

**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)
 Production and Related Facilities in Certain)
 Areas of Cass County, Missouri Near the City)
 of Peculiar.)
)

Case No. _____

APPLICATION

Aquila, Inc., doing business as KCP&L Greater Missouri Operations Company (“Aquila” or “Company”), pursuant to Sections 393.170 and 393.171, Mo. Rev. Stat.,¹ as well as 4 CSR 240-2.060 and 4 CSR 240-3.105(1)(B), states the following for its application to the Missouri Public Service Commission (“Commission”):

Background

1. This Application is for a Certificate of Convenience and Necessity for two facilities previously approved by the Commission: (a) the South Harper power plant and related infrastructure and (b) the Peculiar 345 kV substation recently annexed by the City of Peculiar. Both facilities are located in Cass County, Missouri. The Commission concluded that Aquila had specific authorization to construct these facilities in an Order Clarifying Prior Certificates of Convenience and Necessity in Case No. EA-2005-0248 issued April 7, 2005. It granted a

¹ All statutory references are to the Missouri Revised Statutes (2000), as amended, unless otherwise indicated.

specific Certificate of Convenience and Necessity in a Report and Order issued May 23, 2006 in Case No. EA-2006-0309.

2. The orders were overturned by the courts after challenges by Cass County and other parties. Most recently, an opinion by the Missouri Court of Appeals, Western District, issued March 4, 2008, found the Commission lacked authority to issue retroactive approval for construction of the facilities. That decision could have resulted in the dismantling of these facilities.

3. The Missouri General Assembly determined that it did not make sense to dismantle this necessary generation and transmission infrastructure, and passed Senate Bill 720 which granted the Commission authority for one year after the effective date of the bill to issue a certificate for facilities falling within its scope, which includes these Cass County facilities. The bill was signed into law and took effect August 28, 2008. This Application seeks a certificate for the South Harper power plant, the Peculiar substation, and the related facilities, pursuant to that statutory authority.

4. The Company has resolved the vast majority of issues relating to the South Harper power plant and related facilities, and is in the process of doing so for the Peculiar substation. In particular:

- The Company has resolved all known disputes regarding the South Harper plant and the Peculiar substation.²

² One private suit was recently filed by a resident living within one mile of the South Harper power plant. The suit does not challenge the continued operation of the plant, but rather seeks compensation for an alleged nuisance.

- Six public information meetings held in Cass County on status of the South Harper power plant were uneventful. Twenty citizens attended the meetings and expressed no opposition at any of the meetings.
- In September 2008 Cass County issued a Special Use Permit for the South Harper power plant and disclaimed jurisdiction over the Peculiar substation.
- A zoning application was filed on September 5, 2008 with the City of Peculiar for the Peculiar 345 kV substation. To the Company's knowledge, there is no opposition to the facility.
- An informal county-wide petition drive was organized in the Spring of 2007 by Cass County residents who were not Aquila employees. Citizens were asked to sign a petition that opposed the removal or dismantling of the South Harper power plant as a "tremendous waste of resources." In a brief period of time 1,002 signatures were collected, of which 948 were determined to be Cass County residents, including 401 from Pleasant Hill (home to two existing power plants), 139 from Garden City, 131 from Peculiar, 72 from Harrisonville, and 43 from Freeman.

General Information About Applicant

5. Aquila is a Delaware corporation with its principal office and place of business at 1201 Walnut Street, Kansas City, Missouri 64106-2124. Aquila is a wholly owned subsidiary of Great Plains Energy Incorporated, the parent company of Kansas City Power & Light Company ("KCP&L"), and today does business as KCP&L Greater Missouri Operations Company. Aquila is an "electrical corporation," "heating company," and "public utility" as those terms are defined by Section 386.020 and is engaged in providing electrical 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 the Company'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) and made a part hereof for all purposes.

6. Aquila has no 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, and has rate cases now pending before the Commission. Aquila has no annual report or assessment fees that are overdue.

