

**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 Unincorporated)
Areas of Cass County, Missouri Near the)
Town of Peculiar.)

Case No. _____

APPLICATION

COMES NOW Aquila, Inc., (hereinafter "Aquila" or "Company") pursuant to §393.170 RSMo 2000, 4 CSR 240-2.060 and 4 CSR 240-3.105(1)(B), and for its application to the Missouri Public Service Commission ("Commission") states as follows:

General Information About Aquila

1. Aquila is a Delaware Corporation with its principal office and place of business at 20 W. 9th Street, Kansas City, Missouri 64105-1711. The Company is authorized to conduct business in Missouri through its Aquila Networks-MPS and Aquila Networks-L&P operating divisions. Aquila is an "electrical corporation," "gas corporation," "heating company," and "public utility" as those terms are defined by §386.020 RSMo 2000 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) and made a part hereof for all purposes. Copies of the registrations of the fictitious names of Aquila Networks-MPS and Aquila Networks L&P were 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.

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

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

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

James C. Swearngen
Brydon, Swearngen & England, P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, Missouri 65102
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Relief Requested

4. This application is being filed by Aquila to obtain from the Commission 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 production and related facilities located on two discrete tracts of

property near the City of Peculiar in Cass County, Missouri all as more specifically described herein. The tracts are situated within the geographic service area previously certificated to Aquila's predecessors-in-interest pursuant to the Commission's prior decisions and orders in various cases, including Commission Case Nos. 1,074, 1,449, 3,171, 5,109, 9,470, and 11,892. As explained herein, certain of the involved electrical production and related facilities have been constructed at a cost to Aquila of approximately \$155 million and have operated to meet the requirements of the Company's customers.

**The South Harper Facility and
Peculiar Substation**

5. In October of 2004, Aquila began land clearance and site preparation on a tract of land in an unincorporated area in Cass County, Missouri, near the City of Peculiar at East 243rd Street and South Harper Road for the installation of a peaking power production facility initially comprising three (3) natural gas-fired combustion turbines ("CTs") and an associated electric transmission substation (the "South Harper Facility") on approximately thirty-eight (38) acres of a seventy-four (74) acre tract of land. The Company also began land clearance activities in preparation for the construction of a related electrical transmission substation on approximately ten (10) acres of a fifty-five (55) acre tract of land. The second tract is located one-half mile west of 71 Highway and one-half mile south of the intersection of 203rd Street and Knight Road, approximately 2 miles northwest of Peculiar adjacent to the intersection of an existing 345 kV electrical transmission line and an existing 69 kV electrical transmission line, each of which line is owned by Aquila (the "Peculiar Substation").

Construction of the South Harper Facility and the Peculiar Substation was completed during the summer of 2005 and both were placed into commercial operation and began serving Aquila's customers during late June and early July of that year.¹

6. 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, Missouri, to further the public convenience and necessity, pursuant to various prior Commission orders, including decisions in Commission 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 general electric service area certificated to Aquila by the Commission in its Case Nos. 9,470 (1938) and 11,892 (1950).

7. In reliance on past case law and relevant orders of the Commission, Aquila concluded that a new separate and overlapping certificate of public convenience and necessity for the construction and operation of the South Harper Facility and the associated Peculiar Substation would be duplicative and unnecessary.² The Company's understanding of the law in this regard was 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 marked **Appendix 1**, attached hereto and made a part hereof for all purposes.

¹ The commercial operation date for Unit 3 was June 30, 2005; for Unit 2 July 1, 2005; and for Unit 1 July 12, 2005.

² See, *State ex. rel. Harline v. Public Service Commission*, 343 S.W.2d 177 (Mo. App. 1960); *The Empire District Electric Company v. Cox*, 588 S.W.2d 263 (Mo. App. 1979); *Re Missouri Power and Light Company*, 18 Mo.P.S.C (N.S.) 116 (1973); *Re The Empire District Electric Company*, 21 Mo.P.S.C. (N.S.) 351 (1977); and *Re Union Electric Company*, 24 Mo.P.S.C.(N.S.) 72 (1980).

