

1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

3

4

TRANSCRIPT OF PROCEEDINGS

5

HEARING

6

March 28, 2005

7

Jefferson City, Missouri

8

Volume 4

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10

In the Matter of the Application of)
11 Aquila, Inc., for Specific Confirmation)
or, in the Alternative, Issuance of a)
12 Certificate of Convenience and) Case No.
Necessity Authorizing It to Construct,) EA-2005-0248
13 Install, Own, Operate, Control, Manage,)
and Maintain a Combustion Turbine)
14 Electric Generating Station and)
Associated Electric Transmission)
15 Substations in Unincorporated Areas of)
Cass County, Missouri, Near the Town)
16 of Peculiar)

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LEWIS MILLS, Presiding
19 DEPUTY CHIEF REGULATORY LAW JUDGE.
STEVE GAW
20 CONNIE MURRAY,
LINWARD "LIN" APPLING,
21 COMMISSIONERS.

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1 P R O C E E D I N G S

2 JUDGE MILLS: We're on the record this morning
3 for an evidentiary hearing in Case No. EA-2005-0248. We'll
4 begin by taking appearance -- entries of appearance. I'll
5 start in the front row and just sort of work my way back
6 beginning with the Staff of the Commission

7 MS. SHEMWELL: Good morning. Lera Shemwell,
8 Nathan Williams and Steven Dottheim representing the Staff of
9 the Missouri Public Service Commission, Post Office Box 360,
10 Jefferson City, Missouri 65102.

11 JUDGE MILLS: Sorry. Minor technical
12 difficulties.

13 Ms. O'Neill, go ahead.

14 MS. O'NEILL: Good morning. Ruth O'Neill on
15 behalf of John Coffman and the Office of the Public Counsel.
16 Our address is PO Box 2230, Jefferson City, Missouri 65102.

17 JUDGE MILLS: Thank you.

18 Mr. Comley.

19 MR. COMLEY: Thank you, Judge. Let the record
20 reflect the entry of appearance of Mark W. Comley, Newman,
21 Comley and Ruth, 601 Monroe street, Jefferson City, Missouri
22 on behalf of intervenor, Cass County.

23 Also, let the record reflect the entry as well
24 of Debra L. Moore, Cass County counselor. Her address is 102
25 East Wall, Harrisonville, Missouri 64701. And also Cindy

1 Reams Martin, 408 Southeast Douglas, Lee's Summit, Missouri
2 64063, both of whom are with me today.

3 JUDGE MILLS: Thank you.

4 Mr. Boudreau.

5 MR. BOUDREAU: Yes, thank you. Appearing on
6 behalf of applicant, Aquila, Inc., let the record reflect the
7 appearance of Paul A. Boudreau and Janet Wheeler with the law
8 firm of Brydon, Swearngen and England, 312 East Capitol,
9 Jefferson City, Missouri. And also I have co-counsel with me
10 here today.

11 MR. YOUNGS: Your Honor, also appearing on
12 behalf of Aquila, Dale Youngs and Andrew Bailey of the law
13 firm of Blackwell Sanders Peper Martin, 4801 Main, suite 1000,
14 Kansas City, Missouri.

15 JUDGE MILLS: Thank you.

16 And for stopaquila.org.

17 MR. EFTINK: Gerard Eftink. The address is
18 Post Office Box 1280, Raymore, Missouri 64083.

19 JUDGE MILLS: Thank you.

20 We're going to begin with opening statements
21 starting with Aquila, then the Staff of the Commission, then
22 Public Counsel, Cass County and then stopaquila.org.

23 So, Mr. Boudreau.

24 MR. BOUDREAU: Good morning. I'll keep my
25 statement very brief with the idea that I won't necessarily be

1 addressing the legal issues associated with the case, at least
2 not at the outset. I understand the Commission may want to
3 reserve some time at the conclusion of the taking of evidence
4 to hear oral argument or to pose legal questions to counsel of
5 record. So I will keep my comments directed to the
6 evidentiary aspect of this hearing today.

