

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In The Matter of the Application of Aquila,)
Inc. for Specific Confirmation or, in the)
Alternative, Issuance of a Certificate of)
Convenience and Necessity Authorizing)
it to Construct, Install, Own, Operate,)
Control, Manage, and Maintain a)
Combustion Turbine Electric Generating)
Station and Associated Electric)
Transmission Substations in)
Unincorporated Areas of Cass County,)
Missouri Near the Town of Peculiar.)

Case No. EA-2005-0248

**RESPONSE OF AQUILA, INC. TO MATTERS BROUGHT FORTH IN THE LOCAL
HEARING IN HARRISONVILLE, MISSOURI**

COMES NOW Aquila, Inc., ("Aquila"), and in accordance with the Missouri Public Service Commission's ("Commission") Order Regarding March 28 Hearing dated March 18, 2005, and provides its preliminary response to certain issues raised during the public comment taken at the local hearing in Harrisonville, Missouri on March 15, 2005.

1. On March 15, 2005, the Commission held a local hearing in Harrisonville, Missouri, at the Cass County Justice Center, at which time members of the public offered statements in support of and in opposition to the relief requested in the Application filed by Aquila on January 28, 2005.

2. On March 18, 2005, the Commission issued an Order Regarding March 28 Hearing. The Commission noted that cross-examination of witnesses was not permitted at the Harrisonville hearing. Consequently, the Commission set aside the dates of March 28 and 29, 2005 to take additional evidence and oral argument. The

Commission stated that it “will expect the parties to address the testimony offered at the Harrisonville public hearing.”

3. To facilitate the March 28 – 29, 2005 hearing, Aquila submits the following summary response to a number of issues that were brought to the Commission’s attention by members of the public on March 15, 2005. As the Commission has noted, Aquila was not given the opportunity to offer its own comments for the record, to respond to the statements offered by the opponents of the South Harper Facility or to ask clarifying questions of those individuals who made statements. (Tr. 75-76) By virtue of the following comments, Aquila will attempt to provide some additional information and context with regard to a number of matters that came to light at the time of the Harrisonville hearing.

4. Except as otherwise specifically contained herein, Aquila will not provide a point-by-point response or rebuttal to the testimony of each person who spoke in opposition to the Application in this case. Rather, Aquila will endeavor to address general topics and concerns that were brought to the Commission’s attention in a general summary fashion.

General Observations Concerning Public Statements

5. Thirty-two (32) witnesses testified at the public hearing in Harrisonville. Eleven (11) of those witnesses testified in support of the South Harper Facility. Those witnesses were as follows:

| <u>Name</u> | <u>Identity</u> | <u>Transcript Page Reference</u> |
|---------------|--|--------------------------------------|
| George Lewis | Mayor of City of Peculiar, Missouri | 10 |
| George Bremer | Landowner and resident | 14 |

| | | |
|----------------------------------|--|-----|
| James Toone | Fire Chief of the West Peculiar Fire District | 16 |
| Tom Shiflett | President, PAR Electrical Contractor | 18 |
| Garry Kemp | Business Manager of Greater Kansas City Building and Construction Trades Council | 24 |
| Mike Baker | Business Manager and Financial Secretary, IBEW Local 814 | 28 |
| Pete Browne | Vice-President, Kissick Construction Company | 32 |
| Leonard Whiting | Public Water Supply District No. 7 of Cass County | 34 |
| Dan Dearhoff, Ph.D. ¹ | Superintendent, East Lynne Number 40 School District | 41 |
| Jim Hayes | Cass County resident | 50 |
| Bruce Schanuth | Construction worker (KCPL Hawthorne Plant) | 186 |

The testimony of these witnesses covered a number of topics but several offered compelling testimony about population growth in the area, the need for additional sources of electric power and robust transmission capabilities, the economic development benefits associated with the project and the benefits to be derived from resulting employment and additional property tax revenues for local schools and improvements to fire protection capabilities for local residents.

