \$28 million are anticipated through the first quarter of 2005 alone. Aquila anticipates investing approximately \$3 million per week through the end of March 2005. Ultimately, total project costs are expected to exceed \$144 million through October of this year including the CTs.

### **Cass County Litigation**

13. Shortly after the commencement of site preparation and improvements at the South Harper Facility, separate petitions for injunctive relief were filed by Cass County, Missouri and an unincorporated association of individuals. Said lawsuits challenged the right of Aquila to construct the South Harper Facility and the Peculiar Substation claiming, among other things, that the provisions of §64.235 RSMo 2000,

providing for the adoption by first class non-charter counties of a planning and zoning code, superceded the authority of Aquila's Certificate or imposed additional requirements on Aquila to seek either project-specific authority from the Commission to construct and operate the South Harper Facility and the Peculiar Substation or, more specific authority from the Cass County Commission. On January 6, 2005, the Cass County Circuit Court issued a permanent injunction enjoining Aquila from constructing and operating the South Harper Plant and the Peculiar Substation, and ordering that Aquila remove all improvements and equipment inconsistent with the property's agricultural zoning classification by Cass County. A copy of the Court's Judgment, is marked **Appendix 2**, attached hereto and incorporated herein for all purposes.

14. The Court's Judgment also provided for the injunction to be suspended pending the posting by Aquila of a cash or surety bond during the pendency of appeal. Aquila posted a surety bond, which was accepted on January 11, 2005 by the Circuit Court. On January 12, 2005, Aquila filed a Notice of Appeal of the Judgment in the Missouri Court of Appeals, Western District, Case No. WD64985. A copy of that documentation is marked **Appendix 3**, attached hereto and incorporated herein for all purposes.

15. The Judgment of the Circuit Court contains the following finding:

The Court finds that either Aquila's Cass County franchise must give Aquila the specific authority to build a power plant within Aquila's certificated area or service territory, and that Aquila's 1917 franchise with Cass County does not; or that Aquila must obtain a "specific authorization" in its certificate of public convenience and necessity, pursuant to the provisions of §64.235 of the revised statutes of Missouri, to build a power plant within its certificated area or service territory from the Missouri Public Service Commission, and that Aquila has not. (Judgment, p.3, emphasis added)

The Circuit Court's conclusion that the provisions of §64.235 RSMo, as they apply to the authority of first class non-charter counties to adopt a comprehensive planning and zoning code supercede or impose additional requirements on certificates of convenience and necessity held by investor-owned utilities subject to the Commission's jurisdiction, is not consistent with Aquila's understanding of the expository case law as articulated by the Missouri Supreme Court in a series of important opinions.<sup>3</sup> Consequently, Aquila is confident that its appeal is meritorious and that it will ultimately prevail on the legal issues raised by Cass County and addressed in the Judgment. Aquila intends to request an expedited appeal of the Judgment of the Cass County Circuit Court but the timing of a decision in that appeal is uncertain. It is possible that the Court of Appeals will not issue its decision sufficiently in advance of June 2005 to meet Aquila's urgent need to have power production capacity on line to meet the growing demands of its Aquila Networks-MPS customers, including those located in Cass County, Missouri.

16. Because of the uncertainties created by the Court's injunction, Aquila does not have the luxury of simply waiting for the outcome of the appeal. The power to be produced by the South Harper Facility is needed to meet its customers' demands and significant additional capital commitments associated with the construction of the South Harper Facility are imminent. Without the restoration of certainty concerning Applicant's right and authority to construct and operate the South Harper Facility and the Peculiar Substation, Aquila will be forced to consider more costly options to meet its obligation to serve the public. In an abundance of caution, Aquila is compelled to address the

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<sup>3</sup> See, *Union Electric Company v. Saale*, 377 S.W. 2d 427, 430 (Mo. 1964); *Union Electric Company v. City of Crestwood*, 499 S.W. 2d 480, 482-84 (Mo. 1973) ("*Crestwood 1*"); *Union Electric Company v. City of Crestwood*, 562 S.W. 2d 344, 346 (Mo banc. 1978) ("*Crestwood 2*").

legality and legitimacy of the South Harper Facility and the Peculiar Substation by all means possible and in the most time-effective manner.

### **Regulatory Context and Considerations**

17. For a period of time, there was a divergence of views within the industry about the scope of the authority of electric utilities to build additional electric plants within geographic areas certificated to them to provide service to the public. In 1973, Commissioner Clark noted that:

[M]any existing electric companies in this state have, for many years, after first obtaining consent necessary for subsection [393.170] (1) authority added to the existing plant or built additional plants at different locations without having applied to the Commission, and to hold otherwise would place in jeopardy the many plants heretofore constructed without the consent of the Commission.