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

Mr. Chris B. Giles
Kansas City Power & Light Co.
1201 Walnut Street
Kansas City, MO 64106
(816) 556-2912
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Relief Requested

8. This Application is being filed by the Company to obtain from the Commission its permission, approval, and a certificate of public convenience and necessity authorizing the Company to acquire, construct, install, own, operate, maintain, and otherwise control and manage electrical generation, transmission and related facilities located on two discrete tracts of

property: (1) a site located near the City of Peculiar in unincorporated Cass County, a first-class county without a charter form of government; and (2) a site recently annexed by and into the City of Peculiar, all as more specifically described herein. Both tracts are situated within the geographic certificated service area previously granted to Aquila's predecessors-in-interest pursuant to the Commission's prior decisions and orders in various cases, including Case Nos. 1,074, 1,449, 3,171, 5,109, 9,470, and 11,892. The electrical generation, transmission and related facilities have been constructed by the Company and have operated to serve and meet the requirements of the Company's customers since July 2005.

The South Harper Facility and Peculiar Substation

9. In October of 2004, Aquila began land clearance and site preparation on a tract of land in an unincorporated area of Cass County, near Peculiar at East 243rd Street and South Harper Road for the construction of a peaking power production facility initially consisting of three natural gas-fired combustion turbines ("CTs") and an associated electric transmission substation on approximately 38 acres of a 74-acre tract of land ("South Harper Facility").

10. Aquila also began land clearance activities in preparation for the construction of a related electrical transmission substation on approximately 7.5 acres of a 55-acre tract of land, located one-half mile west of 71 Highway, south and adjacent to 203rd Street, next to the intersection of 203rd Street and Knight Road in Peculiar. This second tract is adjacent to the intersection of an existing 345 kV electrical transmission line and an existing 161 kV electrical transmission line, both transmission lines being owned by the Company ("Peculiar Substation").

11. Construction of the South Harper Facility and the Peculiar Substation was completed during the summer of 2005. Both were placed into commercial operation and began serving Aquila's customers during late June and early July.³

12. The Commission has previously authorized Aquila or its predecessors-in-interest to construct, operate, and maintain electrical facilities and to render electrical service throughout portions of Cass County to further the public convenience and necessity, pursuant to various prior Commission orders, including decisions in Case Nos. 1,074, 1,449, 3,171, 5,109, 9,470 and 11,892. The location of the South Harper Facility and the Peculiar Substation are within the service area certificated to Aquila by the Commission in its Case No. 9,470 (1938) and Case No. 11,892 (1950).

The Requirement of a Certificate of Convenience and Necessity

13. Until recently, prior case law and Commission decisions indicated that a new, separate and overlapping certificate of public convenience and necessity for the construction and operation of new electric facilities within a public utility's existing service territory, including power production facilities, would be duplicative and unnecessary.⁴ On December 20, 2005, however, the Missouri Court of Appeals in StopAquila.org v. Aquila, Inc., 180 S.W.2d 24 (Mo. App. W.D. 2005) ("South Harper I") determined that the existing certificates of public convenience and necessity held by Aquila did not provide site-specific Commission authority for the Company to construct and operate the South Harper Facility and Peculiar Substation.

³ The commercial operation dates for the three South Harper CTs are as follows: Unit 3, June 30, 2005; Unit 2, July 1, 2005; and Unit 1, July 12, 2005.

⁴ See State ex. rel. Harline v. Public Service Comm'n, 343 S.W.2d 177 (Mo. App. 1960); Empire District Electric Co. v. Cox, 588 S.W.2d 263 (Mo. App. 1979); In re Missouri Power and Light Co., 18 Mo. P.S.C. (N.S.) 116 (1973); In re Empire District Electric Co., 21 Mo. P.S.C. (N.S.) 351 (1977); In re Union Electric Co., 24 Mo. P.S.C. (N.S.) 72 (1980).