Summary History of South Harper Site Selection

6. The testimony of some of the witnesses opposing the South Harper Facility posed the general question of why at South Harper and not elsewhere? It bears repeating that the location of the South Harper Facility was not the result of random

¹ Dr. Dearhoff testified that he supported the construction of the South Harper Facility project but opposed the Chapter 100 RSMo financing. Aquila's comments will address the erroneous basis for Dr. Dearhoff's opposition. See *infra*. ¶¶ 31-36.

choice but, rather, because of certain inherent advantages of the site location concerning load growth, existing infrastructure, sources of fuel and other considerations. These matters were addressed in paragraph 34 of Aquila's Verified Application and can be summarized as follows:

- **Load Center and Growth:**

The South Harper Facility is located approximately 3 miles south of the City of Peculiar. The site is in a rural area that is experiencing and is expected to continue to experience residential, commercial, and industrial load growth that ranks in the top two areas within the Aquila service territory. It is not unusual for peaking facilities to be 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. Currently there are no peaking facilities in this area and the transmission is 69kV which needs to be upgraded to 161kV in the future. The Eastern side (Lee's Summit/Greenwood/Pleasant Hill) of the Aquila system is served by the Greenwood Energy Center and Ralph Green 3, which are both peaking facilities. In addition, the transmission system on the Eastern side is already 161kV transmission.

- **Existing Infrastructure – Transmission:**

Existing electric transmission crosses through the sites. System planning has identified this transmission for upgrade from 69kV to 161kV in the future. The Project allows those enhancements to take place with the growth currently taking place. In addition, there are two KCPL 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 site. The fuel lines have the necessary capacity and pressure to service the facility. In addition, Panhandle Eastern has additional natural gas lines located approximately 2 miles south of the site that also have capacity and pressure to service the facility. By having two different suppliers, the facility 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 No. 7 of Cass County has a major water line located on the eastern edge of the property, convenient for interconnection without obstructing construction. The process and potable

water capacity required for 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:**

In early July, 2004, the City of Peculiar actually first approached Aquila about working together on the Project. That municipality realizes that due to population growth, it will need the infrastructure upgrades provided by the South Harper Facility. This was the basis for the statement made by Mr. George Lewis, Mayor of the City of Peculiar, in Harrisonville. (Tr. 10)

- **The Land at the Site:**

The 74-acre Site was expeditiously purchased without need for condemnation from a willing seller who will continue to reside very nearby on a small northern portion of the site.² The land purchase contract was signed on September 8, 2004. Helping to maintain the rural appearance of the land, there are partial treed surroundings and a slope on the plant site, which allows the facility to maintain a low profile. The rock shelf approximately 10-15 feet below the surface also permits the substantial turbine foundations to be readily installed and anchored. The site size (74-acres) also allows for a 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 site. 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 will be incorporated into the South Harper Facility. The compressor station facility was enlarged and updated within the past five years.

7. With regard to the topic of local support for the project, it is important for the Commission to realize that Aquila initially was approached by the City of Peculiar to build at the South Harper location. Aquila was given to understand that the City

² The individual from whom the property was purchased was Mr. George Bremer. He made a statement in support of the project. (Tr. 14)

planned to annex the seventy-four (74) acre tract of land. The City of Peculiar later abandoned its annexation plans because of local opposition.

Aquila Made Reasonable Efforts to Notify and Educate Landowners Near the Project Site

8. A number of witnesses testifying in opposition to the Application in the meeting in Harrisonville suggested that there was little or no effort made by Aquila to notify the public about the plans for the use of the property on South Harper Road. Indeed, one may have come away with the impression that Aquila attempted to mislead the public and build the project surreptitiously in the dark of night. Nothing could be further from the truth.