*Re Missouri Power and Light Company*, 18 Mo.P.S.C. (N.S.) 116, 121 (1973)(Clark, C., concurring in result). Aquila's predecessor-in-interest, Missouri Public Service Company, followed this practice. Like the South Harper Facility, Aquila's base-load Sibley Power Station and its Greenwood Energy Center, each located in Jackson County, Missouri, were constructed and put into operation in reliance on its Case No. 11,892 certificate.<sup>4</sup> As noted in the *Missouri Power and Light Company* decision, other companies sometimes followed a different practice and would request site-specific certificates for new power production facilities, including those built within the service

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<sup>4</sup> In Case No. 11,892, the Commission specifically granted Missouri Public Service Company a certificate of public convenience and necessity to ". . . own, maintain and operate all properties and assets and to acquire, hold and exercise all contracts, franchises, permits and rights now held and possessed by Missouri Public Service Corporation; including, without limitation, all rights to construct, own and maintain electric utility facilities in the areas in the State of Missouri described and designated in the order of this Commission entered in Case No. 9,470 on January 18, 1938."

areas previously certificated to the applicant. This was the practice of Union Electric Company as revealed in the case papers of Commission Case No. EA-79-119.<sup>5</sup>

18. In that 1980 case, Union Electric Company filed an application for a certificate of convenience and necessity to install two (2) combustion turbine power generating units at a location within its existing certificated service area. In the context of that case, the Commission examined the decisions of the appellate courts in the *Harline* and *Cox* decisions.<sup>6</sup> In the Union Electric case, the Commission carefully articulated its policy regarding the authority of electric utilities to build additional electrical facilities within their certificated service areas. In an important exercise of its primary jurisdiction,<sup>7</sup> the Commission determined that the decision to construct additional facilities is one reserved to the management discretion of the company as driven by its statutory obligation to provide reliable public service to meet the need already established in the underlying area certificate case. Accordingly, it dismissed the application of Union Electric Company.

19. There have been occasional exceptions to the application of the Commission's general policy. In 1973 in Case No. 17,737, the Commission granted Missouri Power and Light Company a power plant "footprint" certificate for authority to construct and operate a 54 MW combustion turbine within its certificated service area in Jefferson City, Cole County, Missouri. In doing so, the Commission reiterated its view that it did "not feel we should interfere with such a management decision unless there is

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<sup>5</sup> Reported at 24 Mo. P.S.C. (N.S.) 72.

<sup>6</sup> See, footnote #1, *supra*.

<sup>7</sup> The Commission has exclusive jurisdiction to make decisions within the specialized expertise reserved to the Commission by law. See, *State ex rel. MCI Metro Access Transmission Services v. City of St. Louis*, 941 S.W.2d 634, 644 (Mo. App 1997); *Killian v. J&J Installers, Inc.*, 802 S.W.2d 158, 160 (Mo. banc 1991); *Crestwood 1* and 2.

clear showing that such decision is unreasonable and unsound.” 18 Mo.P.S.C. (N.S.) at 120. As noted in paragraph 17, *supra*, Commissioner William R. Clark filed a separate opinion concurring in the result but stating:

[i]t is my opinion that Missouri Power and Light Company does not need to apply to the Commission for the consent set forth in §393.170(1) RSMo 1969 for the reason that Missouri Power and Light Company possesses the authority to construct and operate electric plants within the City of Jefferson and has done so for many years.

18 Mo.P.S.C. (N.S.) at 121.

20. In 1977, The Empire District Electric Company (“Empire”) filed an Application for a certificate of convenience and necessity associated with the construction of the LaRussell Energy Center located in Jasper County, Missouri. The Commission docketed the Application as Case No. EA-77-38. Like Aquila, the Commission observed that Empire had been certificated in Commission Case No. 9,420 “to construct, operate and maintain electric facilities and to render electric service in all unincorporated areas of Jasper County, Missouri and certain other counties in Missouri.” The Commission noted that upon advice of legal counsel, Empire nevertheless sought to certificate a 90 MW oil-fired combustion turbine to be located near the confluence of Spring River, the Missouri Pacific Railroad and the Explorer Pipeline in an unincorporated portion of Jasper County.<sup>8</sup>

21. Ultimately, after considering the information provided by Empire, the Commission granted the requested certificate. In doing so, however, the Commission recited its reservations about the necessity of the filing.

Inasmuch as Empire has submitted voluntarily to this Commission its application for authority to construct these facilities, notwithstanding its existing certificate of convenience and necessity under the Report and

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<sup>8</sup> 21 Mo. P.S.C. (N.S.) at 352.