14. In South Harper I the Court of Appeals re-examined the meaning of its 1960 Harline decision, concluding that it only applied to transmission line extensions and not to the construction of electric generation facilities.⁵ Consequently, the Court found that the Commission's Clarification Order issued in Case No. EA-2005-0248 did not provide specific authority for Aquila to construct and operate the South Harper Facility and the Peculiar Substation within the meaning of Section 64.235. Nevertheless, the Court appeared to indicate that its decision should have only prospective effect, stating:

In so ruling, however, we do not intend to suggest that Aquila is precluded from attempting at this late date to secure the necessary authority that would allow the plant and substation, which have already been built, to continue operating, albeit with whatever conditions are deemed appropriate.⁶

15. On January 25, 2006, after Cass County did not accept the Company's request for special use permits, Aquila filed another application with the Commission for a certificate of convenience and necessity regarding the South Harper Facility and the Peculiar Substation, citing the language in the Court of Appeals' decision. Docketed as Case No. EA-2006-0309, the Commission conducted public hearings in Harrisonville in March 2006 and evidentiary hearings in Jefferson City in April and May 2006. The Commission issued its Report and Order on May 23, 2006, granting the relief requested by Aquila.

16. Cass County filed an application for rehearing which the Commission denied on June 1, 2006. Thereafter, Cass County filed its Petition for Writ of Review in the Circuit Court of Cass County, Missouri. On October 19, 2006, the Circuit Court issued its judgment concluding that the Commission's Report and Order exceeded its statutory authority and was unlawful.

⁵ 180 S.W.3d at 34, 37.

⁶ Id. at 41.

17. On November 20, 2006, Aquila appealed to the Missouri Court of Appeals, which issued its opinion in State ex rel. Cass County v. Public Service Comm’n, No. WD 67739 (Mo. App. W.D., Mar. 4, 2008) (“South Harper II”), holding that the Commission lacked statutory authority to grant a certificate of convenience and necessity retroactively. The Court concluded that the Commission only had authority under Section 393.170 to grant such authority prior to the commencement of construction work.

18. After the Court of Appeals decision in South Harper II, the Missouri General Assembly passed Senate Bill 720 (“S.B. 720”)⁷ which provides in pertinent part:

393.171. 1. The commission shall have the authority to grant the permission and approval specified in section 393.170, after the construction or acquisition of an electric plant located in a first class county without a charter form of government has been completed if the commission determines that the grant of such permission and approval is necessary or convenient for the public service. Any such permission and approval shall, for all purposes, have the same effect as the permission and approval granted prior to such construction or acquisition. This subsection is enacted to clarify and specify the law in existence at all times since the original enactment of section 393.170.

2. No permission or approval granted for an electric plant by the commission under subsection 1 of this section, nor any special use permit issued for any such electric plant by the governing body of the county in which the electric plant is located, shall extinguish, render moot or mitigate any suit or claim pending or otherwise allowable by law by any landowner or other legal entity for monetary damages allegedly caused by the operation or existence of such electric plant. Expenses incurred by an electrical corporation in association with the payment of any such damages shall not be recoverable, in any form at any time, from the ratepayers of any such electrical corporation.

3. The commission’s authority under subsection 1 of this section shall expire on August 28, 2009.

⁷ Lt. Governor Kinder signed the legislation on June 16, 2008 and it went into effect on August 28, 2008.

This application is made under the authority of Section 393.170, as modified and clarified by new Section 393.171.

The Involved Electrical Production and Related Facilities

19. Aquila now requests permission, approval, and a certificate of convenience and necessity authorizing the Company to acquire, construct, install, own, operate, maintain, and otherwise control and manage electrical production and related facilities at (1) the South Harper Facility and (2) the Peculiar Substation, as well as all associated fixtures, buildings, transformers, breakers and all other facilities now existing or to be constructed at said sites (collectively, the “Project”).

20. As noted above, the Project is located on two separate sites or tracts of land, both as set forth on the map marked **Appendix 1** and attached hereto. Tract A, encompassing the South Harper Facility, consists of approximately 74 acres of land at or near 243rd Street and Harper Road, approximately two and a half miles southwest of Peculiar, and is generally located in parts of Sections 29 and 32, Township 45 North, Range 32 West in the County. The three CTs and an associated transmission substation, fixtures, equipment and improvements are located on Tract A, the first site. Tract B, encompassing the 345/161 kV Peculiar Substation (described as the “North Substation” on Appendix 1), consists of approximately 55 acres of land one-half mile west of 71 Highway and south of the intersection of 203rd Street and Knight Road, and is generally located in the northwest quarter of Section 5, Township 45 North, Range 32 West, in the County.

21. **Appendix 2**, attached hereto, contains the legal descriptions of Tract A and Tract B, each described by metes and bounds.