9. Aquila undertook extensive efforts to notify and educate interested persons, including local landowners. Representatives of Aquila met with members of the Peculiar Chamber of Commerce on September 14, 2004 to discuss the South Harper Facility. A number of nearby home owners toured Aquila's Greenwood Energy Center on October 1, 2004. Thereafter, on October 6, 2004, Aquila issued a news release advising of its consideration of the South Harper location pursuant to which it announced a public information meeting to be held at the Peculiar Lions Club building on October 11, 2004. That same news release announced another tour and informational meeting on October 12, 2004 at Aquila's Greenwood Energy Center so that nearby residents could actually hear a power peaking facility in operation. A copy of the news release is attached hereto as **Exhibit 1**.

10. In conjunction with the news release, Aquila published an open house ad in the Belton Star Herald and the Raymore Journal on October 7, 2004. A copy of the ad is attached hereto as **Exhibit 2**.

11. On October 29, 2004, Aquila caused to be published a series of informational questions and answers in the Kansas City Star. A text copy of this information is attached hereto as **Exhibit 3**.

12. A number of full-page advertorials have been published in the Cass County Democrat Missourian, the Belton Star Herald and the Raymore Journal throughout the months of December 2004 and January 2005. Copies of these materials are attached hereto as **Exhibit 4**.

13. Aquila cannot accept any suggestion that it has failed to make reasonable efforts to inform, educate and listen to the concerns of interested persons about its plans for the use of the property at the South Harper location. To the contrary, Aquila has made every reasonable effort to listen to, respond to and address reasonable landowner concerns.

14. Those efforts have not always been welcomed by those who now complain about a lack of consultation. Public witness Ms. Nancy Manning (Tr. 96-102) attended the open meeting hosted by Aquila on October 11, 2004. Ms. Manning asked some questions relating to landscaping issues associated with the South Harper Facility. Thereafter, on October 19, 2004, an Aquila representative contacted Ms. Manning to discuss the possibility of sending her some information relating to the company's commitments on the topics they discussed at the October 11, 2004 meeting. Ms. Manning said there was no reason for Aquila to send her any information since she had already retained legal counsel. Clearly, it was Ms. Manning's prerogative to refuse to communicate with Aquila, a decision Aquila respects, but is not entirely fair for her to state at the public hearing that "Aquila doesn't care what we think." (Tr. 97)

Aquila/City of Peculiar Communication

15. At least one member of the public testified about copies of e-mail communications between representatives of the City of Peculiar and Aquila. The implication of the testimony is that something unusual or inappropriate had transpired, which is most certainly not the case. Clearly, there was a need for representatives of Aquila to communicate with city officials on a number of topics on a routine basis, not the least of which was the Chapter 100 RSMo revenue bond financing arrangement which is the subject of Commission Case No. EO-2005-0156. There were also communications regarding annexation and rezoning issues as well as other topics associated with the construction of the South Harper Facility. Aquila submits that there was absolutely nothing improper or unexpected about the fact that Aquila had numerous and regular communications with representatives of the City of Peculiar. Aquila will make copies of a complete set of these communications available upon the Commission's request.

Noise and Plant Profile Mitigation Efforts

16. A number of neighboring landowners expressed concerns about the noise levels associated with the South Harper Facility during those limited hours it actually will be in operation. With all due respect to the legitimate concerns voiced by neighboring landowners, Aquila believes that the anticipated noise "problem" is not supported by the facts. For example, George Bremer, the person whose home will be one of the closest to the location of the South Harper Facility, testified in support of the project. (Tr. 14)

17. The plant site of the South Harper Facility has been excavated into the hillside at that location, lowering the level of the plant by approximately 14 feet below

the surrounding contour and, additionally, creating an earthen berm of approximately 14 – 18 feet in height at key locations around the perimeter of the site. This will form a sound barrier from neighboring homes and structures that will significantly moderate any discernable noise during the operation of the South Harper Facility. Copies of photographs showing the construction and location of the earthen berms are attached hereto, collectively, as **Exhibit 5**. It will also significantly mitigate the visible plant profile. Aquila also plans to plant 8-10 foot trees that will further reduce visibility.