Order in Case No. 9,420, we choose to exercise our authority and jurisdiction and do not treat the issue respecting the efficacy of that certificate as authority for the facilities involved in this proceeding.

21 Mo.P.S.C. (N.S.) at 355.

22. The *Missouri Power and Light* and *Empire* decisions, though consistent with the Commission's long-standing interpretation as to the scope of authority granted by a blanket certificate, demonstrate that the Commission has reserved the right to consider applications that request an overlapping production facility certificate under special circumstances. Aquila submits that compelling special circumstances justify the Commission's issuance of such an overlapping certificate for the locations of the South Harper Facility and the Peculiar Substation. As noted above, Aquila faces a deadline for additional peaking power capacity in June of 2005. The Judgment of the Circuit Court has cast doubt on Aquila's right to proceed with the completion of the South Harper Facility and the Peculiar Substation, as well as its decision to incur significant expenses to complete this project. The issuance of either a confirmation of specific authority under the existing certificate or a new project-specific certificate of convenience and necessity will remove any doubt about Aquila's authority and right to complete and operate the South Harper Facility and the Peculiar Substation.

**The Public Convenience Will Be Served By  
Completion of the South Harper Facility**

23. Applicant requests specific confirmation under its existing certificate or, in the alternative, a new site-specific certificate of public convenience and necessity, authorizing Aquila to install, own, acquire, construct, operate, control, manage and maintain an electric generation station comprising three (3) 105 MW natural gas-fired CTs and its associated electric transmission substation, as well as the related electric

substation and all associated fixtures, buildings, transformers and breakers (hereinafter, collectively, the "Project"). All facilities, equipment and installation will be located on two (2) separate parcels of property located in an unincorporated area of Cass County, Missouri as set forth on the map attached hereto as, marked **Appendix 4** and incorporated herein for all purposes.<sup>9</sup> Tract A is approximately 74 acres of land at or near 243<sup>rd</sup> Street and Harper Road, approximately two (2) miles Southwest of Peculiar, and is generally located in parts of Sections 29 and 32, Township 45 North, Range 32 West in Cass County. The three (3) CTs and an associated transmission substation, fixtures, equipment and improvements will be located on Tract A. Tract B is approximately 55 acres of property one-half mile west of 71 Highway and one-half mile south of the intersection of 203<sup>rd</sup> Street and Knight Road, and is generally located in the northwest quarter of Section 5, Township 45 North, Range 32 West, in Cass County. An electric transmission substation will be located on Tract B.

24. Attached hereto, marked **Appendix 5** and incorporated herein for all purposes are legal descriptions of Tract A and Tract B, each described by metes and bounds.

25. Applicant requests a waiver from the requirement of Commission Rule 4 CSR 240-3.105(1)(B)2, that it submit a study containing the plans and specifications for its power generation station, the associated electric substations and the estimated cost of construction of the Project. Those materials are extremely voluminous and would be an unreasonable burden on Applicant to either reproduce or electronically submit the materials on the Commission's EFIS. Applicant is prepared to make these materials

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<sup>9</sup> The Peculiar Substation is indicated as the "North Substation" on the map.

available to the Commission's Staff or the Office of Public Counsel ("OPC") at Applicant's offices in Kansas City, Missouri, or at any other agreed-to location.

26. The Project will be financed with Aquila's internally generated funds.<sup>10</sup>

27. As explained in greater detail in its Application in Case No. EO-2005-1156, title to the Project will be transferred to the City of Peculiar and will be leased back to Aquila. Aquila will treat the lease arrangement as a capital lease. The resulting accounting treatment will be the same as if the Project were a power generation asset owned outright by Aquila Networks-MPS.

28. This Commission has previously established in Case Nos. 3,171, 9,470 and 11,892 and others that the public convenience and necessity is served by Aquila's extension of new electric plant, including power plants and transmission substations, throughout those areas of Cass County currently served by it, including at the locations of Tracts A and B. Said findings are final and conclusive and are not subject to collateral challenge. §386.550 RSMo 2000. Nevertheless, the granting of this Application will be in the public interest because the electric power to be generated by the Project will be rate-based capacity that will be available to serve increasing demand for electric power by Aquila's customers in Missouri, including those located in Cass County. There are operational and cost advantages inherent in a utility's ownership of generating facilities. In recognition of these advantages, the Commission just recently stated its preference for company-owned generation instead of heavy reliance PPAs to meet Missouri load requirements and to protect Missouri customers.<sup>11</sup> This statement

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<sup>10</sup> The terms of tax-advantaged Chapter 100 RSMo revenue bond financing are addressed with more specificity in the Application heretofore filed by Aquila and docketed by the Commission as Case No. EO-2005-0156.