Litigation

8. Shortly after the commencement of site preparation and improvements at the South Harper Facility, separate petitions for injunctive relief were filed in the Circuit Court of Cass County 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 existing certificates of public convenience and necessity 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.

9. On January 6, 2005, the Cass County Circuit Court issued a permanent injunction enjoining Aquila from constructing and operating the South Harper Facility and the Peculiar Substation, and ordered that Aquila remove all improvements and equipment inconsistent with the property's agricultural zoning classification by Cass County. A copy of the Circuit Court's Judgment was filed with the Commission in Case No. EA-2005-0248 and is incorporated herein by reference in accordance with Commission Rule 4 CSR 240-2.060(1)(G), and made a part hereof for all purposes.

10. The Circuit Court's Judgment, however, 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. WD64985.³ A copy of that documentation was filed with the Commission in Case No. EA-2005-0248 and is incorporated herein by reference in accordance with Commission Rule 4 CSR 240-2.060(1)(G), and made a part hereof for all purposes.

11. Based on language contained in the Judgment of the Circuit Court, Aquila, on January 28, 2005, filed with the Commission an application for specific confirmation of the Commission's permission, approval and authority, or in the alternative, a grant of a new site-specific certificate of public convenience and necessity, to construct, own, operate, control and manage the South Harper Facility and the Peculiar Substation at the described locations in Cass County, Missouri. Aquila's application was docketed as Case No. EA-2005-0248. Thereafter, on April 7, 2005, the Commission, in a 4-1 vote,⁴ issued its Order Clarifying Prior Certificates of Convenience and Necessity (the "Clarification Order") whereby the Commission confirmed that Aquila's existing certificates authorized Aquila to build the South Harper Facility and the Peculiar Substation at the locations where they were being constructed. As a result, Cass County sued the Commission in the Circuit Court of Cass County alleging that the Commission acted illegally, without due process, and lacks the authority to interpret its prior orders or permit the construction of utility infrastructure unless the county has previously. That litigation was docketed as case CV105 558CC and continues to be pending.

³ Cass County v. Aquila, Inc.

⁴ Commissioner Gaw filed a separate dissenting opinion.

12. On December 20, 2005, the Missouri Court of Appeals, Western District, handed down its Opinion in Case No. WD64985 wherein it found that Aquila's existing certificates of public convenience and necessity did not provide specific Commission authority for the Company to construct and operate the South Harper Facility and the Peculiar Substation. In its opinion, the Court of Appeals reexamined the meaning of its 1960 *Harline* decision and concluded that *Harline's* holding applied only to transmission line extensions and did not apply to the construction of electric generation facilities.⁵ Consequently, although not before it for review on appeal, the Court of Appeals concluded that the Commission's Clarification Order issued in Commission 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 the regulatory preemption contemplated by § 64.235 RSMo.⁶ Nevertheless, the Court of Appeals expressly stated that its decision should have only prospective effect and allowed as follows:

[W]e 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.⁷

That necessary authority, according to the Court of Appeals, is approval from Cass County or the Commission.⁸

⁵ Slip op. at 5 and 11-22.

⁶ Slip op. at 22-24.

⁷ Slip op. at 26.

⁸ Slip op. at 26

13. In light of the rejection by the Court of Appeals of the Commission's long-standing regulatory policy embodied in *Re Union Electric Company, 24 Mo.P.S.C.(NS) 72 (1980)*, and its holding that with Commission approval Aquila will qualify for the regulatory preemption from Cass County zoning requirements as contemplated by §64.235 RSMo, Aquila now files this application for a site-specific certificate of public convenience and necessity, as described herein.

The Involved Electrical Production and Related Facilities

14. By this application, Aquila requests 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 production and related facilities at a site now comprising three (3) 105 MW natural gas-fired combustion turbines ("CTs") and an associated electrical transmission substation, as well as a related electrical substation at a second site, and all associated fixtures, buildings, transformers, breakers and all other facilities now existing or to be constructed at said sites (hereinafter, collectively, the "Project").