7 As was just made apparent, also appearing with
8 me here today are Dale Young -- or Dale Youngs and Andrew
9 Bailey with the law firm of Blackwell Sanders Peper Martin in
10 Kansas City who have been representing the company in the
11 context of the appeal now pending before the Western District
12 Court of Appeals. And they are here to address any -- I
13 suppose any issues that may come up, but primarily to deal
14 with the legal issues associated with that to the extent the
15 Commission has questions about the legal issues that are posed
16 by the various questions that have come up both here and in
17 the litigation that arose out of Cass County.

18 The object of our evidence -- of the company's
19 evidence today is really sort of two-fold, I suppose. It's to
20 comply with the terms of the March 18th, 2005 order regarding
21 March 28 hearing. In that order the Commission directed the
22 parties to address the testimony offered at the Harrisonville
23 public hearing that occurred on March 15th.

24 There were comments made both in support of and
25 opposed to the South Harper facility and the associated

1 Peculiar substation. The company's presentation today will be
2 responsive to the statements made by those individuals that
3 made statements opposing the project. The information will be
4 supplemented in much greater detail and in depth than the
5 written response that was filed by Aquila on Friday afternoon.

6 The Commission also, I think, discussed this
7 case on the 23rd. And it is apparent, at least to me, that
8 Commissioners Gaw and Davis in particular want additional
9 information concerning considerations associated with need for
10 the facility and perhaps citing considerations associated with
11 the placement of the facility, in addition to the facts that
12 were participated in the joint stipulation of facts in this
13 case.

14 Should the analysis that's employed by the
15 Commission be one that is the traditional analysis associated
16 with the certificate of convenience and necessity as opposed
17 to just a confirmation of existing authority under the
18 existing certificates, the relevant statute is 393.170.
19 Subsection 3 states that the standard is whether the
20 construction or exercise of the right, privilege or franchise
21 is necessary or convenient for the public service.

22 The cases that have been decided by the
23 Commission in years past tend to break that analysis into two
24 general categories, one of which is financial ability to build
25 the plant and provide the service, and the second

1 consideration is need, which was actually a topic that was
2 brought up in a number of different configurations in the
3 public hearing.

4 We don't think that financial capability is in
5 dispute. Nobody's really raised much of an issue whether the
6 company has the financial ability to build the plant. The
7 complaint seems to be the fact that they are building the
8 plant. But we'll address that issue.

9 There's some additional matters and there's
10 some overlap. Some of them deal with some of the issues I've
11 just mentioned. And this isn't meant to be exclusive, but I
12 think there was some testimony and perhaps there's going to be
13 some questions about the peak -- what I'll call the peaker
14 versus combined cycle issue and that -- and that would --
15 might be more specifically the South Harper versus Aries
16 plant.

17 There were some issues brought up about due
18 process and public input and -- and the conduct of the company
19 in terms of advising the public and educating the public about
20 what it was doing.

21 Another issue was damage to some of the local
22 roads associated during -- with the construction phase of the
23 South Harper project and associated substations. There was
24 another category that I'll loosely characterize as
25 environmental and I think there's three subparts to that:

1 aesthetics, there was some testimony about the profile of the
2 plant; another subcategory might be noise, that the noise
3 operation at the time the peaker's actually in operation at
4 times of peak demand; and there were some -- there was some
5 testimony about emissions associated with the operation of the
6 plant.

7 There was another category that talked about
8 the need for and conduct of external security patrols.
9 We've got people to address that today. I might point out
10 though at the outset, before the testimony is presented, that
11 this issue did really come as a surprise to the company. This
12 is the first that the company had heard about complaints about
13 conduct of external security patrols.

14 It certainly was never brought to my attention
15 as counsel for the company. It wasn't brought to any -- to
16 the attention of the attorneys at Blackwell Sanders either.
17 Nobody ever mentioned this to counsel of record that there was
18 complaints from their clients about the conduct of the
19 external security controls.

20 I might also point out that the Commission has
21 received a good deal of unsolicited e-mails from various
22 members of the public, some of whom were from stopaquila.org.
23 And if you'll look back at those e-mails that were sent in,
24 I'll just suggest to you that nobody mentioned the security
25 patrols as an issue. Those were filed, by my record,

1 primarily during January and February of this year.
2 Certainly at a time the security patrols were actually in
3 operation. So take that for what it's worth, but this is the
4 first we've heard about it.