<sup>11</sup> See, FERC Docket EC03-53-000 and 001, Opinion 473, pages 7 and 10.

has been consistent with Aquila's recent experience in which the Commission's Staff has encouraged the company to reduce its reliance on PPAs in favor of power plant ownership when justified. Since as early as May of 2003, Aquila has presented to representatives of Staff and OPC information demonstrating the need for peaking capacity of 300 MW during regular reviews of its integrated resources plan ("IRP"). The construction of the South Harper Facility is consistent with the IRP. The location of the Project is desirable because of its relative proximity to the load center of the Western side of Aquila Networks-MPS's service area, existing electrical transmission facilities and the availability of fuel from natural gas pipelines near the Project site, all as more specifically described in Paragraph 34, *infra*.

29. In accordance with Commission Rule 4 CSR 240-3.105(B)(1), Applicant states that construction activities at the South Harper Facility required the lowering of an existing telephone line of Cass County Telephone Company (representatives of which were on-site at the time) and the placement of the driveway that crossed an existing water line of Public Water Supply District No. 7 ("PWSD7"). Representatives of PWSD7 worked with Applicant to lower the line to accommodate the driveway entrance to Tract A. Other activities associated with an upgrade of an existing 69 kV electric transmission line will occur over buried natural gas lines, but it is not expected that those lines will be disturbed.

30. In connection with the construction and development of the South Harper Facility and the associated Peculiar Substation, Aquila is preparing to apply, has applied, and/or has obtained all required authorizations from local, state, and federal authorities, including but not limited to, county driveway permits, county building code

permits, a prevention of significant deterioration ("PSD") air permit, acid rain permit, review of threatened and endangered species, wetland determinations, cultural resources review, permits under the National Pollutant Discharge Elimination System ("NPDES") and Storm Water Pollution Protection Plans ("SWPPP") for construction activity, NPDES hydrostatic testing permit, NPDES and SWPPP operating permits and Commission approval for the use of purchased CTs and Chapter 100 revenue bond financing in Commission Case No. EO-2005-0156.

31. In accordance with Commission Rule 4 CSR 240-3.105(D), Applicant has marked **Appendix 6**, and attached hereto for all purposes a copy of the assent of Cass County, Missouri pursuant to the provisions of §229.100 RSMo issued by order of the Cass County Commission in 1917. A copy of this franchise was heretofore filed as a matter of public record as Exhibit B-5 in Commission Case No. 9,470 in 1937.

32. In accordance with Commission Rule 4 CSR 240-3.105(D), Applicant has marked as **Appendix 7** and attached hereto for all purposes a copy of the New Source Review Permit No. 122004-017 issued by the Air Pollution Control Program of the Missouri Department of Natural Resources on December 29, 2004. Said permit authorizes Aquila to construct and commence operation of the South Harper Facility.

#### **Supplemental Project Information**

33. Aquila issued several requests for proposals and conducted multiple independent solicitations seeking the required power supply beginning in 2005 to replace an existing 500 MW PPA from a combined cycle facility interconnected with the Aquila Networks-MPS transmission system and to acquire approximately 25 MW to 100 MW necessitated by system load growth. Aquila's evaluation of the comprehensive list

of responses/solicitations determined that a portfolio of alternatives, rather than one single response, provided the best supply option for the company. Specifically, Aquila determined the preferred supply option combined the construction of three (3) CTs with a combined nominal rating of 318 MW, and two (2) PPAs of 75 MW (eight-year duration) and 150 MW (five-year duration), respectively.

34. The South Harper Facility and the Peculiar Substation sites were chosen because of their relative proximity to the load center of the Western side of Aquila Networks-MPS's service area, existing electrical transmission facilities of Aquila that cross the sites, the availability of fuel supply for the CTs from interstate natural gas pipelines operated by Southern Star and Panhandle Eastern Pipeline Company ("Panhandle Eastern"), and for other considerations as more specifically set forth as follows:

- **Load Center and Growth:**  
The South Harper Facility is located approximately 3 miles south of the City of Peculiar. The site is in rural area that is experiencing and is expected to continue to experience residential, commercial, and industrial load growth that ranks in the top two areas within the Aquila service territory. Peaking facilities are typically placed in or close to "Load Centers" to ensure generation during peak demand or other system outages. This is the Western side (Belton/Raymore/Peculiar) of the Aquila system. Currently there are no peaking facilities in this area and the transmission is 69kV which needs to be upgraded to 161kV in the future. The Eastern side (Lee's Summit/Greenwood/Pleasant Hill) of the Aquila system is served by the Greenwood Energy Center and Ralph Green 3, which are both peaking facilities. In addition, the transmission system on the Eastern side is already 161kV transmission.
- **Existing Infrastructure – Transmission:**  
Existing transmission crosses through the sites. System planning has identified this transmission for upgrade from 69kV to 161kV in the future. The Project allows those enhancements to take place with the growth currently taking place. In addition, there are two KCPL transmission lines located approximately 2 miles south of the South Harper Facility that could provide system interconnect ability in the future, if necessary.

