

**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. EA-2009-0118

**STIPULATION AND AGREEMENT**

As a result of discussions among the Staff of the Missouri Public Service Commission (“Staff”), the Office of the Public Counsel (“Public Counsel”), KCP&L Greater Missouri Operations Company (“Company”), formerly known as Aquila, Inc. d/b/a KCP&L Greater Missouri Operations Company,<sup>1</sup> Dogwood Energy LLC (“Dogwood”), and Cass County, Missouri (“Cass County”) (collectively, the “Signatory Parties” or “Signatories,” and individually, a “Signatory”), the Signatory Parties hereby submit to the Missouri Public Service Commission (“Commission”) for its consideration and approval this Stipulation and Agreement (“Agreement”).

The Sedalia Industrial Energy Users’ Association (“SIEUA”) was involved in these discussions but is not a Signatory. However, SIEUA through its counsel has advised that it will not oppose this Agreement and will not seek a hearing.

The Signatory Parties state as follows:

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<sup>1</sup> On November 20, 2008, in Case No. EN-2009-0164 and in Case No. HN-2009-0165 the Commission granted the Company’s applications regarding its change of name from Aquila, Inc., d/b/a KCP&L Greater Missouri Operations Company to KCP&L Greater Missouri Operations Company.

### **A. Background.**

1. On September 30, 2008, the Company filed an Application with the Commission, pursuant to Section 393.170 and 393.171,<sup>2</sup> as well as 4 CSR 240-2.060 and 4 CSR 240-3.105(1)(B), that commenced this proceeding (“Application”). The Application requests that the Commission grant the Company a Certificate of Convenience and Necessity (“CCN”) for two installations previously constructed by the Company and currently in operation since 2005: (a) the South Harper Power Plant and an adjacent transmission substation (“South Harper Plant”) and (b) the Peculiar 345 kV Substation recently annexed by the City of Peculiar (“Peculiar Substation”) (collectively, the “Facilities”). The Facilities are located in Cass County, Missouri.

2. The Facilities were the subject matter of two earlier applications before the Commission: Case No. EA-2005-0248 (Apr. 7, 2005) and Case No. EA-2006-0309 (May 23, 2006). In each proceeding the Commission issued a report and order approving the construction and operation of the Facilities.

3. In Case No. EA-2005-0248 the Commission determined that a 1938 CCN issued in Case No. 9470, 23 Mo. P.S.C. 740 (1938), authorized construction of the Facilities. In proceedings on a petition for writ of review of the Commission’s decision in Case No. EA-2005-0248, the Circuit Court of Cass County in Case No. CV105558CC entered a Consent Judgment agreed to by the Commission and Cass County that directed the Commission to set aside and vacate its April 7, 2005 order in that case. This Consent Judgment was issued as a result of the Missouri Court of Appeals decision in StopAquila.org v. Aquila, Inc., 180 S.W.3d 24 (Mo. App. W.D. 2005) (“South Harper I”), which rejected the Commission’s determination

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<sup>2</sup> All statutory references are to the Missouri Revised Statutes (2000), as supplemented and amended, unless otherwise noted.

in Case No. EA-2005-0248. Pursuant to the Circuit Court's Consent Judgment, the Commission vacated its decision in Case No. EA-2005-0248 on March 7, 2006.

4. After the South Harper I opinion, the Commission issued the Company a post-construction CCN for the Facilities in Case No. EA-2006-0309. The Circuit Court of Cass County granted a writ of review regarding this decision of the Commission and entered a judgment adverse to the Commission and the Company. On appeal the Missouri Court of Appeals upheld the Circuit Court's judgment and set aside the Commission's Report and Order in State ex rel. Cass County v. Public Service Comm'n, 259 S.W.3d 544 (Mo. App. W.D. 2008) ("South Harper II"), on the basis that the Commission did not have authority to issue such a CCN post-construction.

5. Subsequent to the Court of Appeals decisions in South Harper I and South Harper II, the Missouri General Assembly passed Senate Bill 720 ("S.B. 720")<sup>3</sup> 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

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<sup>3</sup> Lt. Gov. Kinder signed the bill on June 16, 2008, which went into effect on August 28, 2008.