15. The Project is located on two (2) separate sites or tracts of land located in an unincorporated area of Cass County, Missouri as set forth on the map, marked **Appendix 2** and attached hereto and made a part hereof for all purposes.⁹ Tract A consists of approximately 74 acres of land at or near 243rd 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 which have been constructed and an associated transmission substation, fixtures, equipment and improvements are located on Tract A the first site. Tract B, the second

⁹ The Peculiar Substation is indicated as the "North Substation" on the map.

site, consists of approximately 55 acres of land one-half mile west of 71 Highway and one-half mile 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 Cass County. A 161 kV electric transmission substation is located on Tract B.

16. Marked **Appendix 3**, attached hereto and made a part hereof for all purposes are legal descriptions of Tract A and Tract B, each described by metes and bounds.

17. 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, including the South Harper Facility and Peculiar Substation, 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 agreed-to location, those materials are extremely voluminous and would be an unreasonable burden on the Company to either reproduce or electronically submit on the Commission's EFIS. Waiver of this requirement is particularly appropriate in light of the special circumstance that construction of the South Harper Facility and Peculiar Substation was completed in the Summer of 2005, the costs are now known and that a certificate of public convenience and necessity is being sought at this time because the Court of Appeals has only recently reversed the 1980 interpretation and application of *Harline and the Commission's long-standing policy concerning the need for the requested certificate*.¹⁰

18. A granting of the application is required by the public convenience and necessity. This Commission has previously established, in Case Nos. 3,171, 9,470 and

¹⁰ Slip op. at 18.

11,892 and others, 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. In furtherance of this, the South Harper Facility and Peculiar Substation were constructed to replace the Company's power purchase agreement ("PPA") that expired May 31, 2005. The PPA provided for 500 megawatts ("MW") of capacity from a combined cycle facility interconnected with the Aquila Networks-MPS transmission system during the summer months and 200 MW from said facility in the winter months. With increasing demand in Aquila's Missouri service area, including Cass County, and the need for year-around peaking capability, the South Harper Facility's three (3) 105 MW simple cycle CTs provide flexibility to meet the needs of the Company's customers.

19. 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 the Company.¹¹ Aquila is adding approximately 5,000 new customers per year in this area, and the Company's 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. The granting of this application is required by and will promote the public interest because the electrical power to be 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, as described herein.

¹¹ The Missouri Office Administration has identified Cass County as one of the top ten fastest growing counties in the State showing an aggregate population increase of 8.2% during the thirty-nine (39) months over the three (3) years between April 1, 2000 and July 1, 2003. (OA News Release, April 9, 2004)

20. The Commission has stated its preference for company-owned generation instead of heavy reliance on power purchase agreements to meet Missouri load requirements and to protect Missouri customers.¹² This statement is consistent with Aquila's recent experience in which the Staff has encouraged Aquila to reduce its reliance on power purchase agreements 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").

21. The construction of the South Harper Facility is consistent with the Company's IRP. Actual experience has borne out Aquila's need for the capacity produced by the South Harper Facility. In fact, during the months of July through December of 2005, the South Harper Facility was operated for a total of 429 hours¹³ on 57 days, representing nearly 74,000 MWh of power generation for Aquila Networks-MPS system customers.

22. The location of the Project is desirable because of its relative proximity to the load center of the Western side of the Aquila Networks-MPS 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 29, *infra*.

23. 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 the driveway that crossed an existing water line of

¹² See, FERC Docket EC03-53-000 and 001, Opinion 473, pages 7 and 10.

¹³ Hours when at least one of the three units was operating.

Public Water Supply District No. 7 ("PWSD7"). Representatives of PWSD7 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.

24. In connection with the construction and development of the Project, Aquila has applied, and/or has obtained various authorizations, including, a prevention of significant deterioration ("PSD") air permit, and Storm Water Pollution Protection Plans ("SWPPP") for construction activity.