- **Existing Infrastructure – Fuel Gas:**  
The South Harper Facility has two Southern Star natural gas lines crossing to a compressor station located within the original 80-acre site. The fuel lines have the necessary capacity and pressure to service the facility. In addition, Panhandle Eastern has additional natural gas lines located approximately 2 miles south of the site that also have capacity and pressure to service the facility. By having two different suppliers, the facility will have a flexible supply of fuel and will not be dependent upon a single supplier. Competition will allow Aquila to achieve the best fuel cost.
- **Existing Infrastructure – Water Line:**  
PWSD7 has a major water line located on the eastern edge of the property, convenient for interconnection without obstructing construction. The process and potable water capacity required for the Project can be served by this interconnection. In addition, sufficient water supply capacity is available from this connection to meet the fire fighting requirements as approved by the West Peculiar Fire Protection District.
- **Local Support for the Project:**  
The City of Peculiar actually first approached Aquila about working together on the Project. That municipality realizes that due to population growth, it will need the infrastructure upgrades provided by the South Harper Facility. In addition, the City desires to utilize Chapter 100 financing that will greatly enhance the financial benefit to the tax jurisdiction entities including the City, the School District, Fire District, etc. As a result, the Fire District and Water District have also supported the Project.
- **The Land at the Site:**  
The 74-acre Site was expeditiously purchased from a willing seller without need for condemnation who will continue to reside on a small northern portion of the site. Helping to maintain the rural appearance of the land, there are partial treed surroundings and a slope on the plant site, which allows the facility to maintain a low profile. The rock shelf approximately 10-15 feet below the surface also permits the substantial turbine foundations to be readily installed and anchored. The site size (74-acres) also allows for a 100-foot buffer to the property line and substantially greater buffer to shield from surrounding homes.
- **Compatibility with Use of Adjacent Property:**  
Southern Star has a major natural gas compressor station located on the east central boundary of the original 80-acre site. Southern Star has two major gas transmission lines, which bisect the remaining 74-acre tract from west to east. The Southern Star compressor station has been in service since 1954 and incorporates natural gas, compressors,

reciprocating engines, turbines, buildings, and stacks. All of these are similar in nature to the type of facilities that will be incorporated into the South Harper Facility. The compressor station facility was enlarged and updated within the past five years.

The attached map, marked **Appendix 8**, and incorporated herein for all purposes, shows by township number the major portion of Aquila's service territory in Jackson and Cass Counties in western Missouri. The two fastest growing areas served by Aquila's Missouri operations are in and around Lee's Summit and from Belton southward to Peculiar. As can be seen by the red schematic line, the site is served by two gas pipelines owned by Southern Star and is near to gas pipelines owned by Panhandle Eastern, thus providing competitive sources of gas supply to the facility. The service area shown on the map is encircled by a 161 kV transmission line (shown in yellow) except for the western side of the Aquila system which is served only by a 69 kV line (shown in blue). Construction of the peaking facility at the South Harper site allows the 69 kV line to be upgraded so that the entire area will be serviced by a 161 kV line, which is necessary for continued transmission reliability.

35. Aerial photographs of the location of the South Harper Facility are attached hereto, marked **Appendix 9**, collectively, and incorporated herein for all purposes. By way of comparison, aerial photographs of Aquila's Greenwood Energy Center and three (3) similar Independence Power and Light power stations are attached hereto, marked **Appendices 10, 11, 12 and 13**, respectively, and incorporated herein for all purposes.