5 Aquila contends that a number of the issues
6 that were addressed in the public hearing are, frankly,
7 irrelevant to the legal issues that are before the Commission
8 and quite -- in some cases, quite clearly beyond the
9 Commission's statutory authority.

10 Just an illustration is plant emissions, which
11 is reserved to the Air Pollution Control Program of the
12 Missouri Department of Natural Resources. And the evidence
13 has shown and the parties have stipulated to the fact that the
14 company has received its operating permit, the evidence is in
15 compliance with all state and federal air emissions standards.

16 Now, there was some testimony about it. I
17 think at least one of the Commissioners has expressed an
18 interest in maybe finding out a little bit more. It may have
19 been Commissioner Davis. So we are here -- we have people
20 here to address those issues as well. But this does not
21 constitute a waiver of any of the company's arguments that any
22 or all of these issues are, frankly, irrelevant to the legal
23 issue that's before the Commission to decide in this case.

24 If the Commission wants to inquire, we're
25 pleased to have them inquire, we're pleased to provide the

1 information about it, but it doesn't constitute a waiver of
2 any argument that we may have in that regard.

3 We have six witnesses that I've planned to call
4 to the stand. They are Jon Empson, who's the senior vice
5 president of Aquila. He'll provide some information of just
6 kind of an overview response to the comments that were
7 received in the public hearing on the 15th. He will also
8 introduce the subject matter -- generally introduce the
9 subject matter that will be addressed by some of the other
10 witnesses.

11 Those being Jerry Boehm, who is the manager of
12 power services for Aquila. He's here to address resource
13 planning issues generally, and more specifically, as it may
14 relate to questions about the decision to go with a peaker as
15 opposed to a combined cycle and that, of course, implicates
16 some of the Aries questions.

17 We also have with us today Terry Hedrick,
18 generation services manager for Aquila. He'll address -- he's
19 the project manager of the South Harper facility site. So
20 he'll address a number of different topics that came up, some
21 of which is the construction -- or the chronology, the public
22 outreach, the actual construction techniques, placement of the
23 plant. It will cover quite a few things, but he has -- this
24 is the guy that knows about the construction of this plant.

25 And that's not to minimize the next witness,

1 which would be Chris Rodgers, who's vice president with Sega,
2 Inc. He's the contractor -- or the project manager for the
3 contractor hired by Aquila to assist it in connection with the
4 construction of this project.

5 We also have Block Andrews, who's director of
6 environmental health and safety for Aquila. He'll deal with
7 the environmental issues, perhaps with the exception of the --
8 what I call the aesthetic or profile issues which are probably
9 better -- be better addressed by Terry Hedrick.

10 We also have with us Jar-- excuse me, Marc
11 Jacobs, who's security account manager for Corporate Risk
12 Solutions who has been coordinating the security efforts
13 associated with the South Harper facility and the associated
14 substation construction, electric substation construction.

15 We do have other members or other employees and
16 associates of Aquila here to address other issues that may
17 come up. And they're here to give some additional detail to
18 the extent the Commission wants to mine a particular topic,
19 such as transmission-type issues. They're available.

20 Some of the witnesses that are here may defer
21 specific questions to other people simply because they have
22 more knowledge about it, but that's just really kind of a
23 contingency plan. It just depends on how -- the sort of
24 questions that are received not only from the Bench, but for
25 other counsel of record. So we do have other people available

1 here that I'd like to reserve the ability to call to the stand
2 as needed.

3 And with that, I'll conclude my opening
4 comments except for this, is that to the extent that the legal
5 issues are to be addressed, I would hope that we'd have an
6 opportunity perhaps at the conclusion of the evidentiary
7 hearing to make a closing statement about the legal issues
8 presented and to perhaps make oral argument and answer
9 questions from the Commissioners about legal issues. But with
10 that, I'll conclude my opening statement. Thank you.