25. 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 was heretofore 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 and is incorporated herein by reference in accordance with Commission Rule 4 CSR 240-2.060(1)(G) as required by Commission Rule 4 CSR 240-3.105(D) and made a part hereof for all purposes.

26. Previous attempts by Aquila to secure local land use approval from Cass County have been met with a refusal by Cass County officials to consider the application as reflected by the letters marked collectively as **Appendix 4** attached hereto and made a part hereof for all purposes. Nonetheless, on January 20, 2006, Aquila attempted to file with the appropriate Cass County officials a special use permit application, but said officials refused to accept the application citing their requirement for the entry of a court judgment against the Commission in the writ of review proceeding pending in the Circuit Court of Cass County docketed as Case No. CV 105

558CC and involving judicial review of the Clarification Order issued by the Commission in Case No. EA-2005-0248. That application is in excess of 200 pages and will be made available to proper parties upon request.

27. 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 and made a part hereof for all purposes in accordance with Commission Rule 4 CSR 240-2.060(1)(G) and as required by Commission Rule 4 CSR 240-3.105(D). Said permit authorizes Aquila to construct and commence operation of the South Harper Facility.

Determination of Need for Capacity and Siting Considerations

28. Aquila issued several requests for proposals 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.¹⁴ Aquila determined to replace a portion of the 500 MW from the PPA through the construction of three (3) CTs at the South Harper Facility, with a combined nominal rating of 318 MW.

29. The Project tracts were chosen because of the relative proximity of the tracts to the load center of the Western side of Aquila Networks-MPS 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

¹⁴ See, ¶ 8, supra.

and Panhandle Eastern Pipeline Company ("Panhandle Eastern"), and for other considerations as more specifically set forth as follows:

- **Load Center and Growth:**

The Project, including 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 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 69kV transmission line needed to be upgraded to 161kV. This project included upgrading transmission reliability through construction of a 161kV line from South Harper to Belton, and will allow for the future upgrade of the existing 69KV 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 161kV.

- **Existing Infrastructure – Transmission:**

Existing transmission crosses through the tracts. As noted above, Aquila's system planning identified this transmission for upgrade from 69kV to 161kV. The Project provides those enhancements simultaneously with the current growth. In addition, there are two Kansas City Power & Light Company 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 tract. The fuel lines have the necessary capacity and pressure to service the South Harper Facility. In addition, Panhandle Eastern has additional natural gas lines located approximately 2 miles south of the tract that also have capacity and pressure to service the South Harper Facility. In fact, a Panhandle line has been connected to the South Harper Facility and was utilized during the 2005 summer. By having two different suppliers, the South Harper Facility and Project 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:**

Public Water Supply District 7 has a major water line located on the eastern edge of the tract, convenient for interconnection. The process and potable water capacity required for the South Harper Facility and 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 first approached Aquila about working together on the Project. That municipality realized that due to population growth, it needed the infrastructure upgrades provided by the South Harper Facility. In addition, the City desired to utilize Chapter 100 financing to enhance the financial benefit to the tax jurisdiction entities including, the School District, the Fire District, the Ambulance District and the Hospital District as well as reduce costs to the customers in Aquila's MPS territory. As a result, the Fire District and Water District have also supported the Project. The names and addresses of persons residing near the sites sought to be certificated herein and resolutions from various entities who have indicated support for the South Harper Facility are marked collectively as **Appendix 5** attached hereto and made a part hereof for all purposes.

- **The Land at the South Harper Facility Site:**

The 74-acre tract for the South Harper Facility was expeditiously purchased from a willing seller without need for condemnation, and the seller continues to reside on a small northern portion of the property. Helping to maintain the rural appearance of the land, there are partial tract surroundings and a slope on the South Harper Facility site, which allows the facility to maintain a low profile. The rock shelf approximately 10-15

feet below the surface also permitted the substantial turbine foundations to be readily installed and anchored. The tract size (74-acres) also allows for a minimum 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 tract. 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 have been incorporated into the South Harper Facility. The compressor station facility was enlarged and updated within the past six years.

