

**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 Convenience and Necessity)
Authorizing it to Acquire, Construct, Install,)
Own, Operate, Control, Manage and)
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

CONCURRING OPINION OF COMMISSIONER LIN APPLING

I support this order because it reaches a reasonable result, consistent with applicable laws and the record evidence available to the Commission. The Commission's duty was to determine the public interest at stake in this case, and I am confident that we achieved that goal.

In my opinion, this order confirms the Commission's standard practice and affirmations, including: the Public Service Commission's November 5, 2004 letter advising Nanette L. Trout that Aquila, Inc.'s existing certificates of convenience and necessity conferred the authority needed to build generation in its existing service territory; the Commission's April 7, 2005 order clarifying the adequacy of Aquila's certificate authority (EA-2005-0248); and decades of similar findings made by our predecessors.

Until the Western District of Court of Appeals issued its December 20, 2005 opinion in *StopAquila.Org v. Aquila, Inc.*, there was no reason for the Commission *not* to rely on this history. (S.W.3d 24 (Mo. App. 2005)) Given that holding, I would advise any electric utility that wants to build new generation in its existing service territory, out of an abundance of caution, to seriously consider seeking specific authority for its project.

As this order notes, the Western District's opinion found that Aquila built its facility without having proper authority; that it is exempt from Cass County zoning and that it had the option to seek specific authority from either Cass County or the Commission. Aquila chose to come here. The Commission made its decision.

I agree with the majority that there is a need for Aquila's new generation; that it will contribute to safe and reliable service for its customers and for the rest of the grid upon which all of us depend; and that there is no compelling reason to deny the company's request for a certificate of convenience and necessity. It is in the public interest for *all* of us to learn from this experience.

For these reasons, I respectfully concur.


Linward "Lin" Appling, Commissioner

Date: 5/23/06