22. Aquila 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 the Project and the estimated cost of construction. While Aquila is prepared to make these materials available to the Commission's Staff ("Staff") and the Office of the Public Counsel ("OPC") at the Company's offices in Kansas City, Missouri, or at any other mutually agreeable location, those materials are extremely voluminous and burdensome to reproduce or electronically submit on the Commission's Electronic Filing & Information System ("EFIS"). Waiver of this requirement is particularly appropriate since the actual construction costs of the South Harper Facility and Peculiar Substation are known.

23. A granting of this Application is fully justified and required by the public convenience and necessity. This Commission has previously determined in Case Nos. 3,171, 9,470, 11,892 and other proceedings that the public convenience and necessity is served by Aquila's extension of its electrical facilities and services throughout those areas of Cass County currently served by the Company, including at the locations of Tracts A and B. The South Harper Facility and Peculiar Substation were constructed to replace the Company's purchased power agreement ("PPA") that expired May 31, 2005 with Calpine, Inc. ("Calpine"). The PPA provided for 500 megawatts ("MW") of capacity from Calpine's combined-cycle power plant during the summer months and 200 MW in the winter months. With demand increasing in Aquila's Missouri service area, including Cass County, and the need for year-around peaking capability, the South Harper Facility's three 105 MW simple-cycle CTs provide greater flexibility to meet the needs of the Company's customers.

24. Aquila's western Missouri service area includes the majority of the Cass County, a first class non-charter county, which is one of the fastest growing areas served by the

Company.⁸ From 2001 to 2007, the number of Aquila residential customers in Cass County grew by 26.2%, energy sales expressed as megawatt-hours (“MWh”), grew by 36.3%, and usage per residential customer grew by 8.0%. The Company’s total system demand for electricity at peak hit an all-time high of 1,967 MW in 2006, an increase of 15.8% from the previous system peak set in 2001. Granting this Application will promote the public interest because the electrical power generated by the South Harper Facility will be rate-based capacity available to serve the increasing demand for electrical power caused by Aquila’s Missouri customers, including those located in Cass County.

25. The Commission has stated its preference for company-owned generation instead of heavy reliance on PPAs to meet Missouri load requirements and to protect Missouri customers.⁹ This statement is consistent with Aquila’s recent experience in which the Staff has encouraged Aquila 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 Resource Plan (“IRP”).

26. Construction of the South Harper Facility is consistent with the Company’s IRP, and experience has borne out the need for capacity and energy from this generating plant. Since the time the plant entered service in July 2005 through mid-August 2008, the South Harper Facility has operated for 291 days and 2,355 plant operating hours, and supplied over 429,000 MWh of energy to Aquila customers. The South Harper Facility has operated an average of 94

⁸ The Missouri Office of Administration has identified Cass County as one of the top five or six fastest growing counties in the State (based on percentage growth or absolute population growth, respectively) showing an aggregate population increase of 12.5% from 2000 to 2005, and projecting a 24.8% increase from 2000 to 2010. See OA News Release (Apr. 25, 2008).

⁹ In re Ameren Generating Co., 108 FERC ¶ 61,081 at 61,405, Order 473 at Para. 27 (July 29, 2004).

days and 758 plant hours per year, including the period from late January through May 2006 when court orders precluded it from operating.

27. The location of the Project is desirable because of its relative proximity to the load center of the western side of the Aquila service area, existing electrical transmission facilities and the availability of fuel from natural gas pipelines near the Project site, as more specifically described below.

28. In accordance with Commission Rule 4 CSR 240-3.105(B)(1), Aquila states that construction activities at the Project 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 a driveway that crossed an existing water line of Public Water Supply District No. 7 ("PWSD 7"). Representatives of PWSD 7 worked with the Company 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 occurred over buried natural gas lines, but those lines were not disturbed.

29. In connection with the construction and development of the Project, Aquila has applied and/or has obtained various authorizations from local, state and federal agencies. A list of all permits and clearances for both sites, including Cass County building and occupancy permits that have been recently renewed, is provided in **Appendix 3**.