30. Marked **Appendix 6** attached hereto and made a part hereof for all purposes is a map that 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 tract 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 Project. 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 that the entire area now is serviced by a 161 kV line, which has enhanced continued transmission reliability.

How the Need for Capacity Would be Met Absent the Project

31. As indicated, the 315 MW of capacity currently being provided by the three CTs at the South Harper Facility serve as partial replacement for an expiring 500 MW PPA which Aquila had with Calpine, Inc., ("Calpine") and to accommodate load growth. The capacity is also required to comply with Southwest Power Pool and North America Electric Reliability Council criteria to insure reliable service on the MPS system. 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.

32. If the South Harper Facility is not available, Aquila 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 Aquila's system. These other options had been evaluated previously and were significantly more costly than the South Harper Facility.

33. The preferred alternative replacement, as supported by separate statements of this Commission and its Staff, would be through an alternative self-build solution. Due to construction requirements, however, a self-build option would not be available for the next summer peaking season, and the Company's peaking capacity requirements would have to be met through more expensive short-term PPA and

market power purchases. While PPAs can, at times, be cost beneficial, the current market does not reflect any opportunity for capacity purchases that are within a competitive range of the cost of the South Harper Facility. In addition, over-reliance on the purchase power market would result in a lack of diversity and add risk to reliability of resources. For reliability purposes, the most appropriate self-build option would be a facility near the center of the load growth of Aquila's system, i.e. Cass County, Missouri. If generation and transmission are located far from load centers, there is increased opportunity to experience service interruptions, outages, and voltage issues. Aquila has conducted extensive site evaluation studies in Cass County and has not identified any site that is more suitable in terms of infrastructure than the site of the South Harper Facility. Moreover, Aquila has been unable to identify any suitable site that would not be subject to similar objections from nearby residents as have been raised regarding the South Harper Facility. The remaining alternatives of constructing generation outside the load center or purchasing capacity from outside Aquila's system would result in higher costs, less reliability, and greater impact on land use through miles of additional transmission structures and facilities.

Public Issues/Aquila Responses

34. Aquila is aware of public concerns that have been expressed, primarily regarding noise, air quality, temperature and impact on market values of properties near the South Harper Facility. The South Harper Facility was initially in compliance with Cass County ordinances and state and federal environmental requirements. As a result of expressed concerns, Aquila has taken a number of actions to mitigate any perceived impacts on the quality of life of nearby residents.

35. The northern thirty-six (36) acres of the tract are owned by Aquila and will be maintained as a buffer. To further control noise, additional berming was performed and hundreds of trees and shrubs were planted, including landscaping on nearby residences with the design input of individual families. Acoustic insulation has been added to the exterior of the air inlet ducting; silencers have been installed on fuel gas vents, gas yard vents, and compressed air vents; the fire alarm system was reinstalled to the inside of the facility buildings; acoustic skirting and ventilation silencers were installed on the starting motor and we are in the process of building sound walls to further reduce transformer sound.

36. While the South Harper Facility has been verified by the Missouri Department of Natural Resources and Environmental Protection Agency as being compliant with state and Federal air quality regulations, Aquila authorized an independent review by two expert Kansas University toxicologists who indicated that there are no anticipated health effects of the South Harper Facility air emissions. Those experts have been made available to discuss their findings with area residents who have expressed concerns. In addition, Aquila has paved approximately two miles of road in the area. Just four trucks per hour driving on two miles of unpaved road produce more particulate matter emissions than the South Harper Facility generates, so it is very likely that construction of the plant has actually served to reduce particulate emissions in the area.

37. One individual has complained that the South Harper Facility has raised temperatures in the area. Aquila has studied this claim and concluded that it is not supportable from a scientific standpoint.

38. Aquila does not believe that the South Harper Facility will have any long-term negative impact on the property values of homes that are in its proximity. A number of similar peaking facilities co-exist with upper bracket homes in the Kansas City area, some with no buffer zone such as that which exists at the South Harper Facility. However, to address the concerns of those who believe they may have suffered financial harm as a result of the construction of the South Harper Facility, Aquila has offered to purchase, at a premium to market appraisal, homes and vacant residential property near the site. Relocation agreements have been negotiated with some affected neighbors that allow them time to evaluate the issues pertinent to the South Harper Facility and give them the ability to leave the area within a certain time period with costs covered by Aquila.