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.

#### **B. Stipulations.**

6. The South Harper Plant is a peaking electrical production facility that consists of three 105 MW natural gas-fired combustion turbine units, located on a site designed for six such units, and an associated electric transmission substation, all located on approximately 38 acres of a 74-acre tract of land in an unincorporated area of Cass County, near the City of Peculiar at East 243<sup>rd</sup> Street and South Harper Road. It is more particularly described as "Tract A" in Appendix A to the Application in this case.

7. The Peculiar Substation is an electrical transmission substation located on approximately 7.5 acres of a 55-acre tract of land at the intersection of 203<sup>rd</sup> Street and Knight Road in the City of Peculiar. This tract is directly south of 203<sup>rd</sup> Street, approximately one-half mile west of U.S. 71 Highway, and is adjacent to the intersection of an existing 345 kV electrical transmission line and an existing 161 kV electrical transmission line, both owned by the Company. It is more particularly described as "Tract B" in Appendix A to the Application in this case.

8. The South Harper Plant and the Peculiar Substation are each improvements that provide sufficient additional service to justify their cost, and the inconvenience of the Company not having them is sufficient to arise to the level of them being necessities. The Company needs generation capacity to meet the demands of its customers. Each of the three natural gas combustion turbine units at the South Harper Plant is appropriate to meet this demand. The

Company needs the 315 MW of capacity at the South Harper Plant (three 105 MW units) to provide reliable service to its native load customers. Regarding transmission needs, a 2002 study analyzed the Grandview, Belton, Harrisonville and Pleasant Hill areas, and concluded that there was a need to upgrade the 69 kV transmission system serving these areas. By constructing the Peculiar Substation and the substation at the South Harper Plant, the Company was able to improve transmission system reliability to this portion of its service territory and to the local rural electric cooperative.

9. The Facilities were incorporated into Southwest Power Pool's transmission expansion plan, and now provide consumers with greater access to generation resources in the region. The Facilities have improved the reliability of the transmission system, have improved the overall efficiency and economics of transmission operations, and today provide reactive power to control voltage on the transmission network. Additionally, the Peculiar Substation serves to relieve the load on other transmission facilities in southern Kansas City, and enhances the overall operation and reliability of the transmission system in that area.

10. The Company and its predecessors have been authorized by the Commission to conduct business as a regulated public utility and electrical corporation in their certificated areas in Missouri. The Company has been engaged in providing electrical service to Cass County, Missouri since the Cass County Court granted its permission and consent in the form of a franchise to one of the Company's predecessors in January 1917. Since beginning operations in 2005, to the best knowledge, information, and belief of the Signatory Parties, the Facilities have been operated in a safe and responsible manner. The Signatory Parties agree that the Company is qualified to own, operate, control and manage the Facilities.

11. The Company financed the construction of the South Harper Facility with \$140 million of tax-advantaged revenue bonds issued under the economic development authority of the City of Peculiar, pursuant to Article VI, Section 27(b) of the Constitution of the State of Missouri, as well as the statutory provisions of Sections 100.010 through 100.200.

12. The Company has already constructed the Facilities and has been operating them since 2005. The Signatory Parties agree that the Company has the financial ability to own, operate, control and manage the Facilities. The Facilities are economically feasible and currently provide reliable service.

13. On May 31, 2005 the Company's purchased power agreement ("PPA") with Calpine, Inc. ("Calpine") expired. The PPA provided for 500 MW of capacity during the summer months from Calpine's natural gas combined-cycle power plant in Pleasant Hill, Missouri, as well as 200 MW in the winter months. Dogwood now owns and operates that power plant formerly known as the "Aries" plant.

14. With the demand for electricity in the Company's Missouri service area, including Cass County, the South Harper Plant's three 105 MW simple-cycle natural gas-fired combustion turbines provide generating capacity and flexibility to meet the needs of the Company and its customers.

15. The Company's western Missouri service area includes the majority of Cass County, a first-class non-charter county which is one of the fastest growing counties in the State, according to the Missouri Office of Administration. The Signatory Parties agree that the Facilities will promote the public interest by providing generation and transmission capacity available to serve the public's increasing demand for electrical power in Cass County, as well as nearby areas.