11 JUDGE MILLS: Thank you.

12 Ms. Shemwell.

13 MS. SHEMWELL: Good morning. Thank you. Lera
14 Shemwell representing the Staff. May it please the
15 Commission.

16 Staff has two primary witnesses, Warren Wood,
17 who has visited this particular site is prepared to discuss
18 why this site would be a reasonable site and also to discuss
19 remediation issues in response to some of the things that came
20 up at the public hearing. He can briefly discuss
21 environmental issues, if necessary.

22 We would like to make the point that we are
23 making no recommendations concerning rate-making, financing,
24 the prudence that will be reviewed in a later rate case.

25 David Elliott has reviewed the plans briefly

1 and he is able to discuss whether or not Aquila actually needs
2 this particular plant, the South Harper plant and why a
3 peaking unit might be preferable or is preferable as opposed
4 to a combined cycle or actual purchase of electricity on the
5 market.

6 Lena Mantle is available if the Commission
7 would like a discussion of the IRP process. And that IRP is
8 Integrated Resource Planning process in which utility
9 companies come in and visit with the Commission Staff
10 concerning their planning for their future needs.

11 Also, if we should get into Chapter 100
12 financing, and I understand that that was an issue in the
13 public hearing, John Kiebel is here. He is actually a Staff
14 member on the financing case, but he can discuss briefly the
15 financing and the Chapter 100 financing of the case.

16 Those members are available. Again, if you
17 want to discuss legal perhaps at the end of the hearing, that
18 would be a good time to have oral argument, answer questions
19 concerning the legal issues. Thank you.

20 JUDGE MILLS: Thank you.

21 Ms. O'Neill.

22 MS. O'NEILL: Thank you, your Honor. Good
23 morning, Commissioners.

24 I'm kind of here at the last minute.

25 Mr. Coffman, who's case this is, was unavoidably called into a

1 meeting regarding budget issues. And I do want to just
2 briefly kind of address what Public Counsel's position is in
3 this case, which is this. We believe that Aquila has whatever
4 certificates are necessary to construct any generation plant
5 in this certificated area, that the current certificates
6 provide all the regulatory authority that's needed.

7 However, it's a separate issue from whether or
8 not there's -- proper zoning authority has been granted by
9 Cass County. We believe that the Commission should not get
10 involved in a local land use dispute. We don't believe it's
11 within the Commission's authority nor is it good public policy
12 for the Commission to inject itself there.

13 There is a case on appeal that I believe is
14 ready for oral argument before the Western District Court of
15 Appeals in a couple of weeks regarding some zoning issues in
16 Cass County, and we believe that those issues are properly
17 being litigated in another forum.

18 We also don't believe that any rate-making
19 determination should be made as a result of this proceeding.
20 There are other proceedings to determine the prudence of the
21 construction of this facility including location, value of the
22 combustion turbine project. I believe that there is a case
23 that's open, EO-2005-0156, where some of those issues may be
24 litigated, and certainly in any future rate cases for Aquila
25 this would also be considered.

1 Aquila's apparently chosen to -- rather than
2 get approval from Cass County zoning authority before
3 undertaking construction of this project, go ahead and
4 starting their construction project hoping that they're going
5 to win on appeal or that you will give them some sort of
6 special certificate that would support their decision.

7 The fact that Aquila has chosen this course of
8 action should not obligate this Commission to do something
9 that it doesn't need to do as far as establishing a special
10 certificate.

11 We appreciate the concerns of the public that
12 were raised at the local public hearing, but, again, we
13 believe that as far as authority from the Commission, Aquila
14 has that authority from the zoning authority in Cass County.
15 They need to talk to Cass County zoning officials and this
16 Commission need not become involved in any dispute there.
17 Thank you.

18 JUDGE MILLS: Thank you.

19 Mr. Comley.

20 MR. COMLEY: Judge Mills, may it please the
21 Commission.

22 Cass County's role in this proceeding is rather
23 limited. At least we've perceived our task as strictly
24 bringing to your attention that there is the pending dispute
25 between Cass County and Aquila on the extent to which Cass

1 County's land use controls do limit its authority to build the
2 plant.

3 The directive that we had in the recent order
4 about discussing the testimony of the local public hearing
5 witnesses, we think that there are probably other parties that
6 are better in line to handle that task. As a consequence, we
7 will not have any focus on that today.