30. A copy of the consent of Cass County pursuant to the provisions of Section 229.100 issued by order of the Cass County Court in 1917 was filed as a matter of public record as Exhibit B-5 in Commission Case No. 9,470 in 1937 and subsequently as Appendix 6 to Aquila's application in Case No EA-2005-0248. It is incorporated herein by reference in accordance with 4 CSR 240-2.060(1)(G), as required by 4 CSR 240-3.105(D).

31. 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, was filed as Appendix 7 to Aquila's application in Case No. EA-2005-0248 and is incorporated herein by reference in accordance with 4 CSR 240-2.060(1)(G), as required by 4 CSR 240-3.105(D). This permit authorizes Aquila to construct and operate the South Harper Facility. A Title V operating permit has since been issued and is identified on the list of received permits and clearances in **Appendix 3** and which are provided in **Appendix 6**.

Determination of Need for Capacity and Siting Considerations

32. Aquila issued several requests for proposals beginning in 2001 and conducted multiple independent solicitations seeking the required power supply beginning in 2005 to replace the 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 determined to replace a portion of the 500 MW from the PPA through the construction of three CTs at the South Harper Facility, with a combined nominal rating of 315 MW.

33. The Project tracts were chosen because of the relative proximity of the tracts to the load center of the western side of the Aquila 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 Central Gas Pipeline, Inc. ("Southern Star") and Panhandle Eastern Pipe Line Company ("Panhandle Eastern"), and for other considerations as more specifically set forth as follows:

34. **Load Center and Growth:** The South Harper Facility is located approximately two and a half miles south of the City of Peculiar. This location is in a semi-rural area that is

experiencing and is expected to experience residential, commercial and industrial load growth that ranks in the top two load growth 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. Prior to construction of the South Harper Facility, there were no peaking facilities in this area, and the existing 69 kV transmission line needed to be upgraded to 161 kV. This project included upgrading transmission reliability through construction of a 161 kV line from South Harper to Belton, which will allow for the future upgrade of the existing 69 KV transmission line as continued load growth occurs in the Raymore/Peculiar area. The eastern side of the Aquila system (Lee’s Summit/Greenwood/Pleasant Hill) is served by the Company’s Greenwood Energy Center and Ralph Green 3 units, which are both peaking facilities. In addition, the transmission system on the Eastern side is already 161 kV.

35. **Existing Infrastructure – Transmission:** Existing transmission crosses both tracts. As noted above, Aquila’s system planning identified this transmission for upgrade from 69 kV to 161 kV. The Project provides those enhancements simultaneously with the current growth. The Peculiar Substation is located near the intersection of the Aquila 345 kV transmission line between Stilwell, Kansas and Pleasant Hill, Missouri with the South Harper to Belton South 161 kV transmission line. The Peculiar Substation interconnects those transmission lines. In addition, there are two KCP&L transmission lines located approximately two miles south of the South Harper Facility that could provide system interconnect capability in the future.

36. **Existing Infrastructure – Fuel Gas:** The South Harper Facility is interconnected to two Southern Star natural gas pipelines that cross to a compressor station that

is located within the original 80-acre tract. These fuel lines have the necessary capacity and pressure to provide natural gas service to the South Harper Facility. In addition, Panhandle Eastern operates natural gas pipelines located approximately two miles south of the tract that are also interconnected with the South Harper Facility, thus providing it with additional capacity and pressure. With two different natural gas suppliers, the South Harper Facility has an adequate supply of fuel and will not be dependent upon a single supplier. The presence of two suppliers should allow also Aquila to obtain fuel at a competitive price.

37. **Existing Infrastructure – Water Line:** PWSD 7 has a major water line located on the eastern edge of the South Harper Facility, convenient for interconnection. The process and potable water capacity required for the South Harper Facility are 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.

38. **Property Tax Abatement:** The City of Peculiar approached Aquila about working together on the Project in July 2004. The City entered into a Chapter 100 tax abatement arrangement under which the City is the owner of the Project. Missouri law directs PILOT (Payments in Lieu of Taxes) payments to taxing entities in whose districts the Project is located, which for the Project includes the Raymore-Peculiar School District, the West Peculiar Fire Protection District (includes ambulance service), a Cass County road and bridge fund, a hospital maintenance fund and a library district. PILOT payments are less than what property taxes would be if Aquila held title to the Project, thereby reducing costs to customers.