18. A related concern that was expressed at the public hearing was the height of the exhaust stacks at the South Harper Facility. Ultimately, the exposed stack height will be approximately half of the actual height which is seventy feet. Part of the reason for the final stack height is because the company is adding noise reduction technology on the stacks to further reduce the noise associated with the plant's operation. Twenty (20) feet of the total stack height is the result of adding extra sound attenuation baffles. These steps were taken in no small measure because of concerns that had been expressed by neighboring landowners concerned about the audible impact of plant operation. This is being done at an incremental cost of approximately \$1.2 million.

19. Some comment was received about the results of the Noise Assessment Study of the South Harper Facility performed by the consulting firm Burns and McDonnell. Aquila agrees with the witness who testified that the analysis of decibel ("dBA") levels is highly technical. Accordingly, the numbers that were mentioned by the witness must be considered in proper context.

20. The Noise Assessment Study calculated the background noise level at the home nearest the South Harper Facility at 44 dBAs in the morning, 55 dBAs in the

afternoon and 54 dBAs in the evening. Taking the construction design and noise attenuation equipment into consideration, the study predicts an operational equipment noise level at that location of 62 dBAs. As one would expect, noise levels at houses further removed from the site are predicted to be lower. Aquila offered to perform a noise study for anyone near the site who wanted one. Only one person, speaker Mike Tunicliff (Tr. 160), requested that one be performed.

21. Moreover, the South Harper Facility will not be in operation on a continuous basis. It is not a base load power generating unit. Rather, it is a peaking power facility that will be operated only to meet system peak demand, generally in the Summer months and most typically during the afternoon and early evening hours when nearby homes can be expected to be closed up and air conditioned. The CTs are limited by permit to less than 5000 hours per year.

Security at the Construction Site

22. A number of witnesses expressed concerns about the fact that Aquila has arranged for security personnel to patrol the construction site at the South Harper Facility location and the appropriateness for vehicular security patrols traveling through the adjoining neighborhoods. Several of the individuals who testified said they had felt intimidated by the security patrols. One witness suggested the nature of the patrols was one of possible retribution for their involvement in Stopaquila.org. Frankly, Aquila was surprised by this testimony because no one at Aquila, including the site manager, had received any complaints about the security patrols or any actions taken by any of the security personnel from any of the nearby landowners or their attorney. The hearing on March 15th was the first time anyone voice a concern to Aquila.

23. Aquila categorically rejects any suggestion that the actions of any security personnel was intended as retribution for any individual's opposition to the South Harper Facility. Aquila's objective from the beginning has been to be a good neighbor in the South Harper area and, like the Commissioners at the hearing, was concerned about the complaints of the local landowners.

24. There actually was only limited security during the early stages of site preparation until an event that occurred on November 15, 2004 when an unauthorized vehicle entered the construction site. After being asked to leave, the vehicle quickly reversed and nearly struck one of the consulting engineers. At that time, Aquila made the decision to increase the degree of security around the construction sites by engaging the services of a highly-qualified contractor, Securitas. That decision has been further justified because of a number of subsequent incidents of trespass, attempted trespass and vandalism. The most recent event was the removal of a number of survey stakes that occurred since the local hearing that required a re-survey at a cost of approximately \$10,000. Aquila believes it has a solemn obligation to its employees and contractors to provide a safe working environment and to protect the equipment utilized at the construction site. Also, construction sites contain a number of inherent hazards that could result in serious injury to curious trespassers. Finally, the South Harper Facility and the Peculiar Substation are Homeland Security Critical Sites with respect to which Aquila is obliged to maintain adequate levels of oversight.

25. In addition to close patrol of the South Harper Facility and Peculiar Substation, Aquila had requested Securitas to make security patrols that are external to those two locations. There are numerous transmission and substation components

external to the two primary sites, including the transmission line rebuild from the South Harper Facility to the Peculiar Substation. All of this external work is necessary to connect the new generation to the electric transmission grid.