16. There presently are adequate sources of fuel transmission to supply fuel to the South Harper Plant's combustion turbines from interstate natural gas pipelines operated by Southern Star Central Gas Pipeline, Inc. ("Southern Star") and Panhandle Eastern Pipe Line Co. ("Panhandle Eastern"). The South Harper Plant is interconnected to two Southern Star natural gas pipelines that cross to a compressor station that is located within the original 80-acre tract on which the plant is built. These two fuel lines have the necessary capacity and pressure to provide natural gas service to the South Harper Plant as built. In addition, Panhandle Eastern operates natural gas pipelines located approximately two miles south of the tract that are also interconnected with the South Harper Plant. As a result, the South Harper Plant presently has adequate transmission for the supply of fuel, and presently is not dependent upon a single fuel transmission supplier.

17. The Facilities are located near electrical transmission lines that existed when the Facilities were built. As part of the construction of these Facilities, a new 161 kV line was built from the South Harper Plant to the Company's Belton South Substation. This will allow for the future upgrade of existing 69 kV transmission lines as load growth continues to occur in the Raymore/Peculiar area. The existing 69 kV lines that are planned for upgrade consist of a line that runs north from the Peculiar Substation to the Belton South Substation, and a line that runs from a switch that is mid-point on the Peculiar/Belton South line near 58 Highway to the Raymore Substation to the east and then farther east to the Pleasant Hill Substation.

18. As a result of an agreement between the Company and Cass County, the Company filed a special use permit ("SUP") application for the South Harper Plant in May 2008. On July 31, 2008, the Cass County Commission voted 3-0 to approve the South Harper Plant SUP application and directed the County Zoning Officer to work with the Company to

prepare and issue an SUP. The Zoning Officer issued an SUP in accordance with the Cass County Commission's approval and in a form acceptable to the Company on September 12, 2008.

19. With regard to the Peculiar Substation, the Company filed a Zoning Application with the City of Peculiar ("City") on September 5, 2008. At the City's request, the application was revised and re-submitted as a SUP application on November 19, 2008. The City's City Planner recommended that the SUP application be approved, which the City Planning & Zoning Commission did approve on January 8, 2009. The Company expects that the City's Board of Aldermen will approve the SUP application, to which there is no opposition, at its February 3, 2009 meeting.

20. The Company represents that, to the best of its knowledge, information, and belief, all private claims and lawsuits relating either to the South Harper Plant or the Peculiar Substation have been resolved and settled. There are no pending claims or lawsuits relating to the Facilities.

21. Based upon the foregoing, the Signatory Parties agree that the Commission should grant the Company permission and approval to construct, install, own, operate, maintain, and otherwise control and manage the Facilities. The Signatory Parties agree that the exercise by the Company of the rights, privileges and franchises set forth in the Application with regard to the Facilities are necessary and convenient for the public service, and in the public interest. The Signatory Parties agree that, pursuant to Sections 393.170 and 393.171, the Commission should issue certificates of convenience and necessity regarding the Facilities.



22. Only because the Facilities are already constructed, the Signatory Parties agree that the Company should be granted a variance from the requirement of 4 CSR-240-3.105(1)(B)(2).

23. The Signatory Parties agree that any order the Commission issues granting the Company one or more CCNs for the Facilities pursuant to the Agreement must include a statement by the Commission that, other than the need for the Facilities, its order has no ratemaking effect.

24. The Signatory Parties agree that neither any order the Commission issues granting the Company one or more CCNs for the Facilities pursuant to this Agreement, nor this Agreement itself limits any Signatory Party from asserting in a case where the Company's rates are at issue that the Company should have constructed one or more additional generating units at the South Harper Plant, or that Dogwood's plant remains available as a source of generating capacity for the Company.

25. The Signatory Parties agree that this Agreement shall not be interpreted or construed in this or any other proceeding, administrative or judicial, as an amendment, alteration, modification or waiver of any of the terms, conditions, provisions, rights, obligations and duties set forth in the Memorandum of Agreement entered into on April 21, 2008, as amended, by and between Cass County and the Company.