39. **The Land at the South Harper Facility Site:** The 74-acre tract for the South Harper Facility was purchased from a willing seller without need for condemnation, and the sellers continue to reside in their original home on the property. The site is located on South

Harper Road, a significant arterial in that part of the county, near the intersection with 243rd Street. Non-agricultural traffic can access the site via Highway C and 243rd Street, a route from Peculiar that is fully asphalt paved (vs. chip and seal). Land use in the area is a mix of residential, agricultural, and industrial (the pre-existing adjacent Southern Star natural gas compressor station). The northern half of the site consists of open agricultural lands and one residence, home of the previous owners of the property. The agricultural property contains farm ponds, hayfields, pasture, an electric transmission line, and underground interstate natural gas pipelines.

40. **Compatibility of South Harper Site 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 tract. Southern Star has two major gas transmission lines that bisect the remaining 74-acre tract from west to east. The Southern Star compressor station has been in service since 1954 and includes natural gas, compressors, reciprocating engines, turbines, buildings, and stacks. All of these are similar in nature to the type of facilities that have been incorporated into the South Harper Facility. The compressor station facility was enlarged and updated within the past six years.

a. The eastern portion of the South Harper Facility property is designated Multi-Use Tier in Cass County's Comprehensive Plan Update 2005 (Feb. 1, 2005)("Plan"), which specifies characteristics of the Multi-Use Tier designation on page 28 as follows:

The Multi-Use Tier is representative of development areas within Cass County that exhibit the following characteristics:

- Position as transition areas from urban to rural densities,
- Located along rural highways, major arterials and intersections, or close enough to such major roads to provide access for more intense levels of non-agricultural traffic, and

- Predominately developed for a mix of land uses: residential, industrial and commercial purposes.

b. The South Harper Facility site is consistent with these characteristics. It is located south of recently developed residential properties located on or north of 241st Street with typical lot sizes of 3+ acres, or north of the site along South Harper Road. Farmland is south, east and west of the site, as are several residences. The location is in transition from rural use to a more urban environment as the area north of the site has developed.

41. **The Land at the Peculiar Substation Site:** The 55-acre tract for the Peculiar Substation was purchased from a willing seller without need for condemnation. The site is located south of 203rd Street and east of Knight Road, approximately ½ mile west of 71 Highway. Traffic can access the site via a frontage road (Peculiar Drive) from either Belton or Peculiar, to 203rd Street and west to the site entrance gate, a route that is asphalt paved. The northern portion of the property consists of open agricultural lands and some forested areas associated with two intermittent streams that traverse the property. Land use in the area is a mix of residential and agricultural. The property contains 69 kV, 161 kV and 345 kV transmission lines.

42. **Compatibility of Peculiar Substation Site with Use of Adjacent Property:**
The Cass County Plan designates at least the southern portion of the property as a Multi-Use Tier. Such Multi-Use Tiers are described by the Plan at page 25 as follows:

These are areas near towns and cities and along paved highways and thoroughfare roads where non-agricultural development, such as commercial and industrial uses, and residential development that is denser than 20-acre lots, is encouraged. Large-scale development is allowed, including commercial and industrial zoning, provided there are provisions for direct access to paved roads.

The southern portion of the site, and property east, south and west of the site, are designated as Multi-Use Tier on Cass County's Land Use map in the Plan. The southern portion of the site is where the Peculiar Substation is located. Use of the site for the Peculiar Substation, is fully consistent with the Multi-Use Tier definition.

a. Both the Existing and proposed Future Land Use maps for the City show the property as a Public/Quasi-Public classification. The Existing Land Use Map – Northwest shows the land surrounding the site within the Peculiar city limits as “Ag/Open Space.” The Grand Oaks Farm subdivision is on the north side of 203rd Street. There are also several residences southwest of the site, west of Knight Road.