26. Consequently, Securitas was requested to also patrol the transmission line upgrade construction and associated equipment storage areas. Securitas was directed to regularly check equipment, stored material and locked gates. Gates are to be checked to ensure that the contractor has locked gates at the end of the work day and that they stay locked. This includes field/pasture gates. Aquila has suggested that Securitas regularly check the following:

- 241st Street, 0.2 miles west of South Harper Road, one gate on south side of road.
- 235th Street, 0.2 miles west of South Harper Road, one gate on both sides of the road.
- YY Highway, 0.2 miles west of South Harper Road, the gate to the existing Peculiar 69/12 kV Substation on the south side of the highway and the field gate on the north side of the highway.
- PAR's transmission construction show up/material and equipment storage located on the west side of South Harper Road approx. 100 yards south of 211th Street.
- The new Peculiar 345 kV Substation and associated area located at 203rd Street and South Knight Road.

This patrol route requires four turnarounds on the east-west streets after passing under the transmission line and checking the gates. In addition, any vehicle dispatched to obtain meals or beverages would require driving east toward the City of Peculiar. The route to be followed for this purpose is left to the individual patrol officer.

27. Aquila has been unable to confirm allegations of rogue or unauthorized patrols. Nevertheless as a result of the comments received at the March 15th hearing in

Harrisonville and the completion of the transmission line upgrades, the security patrols were discontinued on March 19, 2005. Currently, there is a guard stationed at the Peculiar Substation along with guards within the South Harper Facility construction site. Aquila regrets that security patrols of its contractor have unsettled some of the nearby residents.

Degradation and Use of Local Roads

28. There was testimony from a number of witnesses about the wear and tear on local roads caused by construction activity. As a general proposition, any heavy construction activity can be disruptive and cause damage to existing gravel roads used for access to the construction site. Aquila is well-aware of this situation and is doing what it can to mitigate those circumstances by making temporary repairs during the construction phase. Aquila is committed to repairing the affected roadways to original or better condition at the conclusion of construction. Aquila has posted a \$350,000 appeal bond which is available to address issues related to road damage. More generally, Aquila and its contractors have worked closely with Cass County's Superintendent of Roads and Bridges, Robert Leeper, in conducting regular road repairs and maintenance. Additionally, Aquila is working on an agreement with Cass County that would pave 243rd Street and the property frontage of South Harper Road.

29. Aquila's contractors are not, however, the only commercial entities using the public roads in and around the location of the South Harper construction site. Several miles to the northeast of that location, only two miles west of the City of Peculiar, is a rock quarry operated by Martin Marietta that has been in use for many years. A copy of an aerial photograph showing the relative proximity of the rock quarry

operation to the South Harper Facility and the City of Peculiar is attached hereto as **Exhibit 6**. Heavy dump trucks hauling rock from that quarry regularly drive throughout the area using the county roads, including South Harper Road and other roads around the location of the power plant construction. Certainly, not all of those rock deliveries have been to the South Harper Facility.

30. There is no way to establish from the general nature of the commentary at the local hearing what heavy truck traffic mentioned is attributable to construction at the South Harper Facility and what heavy truck traffic is the routine hauling traffic associated with other construction/quarrying activities in the area that have been taking place for many years. It would be inaccurate and unfair, however, to conclude that the heavy truck traffic of which the commentators complained is solely (or even primarily) attributable to the construction of the South Harper Facility.

Testimony of Dr. Dearhoff Concerning the Tax Impact of Chapter 100 Financing is Inaccurate and Misleading

31. The testimony of Dr. Dan Dearhoff, Superintendent, of the East Lynne No. 40 School District, was in support of the construction of the South Harper Facility and associated electric substations, he opposed the Application because of his interpretation of the impact of the school districts in Cass County of the Chapter 100 RSMo revenue bond financing. (Tr. 44) Dr. Dearhoff's testimony, however, was inaccurate.