8 We did want to supply a little bit more clarity
9 to some of the jointly stipulated facts. In several
10 paragraphs there is reference to building permits that were
11 issued to Aquila. And if I'm quoting the paragraphs
12 correctly -- it's in the range of paragraph 62 through 66 --
13 permits were issued with special conditions.

14 The only witness that we would have today would
15 be Mr. Trague Lammers (ph.), who works in the -- his title
16 escapes me at the moment, but he does work in the zoning area
17 for Cass County and he would be able to identify the
18 construction permits that are referred to in the jointly
19 stipulated facts and the special conditions or the conditions
20 under which they were granted. Unless, of course, those come
21 in some other way, Mr. Lammers would be our only witness.

22 And at the conclusion of this, we would ask for
23 an extensive amount of time to argue our points. And I think
24 that's all we would have.

25 JUDGE MILLS: Thank you.

1 Mr. Eftink.

2 MR. EFTINK: Thank you, Judge. Good morning,
3 Commissioners.

4 I represent stopaquila.org, which is a group of
5 people who have the misfortune of living close to this site.
6 And our concern is about the pollution, the health risks,
7 about property values, safety and noise. We think that there
8 must be a hearing somewhere to address all of these very
9 important concerns.

10 We think that the primary jurisdiction for such
11 concerns is with the county. We don't know if we'll get a
12 hearing from the county because there are three or four
13 lawsuits going on, if you count this one, and of course we
14 don't know where we're going to end up.

15 The judge in the circuit court case involving
16 zoning has issued an order which tells Aquila that it's
17 enjoined from putting in any kind of improvement that violates
18 the local zoning, but of course, Aquila put up the bond and
19 continued to build. And Aquila never applied for a special
20 use permit or a zoning permit for this particular site from
21 Cass County, but instead has tried this gambit of trying to
22 get approval without having a hearing on those issues.

23 If we have a hearing before the Commission
24 today and tomorrow and however long it takes that addresses
25 these issues, we still think the best place and the proper

1 place for those particular concerns to be addressed is before
2 the county planning and zoning. So if we put on evidence,
3 that doesn't mean that we're waiving our argument, it's just
4 that we're put in a quandary here. This evidence needs to be
5 put on at some time.

6 So we would point out, for example, that the
7 Missouri Department of Natural Resources had its hearing and
8 told us that they had no concern, they had no jurisdiction
9 over noise. Nobody has addressed the question of noise
10 because the Department of Natural Resources said that's not
11 its job.

12 The Department of Natural Resources also did
13 not address location. Now, the Department of Natural
14 Resources has to enforce a standard across the entire state.
15 So the same standard applies in the industrial areas in Kansas
16 City and St. Louis and other places where there are power
17 plants and coal-burning plants. And the Department of Natural
18 Resources is applying that same standard to this residential
19 area. That's not appropriate.

20 We'd like to present our evidence to the county
21 that if you're going to build a power plant that emits
22 pollutants, it certainly should not be right next to a
23 residential neighborhood.

24 In the materials submitted in conjunction with
25 the application to the Department of Natural Resources, you'll

1 see that the potential for this three-turbine power plant is
2 to emit over 1,000 tons a year of nitrous oxide, about
3 154 tons a year of particulate matter and several tons of
4 other pollutants, including formaldehyde and benzene.

5 And from looking at the drawings, it appears
6 that Aquila is putting in a pad to double the size of this
7 power plant. It looks to us like they want to put in three
8 more turbines, which would double the potential output.

9 Now, Aquila will probably have somebody that
10 that will say that they're limited in hours of operation so
11 the potential tons of pollutants will be reduced to something
12 in the order of about 550 tons of pollutant a year coming out
13 of the power plants, which is still in my way of thinking,
14 500 tons too much for a residential neighborhood.

15 We'd like to present studies that are in the
16 Federal Register, which is a document that's introduced --
17 according to federal law, can be introduced as evidence in any
18 court proceeding in the country that shows that the EPA has
19 been studying particulate matter, particulate matter 10 and
20 particulate matter 2.5 and has been studying it for several
21 years. And last year announced that new regulations needed to
22 be put into effect, which have not yet been implemented,
23 because there is no safe level for particulate matter. And
24 the EPA has also said there is no safe level for ozone, which
25 is caused or contributed to by nitrous oxide.

