

**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. EA-2006-0309

**AQUILA'S LIST OF ISSUES AND REQUEST FOR WAIVER**

Comes now Aquila, Inc. ("Aquila"), by counsel, and for its proposed List of Issues and Request for Waiver in the captioned-matter respectfully states to the Missouri Public Service Commission ("Commission") as follows:

1. The subject application is before the Commission pursuant to Section 393.170.1, RSMo. A threshold issue can be stated as follows:

**"Does the Commission have the jurisdiction to consider the application?"**

2. The standard for approval of the application is contained in Section 393.170.3, RSMo. In accordance with that statute, the ultimate issue for consideration by the Commission in this matter can be stated as follows:

**"Is the authority requested by Aquila necessary or convenient for the public service?" (393.170.3)**

3. In determining this issue, the Commission has historically considered factors which may be stated as follows:

- Whether there is a need for the involved facilities and related service;

- Whether Aquila is qualified to own, operate, control and manage the involved facilities and provide the related service;
- Whether Aquila has the financial ability for this undertaking;
- Whether Aquila's proposal is economically feasible; and
- Whether the involved facilities and related service promotes the public interest.

(*State ex rel. Intercon Gas, Inc. v. Public Service Commission of Missouri*, 848 S.W.2d 593, 597-598 (Mo. App. W.D. 1993)).

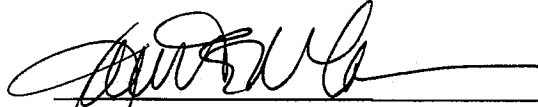
In addition, the Missouri Court of Appeals, in *Cass County v. Aquila, Inc.*, has stated that the Commission also consider "current conditions, concerns and issues, including zoning," matters which Aquila believes fall under the item "whether the involved facilities and related service promotes the public interest."

4. Assuming the Commission grants to Aquila a certificate of public convenience and necessity an additional issue exists which may be stated as follows:

**"May such a certificate be conditioned and, if so, in what manner?"**

5. Commission Rule 4 CSR 240-2.080(21) prescribes the form for any List of Issues ordered by the Commission. Given the circumstances of this case, the fact the standard for approval is prescribed by statute, and the fact that the matters to be considered in determining whether the standard has been satisfied have been previously established by the Commission and the Courts, Aquila requests, pursuant to 4 CSR 240-2.025, that, for good cause, the Commission waive the requirements of 4 CSR 240-2.080(21).

Respectfully submitted,



James C. Swearengen MO#21510  
Janet E. Wheeler MO #52582  
BRYDON, SWEARENGEN & ENGLAND, P.C.  
312 East Capitol Avenue  
P.O. Box 456  
Jefferson City, MO 65102  
(573) 635-7166 Phone  
(573) 634-77431 Fax  
lrackers@brydonlaw.com  
ATTORNEYS FOR AQUILA, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was delivered electronically, by first class mail or by hand delivery, on this 11<sup>th</sup> day of April 2006, to all parties of record.