32. Dr. Dearhoff stated that Chapter 100 RSMo financing is not available unless at least 100 new jobs are created. (Tr. 43) Dr. Dearhoff is mistaken. There are several sections to the Chapter 100 legislation. The City of Peculiar is authorized under §§100.010 – 100.200 RSMo to issue revenue bonds. The job creation statute to which

Dr. Dearhoff made reference is not a requirement of this section of the statutes. Rather, the job creation statute pertains to §100.700 RSMo entitled “Missouri Business Use Incentives for Large-Scale Development Act.”

33. Dr. Dearhoff also made reference to an “eligible industry” requirement. (Tr. 43) This term is not relevant to the revenue bonds issued by the City of Peculiar. Again, Dr. Dearhoff mistakenly references §100.700 RSMo, not those provisions under which the City of Peculiar is authorized to issued Chapter 100 revenue bonds.

34. Dr. Dearhoff stated that the distribution of the payments in lieu of taxes (“PILOT”) is based on an agreement between Aquila and the City of Peculiar. (Tr. 47) This too is an incorrect statement. For projects approved after August 28, 2003, such as the South Harper Facility and Peculiar Substation, the distribution formula of the PILOTs is set forth in §100.050.3 RSMo; not in any agreement between Aquila and the City of Peculiar.

35. Dr. Dearhoff also offered his rough estimate that his school district could benefit by as much as \$24,000 per year if the South Harper Facility and associated electric substations were taxed under traditional property tax calculations and not the special provisions available in Chapter 100. (Tr. 47) Once again, Dr. Dearhoff is in error. Dr. Dearhoff previously has made the same incorrect assertions and Aquila on several occasions has advised Dr. Dearhoff that his calculations contain significant errors. In fact, in July of 2004 Aquila provided Dr. Dearhoff with a letter from the Missouri State Tax Commission clarifying one key error in his calculation, that is, he assumes the property taxes on a power station in Cass County would be available only to school districts having a presence in Cass County. To the contrary, property taxes

paid would be distributed among all the counties served by Aquila. This one error alone overstates the potential tax benefit to his district by a factor of 10. In addition, there are other errors in his calculations that further overstate the claimed benefit to his district. It is apparent that Dr. Dearhoff has not corrected his calculations despite the information with which he previously has been provided by Aquila.

36. Issues associated with the low cost revenue bond financing for the South Harper Facility and related substations is the subject-matter of Case No. EO-2005-0156. Accordingly, any of the issues raised by Dr. Dearhoff are better left to be addressed in that pending docket.

Aquila Financial Difficulties as Incentive to Construct and Install the South Harper Facility

37. At least one witness suggested that the well-publicized financial challenges faced by Aquila is the motivating factor for constructing the South Harper Facility, not the need for peak demand for power. Aquila will not burden the record in this case with a detailed reexamination of the financial challenges it continues to confront. The Commission already is very aware of those circumstances. It is worth noting, however, that Aquila's most pressing financial consideration at this time is cash flow, not necessarily earnings. Consequently, the fact that Aquila is committing substantial cash resources into the construction of the South Harper Facility and the Peculiar Substation (and the associated transmission line upgrades) is itself compelling proof that operational considerations (i.e., the demand for peaking power) are the company's sole motivation for the South Harper Facility.

Knight Road and Correspondence from Blackwell Sanders Law Firm

38. Testimony was given by a Mr. John Bockelman concerning a dispute over the use of Knight Road and claims that Aquila threatened to confiscate a private drive. (Tr. 121-122) Mr. Bockelman claimed that Aquila inappropriately pressed for access to a private lane.