1 So there are legitimate health concerns.
2 That's probably the number one issue for my people. There is
3 a concern for safety with high-line wires carrying high
4 voltage. There is obviously a concern for the property values
5 and there is a concern about the high level of noise.

6 So as I said, we think the county has primary
7 jurisdiction other these things and we think ultimately the
8 Court of Appeals will kick it back and say that that's the
9 case, that the county has to have a hearing if Aquila applies.
10 If Aquila doesn't apply, then the injunction is in place to
11 stop it from building.

12 Now, as we listen to this, we think you should
13 note that there is a big hole in Aquila's logic in its legal
14 argument. This will just take a minute, but I think you ought
15 to be thinking about this. Aquila has said that there's no
16 regulation by the county of power plants. That's not true.
17 If you look at 393.170 and 393.190 and the case law that
18 construes it, before you build an electric plant, you have to
19 get a franchise from the county.

20 393.190 says that the Public Service Commission
21 cannot enlarge or add to what that franchise provides. So we
22 go back to what the franchise from Cass County says. The
23 franchise given by Cass County to Aquila or to its predecessor
24 only gives Aquila the power to put in transmission lines and
25 poles. Cass County never gave authority to Aquila to put in a

1 power plant. In addition to that, Cass County has got the
2 zoning power over Aquila.

3 What Aquila wants is an order from the
4 Commission or from some court that says they don't have to
5 comply with the county, they can build a power plant anywhere
6 they want to. And that's a dangerous road to go down because
7 if you do that for Aquila, then you've got to do that for
8 every utility in the state of Missouri. And pretty soon,
9 we'll have the Aquila rule where everybody -- all the
10 utilities will be building power plants next to schools and
11 churches and day care centers, anywhere they want if you let
12 Aquila get away with this.

13 But back to 393.170 and 393.190 and the cases
14 that discuss that, in particular, 393.190 says the Commission,
15 the Public Service Commission, cannot enlarge or add to that
16 franchise. So the big hole in Aquila's case is that the
17 Public Service Commission cannot give it what it wants to get
18 from the Public Service Commission. The Public Service
19 Commission cannot enlarge upon that franchise from Cass
20 County.

21 Aquila needs to go back to Cass County and
22 straighten that out. It needs to ask for permission in the
23 form of a franchise to build a power plant. And according to
24 the case law and the regulations, Aquila also has to show to
25 this Commission that it has complied with all the local

1 requirements.

2 For the most part though, we don't really know
3 what evidence is going to come in today so it's hard for us to
4 say more right now. We'll just have to respond as things come
5 up. But I just wanted to point out our concerns and a couple
6 of things that I thought the Commission should pay particular
7 attention to. Thank you very much.

8 JUDGE MILLS: Thank you.

9 Okay. That concludes opening statements.
10 Mr. Boudreau, let's move on with your first witness.

11 MR. BOUDREAU: Very good. I'd like to call Jon
12 Empson to the stand, please.

13 (Witness sworn.)

14 JUDGE MILLS: Go ahead, Mr. Boudreau. Don't
15 mind the man behind the curtain.

16 JON EMPSON testified as follows:

17 DIRECT EXAMINATION BY MR. BOUDREAU:

18 Q. Would you state your name for the record,
19 please, sir?

20 A. My name is Jon R. Empson.

21 Q. By whom are you employed and in what capacity?

22 A. I'm employed by Aquila, Inc. as senior vice
23 president responsible for the regulated operations.

24 Q. Can you briefly describe for the Commission the
25 nature of your responsibilities?

1 A. I have overall responsibilities for our
2 10 utility operating divisions that operate in seven states.
3 I also have responsibility for the regulatory legislative IT
4 and call center functions within Aquila.

5 Q. Could you also give a brief background on your
6 educational, professional background?

7 A. I've been employed by Aquila, Inc. for about
8 19 years. I have a bachelors degree in economics from Carlton
9 College and a masters degree in business administration from
10 the University Nebraska-Omaha. Prior to being with Aquila,
11 Inc., I was with a predecessor company for about 7 years. And
12 then prior to that, I was responsible for economic development
13 programs in the City of Omaha for about 8 years.