26. The Signatory Parties agree that any CCN the Commission issues for the Facilities pursuant to this Agreement is conditioned upon the Company having received approval for the South Harper Plant from Cass County in 2008 and receiving approval for the Peculiar Substation from the City in 2009.

### **C. Effect of Agreement.**

27. None of the Signatories shall be deemed to have approved or acquiesced in any question of Commission authority, accounting authority order principle, cost of capital methodology, capital structure, decommissioning methodology, ratemaking principle, valuation methodology, cost of service methodology or determination, depreciation principle or method, rate design methodology, jurisdictional allocation methodology, cost allocation, cost recovery, or question of prudence that may underlie this Agreement or for which provision is made in this Agreement.

28. This Agreement represents a negotiated settlement. Except as specified herein, the Signatories to this Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement: (i) in any future proceeding; (ii) in any proceeding currently pending under a separate docket; and/or (iii) in this proceeding should the Commission decide not to approve this Agreement or in any way condition its approval of same.

29. The provisions of this Agreement have resulted from negotiations among the Signatories and the provisions are interdependent. In the event that the Commission does not approve and adopt the terms of this Agreement in total, or approves this Agreement with modifications or conditions that a Signatory objects to, it shall be void and no Signatory shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof.

30. When approved and adopted by the Commission, this Agreement shall constitute a binding agreement among the Signatories who shall cooperate in defending the validity and enforceability of this Agreement and the operation of Agreement according to its terms.

31. This Agreement does not constitute a contract with the Commission. Acceptance of this Agreement by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forego the use of any discovery, investigative or other power which

the Commission presently has. Thus, nothing in this Agreement is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right to access information, or any statutory obligation.

**D. Commission Approval of the Agreement.**

32. If requested by the Commission, the Staff shall submit to the Commission a memorandum addressing any matter requested by the Commission. The Signatories shall be served with a copy of any such memorandum and shall be entitled to submit to the Commission, within five (5) business days of receipt of the same, a responsive memorandum, which shall also be served on all parties of record. The contents of any memorandum provided by any Signatory are its own and are not acquiesced in or otherwise adopted by the other Signatories to this Agreement, whether or not the Commission approves and adopts this Agreement.

33. Representatives of the Signatory Parties agree that they will appear at the on-the-record presentation scheduled by the Commission for February 19, 2009 to address the issues resolved by this Agreement and to respond to any questions by the Commission. The parties agree to cooperate in presenting this Agreement to the Commission for approval, and will take no action, direct or indirect, in opposition to the request for approval of this Agreement.

34. If the Commission does not unconditionally approve this Agreement without modification, and notwithstanding its provision that it shall become void thereon, neither this Agreement nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any party has to a hearing on the issues presented by the Agreement for cross-examination, or for a decision in accordance with Section 536.080 or Article V, Section 18 of the Missouri Constitution. The parties shall retain all procedural and due process rights as fully as though this Agreement had not been presented for approval, and any suggestions or memoranda, testimony or exhibits that have been offered or

received in support of this Agreement shall thereupon become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

35. In the event the Commission accepts the specific terms of the Agreement, the parties waive their respective rights to call, examine and cross-examine witnesses, pursuant to Section 536.070(2); their respective rights to present oral argument and written briefs pursuant to Section 536.080.1; their respective rights to seek rehearing, pursuant to Section 386.500; and their respective rights to judicial review pursuant to Section 386.510. This waiver applies only to a Commission Report and Order respecting this Agreement issued in this proceeding, and does not apply to any matters raised in any subsequent Commission proceeding, or any matters not explicitly addressed by this Agreement.

WHEREFORE, the Signatory Parties request that the Commission find (1) that the exercise of the Company's right, privilege and franchise to construct, install, own, operate, maintain, control and manage the Facilities is necessary and convenient for the public service, (2) that the Commission issue an order approving this Agreement and authorizing the Company to construct, install, own, operate, maintain, control and manage the Facilities, and (3) that the Commission issue a certificate of convenience and necessity regarding the Facilities, all subject to the specific terms and conditions contained in this Agreement.

Respectfully submitted,

Dated: January 9, 2009

/s/ Karl Zobrist

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served via email upon the following parties, on this 9<sup>th</sup> day of January, 2009:

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