39. Without providing more detail about a private dispute than is warranted under the circumstances, suffice it to say that the dispute arose out of Mr. Bockelman erecting a gate across a road adjacent to the location of the Peculiar Substation, Knight Road, which Aquila believed was a public right-of-way. Aquila was advised by Gary Mallory, Cass County Commissioner, and others that the disputed lane was a public right-of-way that had not been vacated by the County.³ Aquila subsequently learned that the road may have been a private road owned jointly by the Bockelmans and the previous owner of the substation site, the Efferts, and utilized for years by both the Bockelmans and the Efferts. Whether the road was public or private, Aquila reasonably believed, as an owner of the substation site, it would be entitled to use the road. There were a number of informal discussions between employees and contractors of Aquila and Mr. Bockelman that culminated an exchange of communications between the attorney for Aquila and the attorney for Mr. Bockelman in an effort to resolve that dispute, which communications ultimately proved unsuccessful. Even though Aquila believed that it had legitimate claims to the use of the road, the time and expense of litigation caused Aquila to drop the matter.

³ **Exhibit 7**, attached hereto is a copy of the minutes of a meeting of the Cass County Commission on February 15, 2001, wherein the topic of Knight Road was discussed. Those discussions reveal that the Cass County Commission believed Knight Road to be a public road.

40. The language in the letter about which Mr. Bockelman complained was addressed to his lawyer (not Mr. Bockelman) and contains rather customary language that the recipient (an attorney) had the obligation to advise his client that there is a cost associated with any litigation. Aquila very much wanted to reach an agreement with the Bockelmans and the letter includes a variety of proposals Aquila was making to achieve an agreement. It is clear from the language and tone of the letter that it was intended to avoid litigation. Aquila regrets any misimpression of intimidation that Mr. Bockelman derived from the occasion.

41. For the record, at no time did any of Aquila's employees or its right-of-way agent ever threaten or attempt to intimidate Mr. Bockelman or any member of his family.

Air Emissions and Health Concerns

42. A number of individuals expressed concerns about air emissions resulting from the operations of the South Harper Facility and possible adverse health effects. Without minimizing what are clearly genuine concerns voiced by nearby residents, Aquila has obtained New Source Review Permit ("NSR") No. 122004-017 from the Air Pollution Control Program of the Missouri Department of Natural Resources ("MDNR") evidencing compliance with all applicable state and federal air emissions standards. (See Joint Stipulation of Facts, ¶73) The NSR Permit issued after notice and a public hearing on November 22, 2004, in the City of Peculiar at which time members of the public were given the opportunity to provide their input. Compliance with an air emissions standards and limitations is an area of authority that has been reserved by the Missouri General Assembly to MDNR's U.S. EPA-approved Air Pollution Control Program. As the Commission is well aware, it has no statutory authority with regard to

emissions produced by electric power generation plants. It is nevertheless clear that Aquila has complied with all requirements related to this topic.

Concluding Comments

43. As was to be expected, the local hearing in Harrisonville resulted in statements being made in support of and in opposition to the South Harper Facility. Many of the statements in support of the project addressed the need for reliable electric power in the area to support population growth and economic development in this fast growing area. Speakers also pointed out the financial and infrastructure benefits that are to be derived from the project for local fire protection and schools. Many of the statements opposing the project contained errors, omissions or, in Aquila's view, exaggerations or misunderstandings about the likely impact of the project. Aquila has made every reasonable effort to inform neighboring landowners about the South Harper Facility and to solicit public input. Some opposing statements express concerns about the conduct of security personnel that Aquila had not previously been made aware. Aquila regrets any perception of intimidation created by the external security patrols. As noted above, that was not the purpose or intent of the activity. Rather, the patrols were instituted to address real security concerns. The concerns expressed about damage to local roads are legitimate and with respect to which Aquila is fully aware. In that regard, Aquila is working closely with county officials during construction and is committed to repairing the roads to original or better condition at the conclusion of the construction phase of the project.

44. Aquila plans to have a number of individuals available on the 28th and 29th to address each of the matters addressed above or any other matters with respect to

which statements were made that have not been specifically addressed. Aquila welcomes the opportunity to provide testimony concerning the statements made at the Harrisonville public hearing and address questions the commissioners may have about this very important project.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, hand delivery or electronically, on this 25th day of March, 2005 to the following:

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