WHEREFORE, Applicant requests the Commission:

- (A) Specifically confirm that Aquila has the permission, approval and authority necessary, or in the alternative grant Aquila a new

specific certificate of public convenience and necessity, to install, acquire, build, construct, own, operate, control, manage and maintain an electric power generation station comprising three (3) 105 MW natural gas-fired combustion turbines and an associated transmission substation, transformers and breakers together with any and all other installations, facilities, structures, fixtures and equipment related thereto for the production and transmission of electric power and energy at the following described location in Cass County, Missouri:

The Southeast Quarter (SE1/4) of the Southeast Quarter (SE1/4) of Section Twenty-Nine (29), and the Northeast Quarter (NE1/4) of the Northeast Quarter (NE1/4) of Section Thirty-two (32), except that part deeded to Cities Service Gas Company by deed recorded in Book 398, Page 518, Recorder's Office, Cass County, Missouri, and except easements of record all in Township Forty-Five (45), Range Thirty-Two (32).

containing approximately 74 acres at or near the intersection of 243<sup>rd</sup> Street and Harper Road;

- (B) Specifically confirm that Aquila has the permission, approval and authority necessary, or in the alternative grant Aquila a new specific certificate of public convenience and necessity, to install, acquire, build, construct, own, operate, control, manage and maintain an electric transmission substation together with any and all other associated installations, facilities, structures, fixtures and equipment related thereto for the transmission of electric power

and energy at the following described location in Cass County,

Missouri:

Beginning at the Northwest corner of the Northwest Quarter (NW1/4) of Section Five (5), Township Forty-five North (45 N), Range Thirty-two West (32 W), Cass County, Missouri; Thence South along the West line of said NW ¼ a distance of 2,508.18 feet more or less to the South line of said NW ¼; Thence East along said South line a distance of 1320 feet; Thence North parallel with said West line a distance of 1320 feet; Thence West parallel with said South line a distance of 570 feet; Thence Northwesterly 1240 feet more or less to a point on the North line that is 400 feet East of said Northwest corner; Thence West along said North line a distance of 400 feet to the Point of Beginning.

containing approximately 55 acres one-half mile west of 71 Highway and one-half mile south of the intersection of 203<sup>rd</sup> Street and Knight Road;

- (C) find that the construction of the South Harper Facility and the Peculiar Substation is necessary or convenient for the public service;
- (D) state that the confirmation or grant of the certificate of convenience and necessity hereinabove requested by Applicant is not binding for ratemaking or financing purposes and that the Commission reserves the right to consider the treatment to be given the described plant additions in a subsequent proceeding or proceedings; and
- (E) make such other orders and findings as are appropriate in the circumstances.

Respectfully submitted,

/s/ Paul A. Boudreau

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Attorneys for Applicant, Aquila, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, electronic mail or hand delivery, on this 28<sup>th</sup> day of January, 2005 to the following:

General Counsel's Office  
Missouri Public Service Commission  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102-0360

Office of the Public Counsel  
Governor Office Building  
200 Madison Street, Suite 650  
P.O. Box 2230  
Jefferson City, MO 65102-2230

Mark W. Comley  
Newman, Comley & Ruth  
P.O. Box 537  
Jefferson City, MO 65102-0537

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

Mr. Gerard D. Eftink  
Van Hooser, Olsen & Eftink, P.C.  
704 W. Foxwood Drive  
P.O. Box 1280  
Raymore, MO 64083-1280

/s/ Paul A. Boudreau

**Finnell, Kay**

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**From:** Davis, Jeff  
**Sent:** Thursday, February 03, 2005 11:44  
**To:** Finnell, Kay  
**Subject:** FW: Aquila Project in Peculiar

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**From:** Tomlinpec@aol.com [mailto:Tomlinpec@aol.com]  
**Sent:** Wednesday, February 02, 2005 7:37 PM  
**To:** Jeff.davis@psc.mo.gov; Steve.gaw@psc.mo.gov; Connie.murray@psc.mo.com; Robert.clayton@psc.mo.gov; Linward.appling@psc.mo.gov; pscinfo@psc.mo.gov  
**Subject:** Aquila Project in Peculiar

The three adults and one student that live in our household, wish have our voices heard regarding the peak power plant that Aquila is trying to force building in our Cass County neighborhood. And I do mean neighborhood.

Although the 350 member or Stop Aquila.Org live in the country, it is no different from any other neighborhood in the city. We just choose to have larger yards and enjoy the peace and quiet we have found out here in the country. We enjoy the night sky. We are able to see the meteorite showers. There is little traffic noise and that usually come from our toys.

This is not just farm country any longer. Many new homes have been built here just in the last two years and it continues to grow. Well, it did until Aquila and The City of Peculiar tried to force their way and will into our lives.

WE do not want Aquila here. WE want humans, not turbines, stacks, pollution, etc. We want clean air for Asthmatic children. WE want roads that are not torn up because of large gravel trucks using our county roads because they are not allow to go through the City of Peculiar.

We live at 235th and S. Southcrest and are located within a mile of this proposed plant. Please listen to us, the community that lives here and not a business that wants to increase their profit margins regardless of who it hurts.