14 Q. Very good. Thank you.

15 What is the purpose of your testimony today?

16 A. The basic purpose of my testimony is to respond
17 to some of the questions that were raised during the public
18 hearing that was held earlier this month. We made a formal
19 filing with the Commission late Friday afternoon and knowing
20 that it was late, wanted to make sure that we could hit the
21 highlights of that and then indicate what other specific
22 witnesses we would have that could get into more detail.

23 Q. Very good.

24 Are you familiar with the energy center being
25 constructed at South Harper Road in Cass County?

1 A. Yes, I am.

2 Q. Have you visited that location?

3 A. Yes, I have. I went to the site before we
4 acquired it, drove the neighborhood. And I also was down
5 there right before the public hearing just touring the site
6 and talking to the construction workers.

7 Q. Okay. Were you present at the public hearing
8 in Harrisonville on March 15th?

9 A. Yes, I was.

10 Q. Did you listen to the statements of those who
11 spoke in opposition to the South Harper energy station?

12 A. Yes, I did.

13 Q. And can you summarize your views about the
14 principal topics that were brought up at that public hearing?

15 A. Basically, I just confirm in your opening
16 comments the type of issues that were raised. The first was
17 about the need for the power and whether or not we had to be
18 building a peaking facility. Second was about the site
19 itself, whether it would accommodate this type of facility.
20 And then the other issues about security, road damage,
21 environmental, our ability to finance this facility were the
22 primary ones that were raised.

23 Q. Okay. Were there also some questions about
24 what I'll characterize as the integrity or honesty of Aquila
25 in this process?

1 A. Yes, there were.

2 Q. You mentioned, I believe earlier in your
3 testimony, that the company caused to be filed some written
4 responses on Friday afternoon of last week; is that correct?

5 A. That is correct.

6 Q. Was that written response prepared by you or
7 under your direct supervision?

8 A. Yes, it was. It was under my direct
9 supervision.

10 Q. Okay. Have you relied on other persons in the
11 company or elsewhere having first-hand knowledge to acquire
12 information and analysis about the various topics that were
13 discussed at the public hearing?

14 A. Yes, I have.

15 Q. Have you relied on other persons having
16 first-hand knowledge for support documentation that is
17 attached to that document as Exhibits 1 through 7?

18 A. Yes, I have.

19 Q. Is that a routine practice that you employ in
20 your role as vice president of regulated operations at Aquila?

21 A. Yes, it is.

22 Q. So you have to rely on people that report to
23 you to get the information necessary?

24 A. Yes. But I always review it and have
25 discussions with them to make sure I have understanding of

1 what's being filed because I have to file the attestation
2 along with the filing.

3 Q. Very good.

4 Can you name some of the people that assisted
5 you in the preparation of that or at least provided you with
6 information in the preparation of that document?

7 A. Yes. Terry Hedrick, who will be a witness
8 later today; Chris Rodgers with Sega, who will be a witness;
9 Block Andrews, who will also be a witness today; Denny
10 Williams, who is responsible for overall regulatory
11 responsibilities in Missouri helped provide information; we
12 also have Marc Jacobs on the security side that will provide
13 information later today.

14 Q. Very good.

15 MR. BOUDREAU: I'd like to have a document
16 marked as an exhibit.

17 JUDGE MILLS: We'll mark it as Exhibit 1.

18 Actually, I believe we probably have had
19 exhibits marked at the local public hearing so just so we
20 don't have our numbers confused, I'm going to start with
21 No. 101 for this exhibit and we'll go on from there.

22 (Exhibit No. 101 was marked for
23 identification.)

24 MR. BOUDREAU: May I approach the witness,
25 please?

1 JUDGE MILLS: Yes, you may.

2 BY MR. BOUDREAU:

3 Q. Mr. Empson, I've handed you what's been marked
4 for identification as Exhibit 101, and ask you if you
5 recognize that document?