b. Use of the site for the Peculiar Substation is consistent with current site and neighboring land uses. The Peculiar Substation property and neighboring properties contain a high-voltage electric transmission line and water supply pipeline. Farmland is south, east and west of the site. Several residences are west of the site. There are several residences on the south side of 203rd Street approximately ½ mile east of the property and substation, within the Peculiar city limits. The location is in transition from rural use to a more urban environment as the area north of the site is being developed. As Peculiar completes and implements its revised Master Plan, further development is expected, particularly once a 71 Highway interchange at 211th Street is constructed. The Peculiar Substation is located south of 203rd Street, one block from the frontage road (Peculiar Drive) next to 71 Highway, a major arterial in that part of the county. There is ready access to the substation via a gated entrance driveway. Non-agricultural traffic can access the site via the frontage road to 203rd Street. Land use in the area, as described below, is a mix of residential and agricultural, with the bulk of the property adjacent to the Peculiar Substation being agricultural.

c. The northern portion of the property currently consists of open agricultural lands and some forested areas associated with two intermittent streams that traverse the property. Surrounding areas are also designated as Multi-Use Tiers by the Cass County Comprehensive Plan, although the Grand Oaks Farm residential development immediately north of 203rd Street may be designated as an Urban Service Tier. The property outside the Substation fence that is not dedicated to road access is anticipated to remain as its current use, agriculture. Adjacent properties within 1000 feet of the Peculiar Substation site are zoned as agricultural or residential.

d. The Company believes that the operation of the Peculiar Substation does not adversely impact local infrastructure (roads, schools, etc.) as the substation is not normally staffed and the majority of workers that visit the site are from the area and commute to the site from their homes.

43. **Appendix 4**, attached hereto, is a map that shows by township number the major portion of Aquila's service territory in Jackson and Cass Counties. 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, Tract A 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 South Harper 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 was serviced only by a 69 kV line (shown in blue). Construction of the South Harper Facility at its site has allowed the 69 kV line to be upgraded so the entire area now is serviced by a 161 kV line, which has enhanced transmission reliability.

How the Need for Capacity Would be Met Absent the Project

44. The 315 MW of capacity provided by the three CTs at the South Harper Facility serve as partial replacement for an expired 500 MW PPA which Aquila had with Calpine and to accommodate load growth. The capacity is also required to comply with Southwest Power Pool, Inc. and North America Electric Reliability Corporation criteria to ensure reliable service. The expiring PPA was not renewed because Calpine offered to renew only at higher, non-competitive prices and with significant operating constraints that were not consistent with the needs of Aquila's system. Moreover, the financial condition of Calpine raised additional concerns.

45. If the South Harper Facility is not available, the Company will need to immediately add capacity to meet its load and reserve requirements. Adding capacity could come in the form of importing capacity or building at another site within the Company's system. These other options had been evaluated previously and were significantly more costly than the South Harper Facility.

Community Outreach

46. At the time the South Harper Facility was constructed, local residents expressed a variety of concerns about the plant including the lack of opportunity for a local zoning authority to approve or reject the Project. Aquila's community outreach and other efforts have largely succeeded in resolving those concerns and ending the controversy about the South Harper Facility. Aquila has been engaged in community outreach since shortly after the South Harper Facility was constructed, starting in summer 2005. There have been numerous neighbor and community meetings at the South Harper Facility to identify issues, concerns, and discuss solutions. These meetings have led to the Company implementing or paying for a number of

improvements at the South Harper Facility and the surrounding area in 2005 and 2006, including:

- Sound abatement upgrades such as gas yard vent silencers, starting motor skirts and ventilation silencer, acoustic lagging on turbine air inlets, and sound walls for generator step-up transformers.
- Landscaping improvements where almost 1200 trees were planted on and off the site, and berms were constructed around the facility to enhance visual screening.
- Water supply upgrades by PWSD 7, including 25 fire hydrants in the area which improved fire protection to local residents.
- Installation of five tornado sirens, which helped the West Peculiar Fire Protection District cover their district.
- Ball field lights at Raisbeck Park.
- Paving 2 $\frac{3}{4}$ miles of asphalt roads around the South Harper Facility after construction was completed.

47. While the South Harper Facility has been verified by the Missouri Department of Natural Resources and U.S. Environmental Protection Agency as being compliant with state and federal air quality regulations, Aquila authorized an independent review by two toxicologists from the University of Kansas who advised that they did not anticipate any detrimental health effects from South Harper Facility air emissions. Those experts have been made available to discuss their findings with area residents who have expressed concerns.