These are our homes and lives. We are not in this for profit but for the life style we choose to live and do not want our dreams destroyed by greed.

We say that if the City of Peculiar wishes for this plant to be build for their greed, let them build it in the City as it stands now. Not in the county with hope of annexing roads and new land so that they can gain also.

Please help us stop this by supporting the people, not big business and small cities.

Sincerely,

Debra Tomlin  
Michael Tomlin  
Thomas Tomlin  
& Andria Tomlin (Student)

2/7/2005

## **Finnell, Kay**

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**From:** Davis, Jeff  
**Sent:** Friday, February 04, 2005 9:41 AM  
**To:** Finnell, Kay  
**Subject:** Ex parte communication

-----Original Message-----

From: Mike Tunnicliff [mailto:Mike.Tunnicliff@noaa.gov]  
Sent: Friday, February 04, 2005 8:50 AM  
To: Jeff Davis; Connie Murray; Steve Gaw; Robert Clayton; Linward Appling  
Cc: Warren Wood  
Subject: Comments on Aquila's Requested Relief at South Harper Facility

4 February 2005

Dear Commissioners,

These comments are submitted with the intent of notifying you of our adamant opposition to the construction of a peaking facility on South Harper Road, southwest of Peculiar. My wife and I live one mile northwest of the proposed facility, near the intersection of 235th and Knight Roads, and have already been subjected to Aquila's construction noise and traffic for the last few months.

Contrary to Aquila's claims, the number of residents in the immediate area, and downwind of the potential site, is substantial. Additionally, Aquila needs not question the level of opposition to this plant in the surrounding neighborhoods. A vast majority, regardless of each household's involvement with STOPAQUILA.ORG, is opposed to the facility being constructed at this location.

Although we object to many of Aquila's statements within their application for an expedited certificate of convenience and necessity, and their comments on STOPAQUILA.ORG's application for intervention, my wife and I think that the main focus of the Commission should be to determine whether this power generating facility is actually needed in central Cass County. Until now, no federal or state regulatory body has ever addressed the integrity of Aquila's claim that construction of this plant is necessary. Previously, employees at the Public Service Commission have stated they would have no input on the location of the facility; only oversight of the rate base once the plant is constructed. The Air Pollution Control Program of MDNR has adopted a similar stance in stating that they are only responsible for ensuring air emissions criteria are met. EPA Region 7 in Kansas City, Kansas has voiced a similar point of view. It has been an unanswered question of ours as to the entity that is responsible for determining the "need" for this plant. We now hope that your Commission will thoroughly investigate that issue.

Within their application for a site-specific certificate of convenience and necessity, Aquila offers several different justifications for the requested relief. We would like to address a few of those reasons here. In #11, Critical Timing Considerations, Aquila states that they have a very tight schedule. It is our contention that this schedule is self-induced. Currently, Aquila buys power from Calpine's Aries facility that is located less than 25 miles from the proposed site. According to Calpine representatives, the Aries plant, which Aquila constructed less than five years ago and subsequently sold, is operating at 20% of capacity. Aquila is one of the Aries facility's primary customers, if not its sole customer. As you know, Calpine has offered to enter into another agreement with Aquila when the current one expires in May 2005. In fact, it is our understanding that Calpine has proposed a contract price for electricity that is lower than Aquila is currently paying, and by their calculations, for less than what Aquila can generate it. At a minimum, Calpine's offer to sell Aquila power for the upcoming summer cooling season seems to negate the argument of a very tight construction schedule. Again, Aquila's stated time constraints appear to be self-imposed and hollow.

Secondly, in #12 of Aquila's certificate application (page 6), the applicant has outlined

their financial commitment to this project.

Aquila is currently going through the process of getting the plant authorized by the PSC, County and MDNR (and having some difficulty doing it). Simultaneously, Aquila is building the facility and arguing that the ongoing construction is a justification for its authorization. To argue that the plant is needed because it is already being built, even with full knowledge that a permanent injunction is in place and impending court actions might prevent its completion, is circuitous and faulty logic. It is our belief that the expenditure of these funds does not demonstrate need, but represents a management decision and business gamble, which may or may not pay off. We also think that Aquila continues construction, in the face of a permanent injunction, partly because they hope the further that construction progresses, the more unlikely that anyone will make them quit or tear it down. Similar to the phrase "If you build it, they will come," Aquila is using the philosophy "If we build it, they won't say no."

