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February 15, 2006

**VIA FACSIMILE AND MAIL**

Cindy Reams Martin  
408 S.E. Douglas  
Lee's Summit, Missouri 64063

Re: Cass County, Missouri v. Aquila, Inc.

Dear Cindy:

I'm in receipt of your letter which, among other things, asked me to advise you of Aquila's intentions regarding the filing of zoning-related applications for the South Harper facility and Peculiar substation. Specifically, in your letter, you state, "We assume Aquila will be filing an Application for either rezoning, or for a special use permit for the South Harper Plant and the Peculiar Substation, as evidence of local consent is required before the PSC can issue a certificate of convenience and necessity for the Plant and Substation."

The Court of Appeals clearly held that Aquila qualifies for the exemption under 64.235 and that no additional "local consent" is required for the Public Service Commission to issue its order. This conclusion was expressly reaffirmed by Judge Dandurand at the January 27, 2006 hearing.<sup>1</sup> It is also implicit in his order granting Aquila additional time to obtain Public Service Commission approval notwithstanding his understanding at the hearing that the County's position was that it would not and could not accept a zoning application from Aquila.<sup>2</sup>

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<sup>1</sup> MR. YOUNGS: The only point I want to make is at the end of that process, if the Public Service Commission grants our application and issues us specific authority for the South Harper plant and Peculiar Substation, subject to whatever review comes after that, that disposes of the matter. There's been an argument by the County that no, no, we need zoning approval to deal with the land use issues from us and you need PSC approval. The only point I want to make is --  
THE COURT: I don't think the Court of Appeals said that.

MR. YOUNGS: Okay. I agree. So that's all I have to say about that. Transcript Page 17

<sup>2</sup> THE COURT: There are two places for you to go --

MR. YOUNGS: Correct.

THE COURT: --back to the County of Cass or back to the Public Service Commission --

MR. YOUNGS: Right.

THE COURT: -- as far as I'm concerned, and you pretty well know what the County of Cass's answer is, don't you?

MR. YOUNGS: Well, I think we do now.

THE COURT: Their knees aren't buckling. I mean, read the -- I mean --

MR. YOUNGS: Twenty-six pages.

KC-1370714-1

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**BLACKWELL SANDERS PEPER MARTIN**  
LLP

Cindy Reams Martin

February 15, 2006

Page 2

Your January 23, 2006 letter threatened to seek an order holding Aquila in contempt for attempting to file a zoning application while either the writ proceeding was still pending or a removal order was in place. Those circumstances have not changed. You also provided us and Judge Dandurand a memorandum suggesting that it would be illegal for the County to consider such an application now that the facilities are built. Frankly, we are confused as to why the County would now suggest we file an application and pursue a path that the County already rejected and believes is illegal. As you have previously demanded, Aquila has followed the law and sought specific authority for these facilities from the Public Service Commission.

In connection with its previous attempts to file a zoning application, Aquila offered to allow the County to process the application before Aquila turned to the Public Service Commission. However, a result of the County's insistence at the January 27, 2006 hearing that Judge Dandurand require an immediate removal of the facilities is that Aquila has been left with a very short window in which to obtain approval of the Public Service Commission, which approval is necessary in any event.<sup>3</sup> Accordingly, it is now imperative that the resources of all concerned be focused on that process.

You have previously indicated that the motivation of the County in all of this was to seek a forum for land use issues to be heard. Therefore, in Aquila's motion filed with the Public Service Commission today suggesting a procedural schedule, Aquila proposed that the Commission hold a public hearing which will afford all citizens that opportunity. Additionally, as an intervenor in the Public Service Commission proceedings, the County will have an opportunity to present its position as contemplated by the decision of the Court of Appeals. By pursuing this option, which the County has always argued would be an acceptable alternative to County zoning approvals, we will avoid the potential legal concerns you have continually stressed and provide the public and Cass County a forum for input.

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THE COURT: It never stopped pulling punches.

MR. YOUNGS: That's right.

THE COURT: They continue to batter. So I think, you know, you probably pretty well assume that avenue is out and you are stuck with the Public Service Commission and what they are going to do for you, if anything. Transcript page 14

<sup>3</sup> MR. REITZ: The County wants it removed, and one of the reasons we think that they are so anxious to have that done is, because as the Court of Appeals said, the decision about whether this plant should be here or not, at the end of the day, it belongs to the Public Service Commission.

THE COURT: Or the County. Or the County.

MR. REITZ: Well, even if the County gives us approval, the Public Service Commission has been told it is your obligation to approval all projects. We still have to go to them for approval.

THE COURT: Yes. That's right. All right. Transcript Page 28

LAW FIRM

**BLACKWELL SANDERS PEPER MARTIN**  
LLP

Cindy Reams Martin

February 15, 2006

Page 3

Cindy, as always, please feel free to call me with any questions you may have regarding the above.

Sincerely,



J. Dale Youngs

JDY/ed

cc: Christopher Reitz (via facsimile)  
Debra Moore (via facsimile)