39. Finally, Aquila has made a concerted effort to meet with nearby residents, provide tours, listen to and address continuing concerns on an ongoing basis. In recognition of the need to support community development efforts, Aquila installed, in partnership with local agencies, a water loop to increase reliability of the local rural water system, installed 21 new fire hydrants, provided funding for five new tornado sirens, will install poles and lights for the Cass County Pop Warner Football Field and is working on the design of a lighting project for five baseball fields.

WHEREFORE, Aquila requests that the Commission issue its order:

- (A) Granting Aquila 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 a site now comprising three (3) 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;

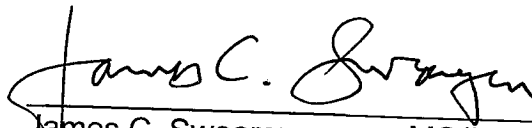
- (B) Granting Aquila permission and approval and a certificate of public convenience and necessity, to construct, install, own, operate, maintain, and otherwise control and manage an electrical transmission substation together with any and all other facilities, structures, fixtures, equipment and installations 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 Aquila 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,



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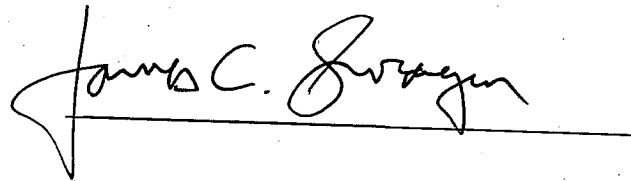
Attorneys for Aquila, Inc.

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 25th day of January, 2006 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



VERIFICATION

STATE OF MISSOURI)
) SS
COUNTY OF JACKSON)

Keith G. Stamm, being duly sworn on oath, deposes and says that he is the Senior Vice President and Chief Operating Officer of Aquila, Inc., that he has read the foregoing Application and attached Exhibits and knows the contents thereof, and that the same are true and correct to the best of his knowledge, information and belief.

AQUILA, INC.

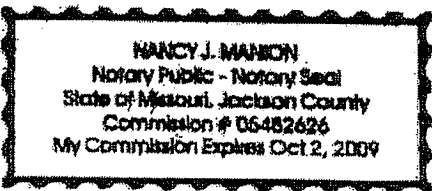
BY: *Keith G. Stamm*
Keith G. Stamm
Senior Vice President &
Chief Operating Officer

Subscribed and sworn to before me, the undersigned, a Notary Public in and for the county and state aforesaid, on the 24th day of JANUARY, 2006.



Nancy J. Manion
Notary Public

My Commission Expires:
10/2/09



LIST OF APPENDICES

- 1) Letter to Mrs. Nanette Trout dated 11/05/04;
- 2) Map of Cass County;
- 3) Legal description of Tract A and Tract B;
- 4) Letters of refusal by Cass County officials;
- 5) Evidence of local support for Project;
- 6) Map showing, by township number, the major portion of Aquila's service territory in Jackson and Cass Counties.

MATERIALS INCORPORATED BY REFERENCE

- Certificate of Authority for a foreign corporation to do business in the State of Missouri evidencing Aquila's authority to conduct business in the State of Missouri filed with the Commission in Case No. EU-2002-1053
- Copies of the registrations of fictitious names of Aquila Networks-MPS and Aquila Networks L&P filed with the Commission in Case No. EU-2002-1053
- Copy of the Court's Judgment filed with the Commission in Case No. EA-2005-0248
- Copy of the Notice of Appeal of the Judgment in the Missouri Court of Appeals, Western District, Case No. WD64985 filed with the Commission in Case No. EA-2005-0248
- 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 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
- 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 filed as Appendix 7 to Aquila's Application in Case No. EA-2005-0248