

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

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 Distribution Substation And Related)
Facilities in Cass County, Missouri (Near the)
City Of Peculiar).)

Case No. EA-2008-0279

STAFF MEMORANDUM IN SUPPORT OF STIPULATION AND AGREEMENT

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its Memorandum in Support states as follows:

1. On February 22, 2008, Aquila filed an application with the Commission, requesting a Certificate of Public Convenience and Necessity (CCN) to construct, own, operate and manage an electrical distribution substation in Cass County, Missouri, near the City of Peculiar (the "Peculiar II Substation"). Aquila subsequently filed a Motion for Expedited Treatment requesting that the Commission issue an order approving Aquila's application by April 1, 2008, bearing an effective date no later than April 10, 2008 so that construction of this substation would be completed prior to the 2008 peak in-service date. The Commission issued an Order and Notice (Order) for interested parties to intervene by March 14, 2008, but no party intervened. The Order directs Staff to file a recommendation regarding Aquila, Inc.'s Application, and provides any other party may do the same, no later than March 21, 2008. However, for reasons stated below, the Staff requests the Commission issue an order approving the Stipulation and Agreement, filed this same day, resolving the issues of this case.

2. The Peculiar II Substation is located north of Peculiar and will be a new 161kV substation to replace an old and overloaded existing 69kV substation built in 1971. The new substation would be built next to the older substation on the same tract of land located at 9707 East Street along Route YY, generally located in Section 17, Township 45, Range 32, Cass County, Missouri. This substation is separate from the substation associated with the South Harper generating station that is located south of Peculiar. The old substation will be dismantled after the new substation goes into service.

3. The Peculiar II Substation is located on the same private property within the general electric service area the Commission certificated to Aquila's predecessor in Case No. 9470.

4. Aquila, Staff, and the Public Counsel (the "Parties") entered into this Stipulation to resolve the issues of this case and to address the outstanding uncertainty in the courts as a result of the precedential value of *StopAquila.org v. Aquila, Inc.*, 180 S.W.3d 24 (Mo. App. W.D. 2005). This Western District case created some uncertainty as to whether an electric utility may lawfully construct and operate any electrical substation, including a transmission substation, within the utility's certificated service area without first obtaining from the Commission a § 393.170.1 certificate of convenience and necessity that specifically authorizes the utility to construct and operate the electric substation.

5. Yet to be decided is a "test case" now before the Cole County Circuit Court to determine the issue whether Aquila must apply for a CCN to build an electrical substation. The "test case" arose when Aquila filed an application seeking a CCN to build a substation in Benton County, docketed as Case No. EA-2007-0245 ("Cole Camp Substation"). The Commission dismissed Case No. EA-2007-0245 on August 28, 2007, on the basis that Aquila, through a CCN

issued in 1938, already had sufficient authority to construct and operate the Cole Camp Substation.

6. Additionally, in similar cases before the Commission, the Parties had previously entered into a Stipulation and Agreement regarding the Raymore North and Osceola Substations, Case Nos. EA-2006-0499 and EA-2006-0500, respectively. The Commission approved those agreements on October 19, 2006. Again, on August 28, 2007, the Commission approved the Parties' Stipulation and Agreement regarding the Pope Lane Substation in Case No. EA-2007-0244.

7. The Staff and Public Counsel believe the holding in *StopAquila.org* does not require Aquila to seek a specific certificate of convenience and necessity from the Commission to construct and operate electrical substations. Aquila, however, interpreted the *StopAquila.org* holding as new binding precedent requiring additional approval from the Commission for Aquila to construct and operate new electric substations. Because of the need for the expedited construction of the Peculiar II Substation, the parties agree that the Commission should exercise its discretion and issue certificates of convenience and necessity under § 393.170.1 RSMo. authorizing Aquila to construct and operate the Peculiar II Substation so that Aquila can begin construction immediately.

8. Further, the Staff believes that the Peculiar II Substation will improve distribution reliability to electric utility consumers in Cass County, which is experiencing an influx in growth. Commission approval of the Stipulation and Agreement resolves the issues of this case and will allow Aquila to provide safe, reliable, and affordable electrical services to its customers served by this substation during the 2008 peak demand season.

9. Accordingly, Staff believes the Peculiar II Substation application should be treated like the Raymore North, Osceola, and Pope Lane Substation applications and approved by the Commission.

WHEREFORE, for the foregoing reasons, the Commission should issue an order approving this Stipulation and Agreement and issue a certificate of convenience and necessity under §393.170.1 RSMo authorizing Aquila to construct and operate the Peculiar II Substation.

Respectfully submitted,

/s/ **Robert S. Berlin**

Robert S. Berlin

Senior Counsel

Missouri Bar No. 51709

Attorney for the Staff of the
Missouri Public Service Commission

P. O. Box 360

Jefferson City, MO 65102

(573) 526-7779 (Telephone)

(573) 751-9285 (Fax)

email: bob.berlin@psc.mo.gov

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 the 20th day of March, 2008, to the following:

Renee Parsons
20 West Ninth Street
Kansas City, MO 64105
Renee.parsons@aquila.com

Michael F. Dandino
Governor Office Building
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102-2230
mike.dandino@ded.mo.gov

/s/ Robert S. Berlin