We also object to Aquila's request that the Commission not make a determination based on the prudence of constructing this facility (page 3). This makes no sense to us and seems to be a very unreasonable request. Why wouldn't the Commission assess whether construction of this facility represents a prudent act? Wouldn't the plant have to be prudent in order to represent something that was needed, and therefore, enable the Commission to grant a certificate of necessity? As questioned earlier, if the Commission is not going to ensure that this project is prudent, then what entity will? Will it be our State's legacy to allow uncontrolled construction of power plants, largely motivated by profit margins, only to have them subsequently abandoned (see Calpine's Aries plant that is possibly losing its primary customer and already at only 20% of capacity), and then potentially left to be cleaned up with additional tax dollars in the future? Or will it be our State's legacy to permit power plants more frequently than adjacent states, by requiring less stringent standards for siting facilities, and therefore, become a haven for utilities that ship power out of state and leave Missouri residents with the associated environmental concerns?

Neither choice appeals to us.

Lastly, it is standard engineering practice for a company attempting to get something approved to submit plans and specifications along with their permit application. Aquila, in item #25 on page 13, requests a waiver of a regulated requirement to submit plans and specs because it "would be an unreasonable burden on the Applicant." This seems to be an outlandish contention; submitting plans and specs to a governing body for approval is part of doing business and an example of good engineering. We request that the Commissioners deny this waiver.

Although Aquila would have all interested parties believe that they have a benevolent and magnanimous desire to serve the public, we can't help but think they have other motivations. In our opinion, it is dollars.

Greed is frequently transparent. We don't oppose companies earning profits, that should be their reward for entering into business and providing services. However, please take it upon yourselves to ensure that those profits are fair, not at the expense of individuals and society and are using resources currently available.

The South Harper peaking facility makes no sense. Aquila does not need it; they only want it. Please deny the application for certificate of convenience and necessity and decide that a site-specific approval is not appropriate on South Harper Road at this time.

Thank you,  
Michael and Rita Tunnicliff

**Finnell, Kay**

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**From:** Davis, Jeff  
**Sent:** Thursday, February 03, 2005 4:38 PM  
**To:** Finnell, Kay  
**Subject:** Ex parte contact...  
**Attachments:** Aquila Construction 2.jpg; Aquila Construction

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**From:** Steve Vincent [mailto:svincent@lesco.com]  
**Sent:** Thursday, February 03, 2005 1:48 PM  
**To:** pscinfo@psc.mo.gov  
**Cc:** jeffdavis@psc.mo.gov  
**Subject:** Aquila Proposed Plant

PSC Staff & Commissioners,  
I am composing this message in response to the recent filing by Aquila to bypass our elected local authorities and county zoning regulations.

A court of law has ruled the proposed site is not and will not be properly zoned for an electrical generation facility. I feel that in your positions it would very hard to not compromise your ethics by allowing an action contradictory to zoning laws and a court ruling.

Please take the time to process all the information, including the views of the local residents before making any decision that has such a lasting impact on a community.

My property will receive the harshest blow from this facility as ther are now 90 to 120 feet high poles with 12 wires running the entire west boundary, less than 90 feet from my house, and my front yard and view is directly into the plant itself. Since some or all of you may not have seen the area I have attached aerial photos to help demonstrate that this is a major residential area. I would also ask that each of you visit the sight prior to making any decision.

Thank you for your attention and please do not hesitate to call me at 816-550-9225.  
Sincerely,

Stephen D. Vincent  
9804 E. 241st Street  
Peculiar, MO 64078 <<...>> <<...>>

**Finnell, Kay**

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**From:** Davis, Jeff  
**Sent:** Thursday, February 03, 2005 11:42  
**To:** Finnell, Kay  
**Subject:** FW: response to Aquila filing

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**From:** Carolyn Yatsook [mailto:yatsook@casstel.net]  
**Sent:** Friday, February 04, 2005 2:03 AM  
**To:** jeff.davis@psc.mo.gov; connie.murray@psc.mo.gov; steve.gaw@psc.mo.gov; robert.clayton@psc.mo.gov; linward.appling@psc.mo.gov  
**Cc:** Nancy Manning  
**Subject:** response to Aquila filing

Dear Commisioners,

I am writing in response to the Aquila filing. We are a family of four: Eric, Carolyn, 5 year old Danielle and 4 year old Erica. We live happily at 22919 South Y Highway. We live approximately 3 miles from the proposed Harper peaking facility. We are members of StopAquila.org.

We are very upset with the fact that Aquila has the nerve to question the "number" of people the peaking plant will effect. We are proud of our homes and proud of our way of life, which is being threatened. We will reap no benefits from the plant and we are strongly opposed.

I do not understand why they think they can pollute our neighborhood. We are a rural community. We chose to live in a rural community and not a city. Please understand this. We invite you to come and see for yourself.

Respectfully,

Eric and Carolyn Yatsook

2/7/2005