48. The Company also recently held six informational meetings around Cass County to brief the public on the status of the South Harper Facility. Even after the Company mailed

postcards to local residents and placed newspaper ads announcing the six meetings, only 20 people came to hear the presentation and no one expressed opposition.

49. A copy of the report on the community outreach effort is provided in **Appendix 5**.

Landscaping

50. Landscaping is described in Section 6 of the Special Use Permit application, which is provided in **Appendix 6**. As noted above, Aquila constructed berms around the plant, and planted approximately 1200 trees on and near the South Harper Facility site. The landscaping at the site provides a good screen of the utility infrastructure at the site boundary. Numerous tree plantings occurred off-site at the request of residents, including one instance where the Company planted 60 trees, and installed 25 tons of decorative rock and an irrigation system.

51. As a result of Aquila's agreement with Cass County, Aquila is evaluating additional landscaping, and has met with the Missouri Department of Conservation for recommendations. Neighbors have told the Company that they do not want the north acreage forested, but the Department of Conservation has provided alternatives that can provide additional long-term screening while meeting the neighbors' desires.

Local Zoning Approvals

52. As a result of an agreement between Aquila and Cass County, the Company filed Special Use Permit (SUP) applications for the South Harper Facility and the Peculiar Substation in early May, 2008. The Peculiar Substation site was subsequently annexed by the City of Peculiar, concluding a process that had been under way for some time, and the County subsequently disclaimed jurisdiction on the Substation SUP application. On July 31, 2008, the Cass County Commission voted 3-0 to approve the South Harper Facility SUP application. A

copy of the minutes of that meeting, containing the resolution unanimously passed by the Cass County Commission, is provided in **Appendix 7**. The permit was prepared by Cass County for review by the parties, approved by the Board of Zoning Adjustment, and is included in **Appendix 8**.

53. The Company is in active and productive discussions with the City of Peculiar on filing a zoning application for the Peculiar Substation site. The application was filed on September 5, 2008, a copy of which is attached as **Appendix 9**. Issues of interest to Peculiar and the site neighbors are being addressed, including preparation of a storm water management plan and repairs or repaving of 203rd Street. The Company has been advised that the zoning application is scheduled for a hearing before the City Planning Board on October 9, 2008 and before the Board of Aldermen on November 18, 2008.

Requested Action from the Commission

WHEREFORE, Aquila respectfully requests that the Commission issue its order:

a. Granting the Company permission and approval and a certificate of public convenience and necessity to construct, install, own, operate, maintain, and otherwise control and manage electrical power production and related facilities at the South Harper Facility consisting of three 105 MW natural gas-fired combustion turbines and an associated transmission substation, as well as all facilities, structures, fixtures, transformers, breakers, installations, and equipment related thereto now existing or to be constructed for the production and transmission of electrical 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 243rd Street and Harper Road;

b. Granting the Company permission and approval and a certificate of public convenience and necessity to construct, install, own, operate, maintain, and otherwise control and manage the Peculiar Substation together with any and all other facilities, structures, fixtures, equipment and installations related thereto, now existing or to be constructed for the transmission of electrical 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 203rd Street and Knight Road;

c. Finding that the granting of the authority requested by this application is required by the public convenience and necessity;

d. Granting the Company a waiver from the requirement of 4 CSR 240-3.105(1)(B)2; and

e. Making such other orders and findings as are appropriate in the circumstances.

Respectfully submitted,

/s/ Karl Zobrist
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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 1st day of October, 2008 to the following:

General Counsel
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

/s/ Karl Zobrist

LIST OF APPENDICES

1. Map of Cass County.
2. Legal description of Tract A and Tract B.
3. Lists of federal, state and local permits, clearances and approvals obtained.
4. Map showing, by township number, the major portion of Aquila's service territory in Jackson and Cass Counties.
5. Community Outreach Report.
6. Special Use Permit Application for the South Harper Peaking Facility Project, dated May 2008.
7. Minutes of the Cass County Commission meeting of July 31, 2008.
8. Special Use Permit issued September 11, 2008.
9. Zoning application for the Substation site, filed September 5, 2008 (as amended).