6 A. Yes, I do.

7 Q. Is that the document that you and I just
8 discussed in terms of a written response that was filed on
9 this past Friday afternoon?

10 A. Yes, it is.

11 Q. Is that a true and correct copy of that
12 document and associated attachments?

13 A. Yes, it is.

14 MR. BOUDREAU: I have one other document I need
15 to be marked.

16 JUDGE MILLS: We'll mark this as 102.

17 (Exhibit No. 102 was marked for
18 identification.)

19 BY MR. BOUDREAU:

20 Q. Mr. Empson, I've also handed you what's been
21 marked for identification purposes as Exhibit 102. Do you
22 recognize that document?

23 A. Yes, I do.

24 Q. What is that document, for the record?

25 A. This is the verification that I signed to be

1 included with the filing that was made last Friday. And I was
2 out of town and had it faxed in and this is the original.

3 Q. That's the original verification that's
4 attached to the document that was filed last week?

5 A. That is correct.

6 Q. Very good.

7 MR. BOUDREAU: With that, I'd offer Exhibits
8 101 and 102 into the record, please.

9 JUDGE MILLS: Are there any objections to the
10 admission of 101?

11 MR. COMLEY: Can I take a moment, Judge? Just
12 a moment.

13 JUDGE MILLS: Certainly.

14 MR. COMLEY: Your Honor, I'd like to voir dire
15 the witness a moment.

16 JUDGE MILLS: Okay. Please go ahead.

17 VOIR DIRE QUESTIONS BY MR. COMLEY:

18 Q. Mr. Empson, could you look at Exhibit 7 to your
19 101? First, I haven't had the opportunity to review in full
20 all of the material in Exhibit 101, but can you explain the
21 significance of Exhibit 7 and why you attached it?

22 A. Yes, I can. There was a question that was
23 raised at the public hearing about the road that was serving
24 the potential substation site that was adjacent to the
25 Bockelman's property and the claim made that that was a

8 So that was one of the basis when we moved
9 forward with the use of that access to the land we were buying
10 from the substation. So we just put that into the record that
11 there was a -- an indication at this time that the road had
12 not been abandoned by Cass County. That's in the No. 3, I'm
13 sorry, in that second paragraph.

16 A. Correct.

25 JUDGE MILLS: Mr. Boudreau, do you have a

1 response?

2 MR. BOUDREAU: My response is that in making
3 decisions of this sort this is -- first of all, it's
4 responsive to a statement that was made by Mr. Bockelman about
5 a dispute over access to the private lane.

6 The document that's been provided or the -- the
7 entire document that's been provided by Aquila last Friday is
8 responsive to those comments that were allowed into the
9 record. This document has been offered to show that there was
10 a legitimate basis for the statement in the pleading that has
11 been filed or the comment that has been filed that Aquila had
12 reasonable belief that based on representations from county
13 officials, that this was a public right-of-way, that they had
14 not abandoned it. It is being offered for that purpose.

15 JUDGE MILLS: Okay. I'll tell you what, I'm
16 going to reserve ruling on this portion of this particular
17 exhibit, that being Exhibit 7 to Exhibit 101 until the end of
18 the hearing.

19 So, Mr. Comley, you'll have the opportunity to
20 investigate further to see if indeed this is an inaccurate
21 representation of the actions of the County Commission. If
22 indeed it proves to be inaccurate, then I will -- well,
23 probably, I won't say what I'm going to rule at that point,
24 but if it proves to be inaccurate, I will probably sustain
25 your objection. If it proves to be accurate, I will probably

1 deny it. I'll reserve ruling until that point.

2 Okay. Let's move onto 102, which is the
3 verification. Are there any objections to the admission of
4 Exhibit 102?

5 Hearing none, it will be admitted.

6 (Exhibit No. 102 was received into evidence.)

7 MR. BOUDREAU: Just so that I'm clear, the
8 Bench has reserved ruling on Exhibit 7, but the balance of the
9 document is in or has the Bench reserved ruling on the entire
10 document?

11 JUDGE MILLS: I'll admit the balance of the
12 document and reserve ruling specifically on Exhibit 7 to
13 Exhibit 101.

14 (Exhibit No. 101 was received into evidence
15 with the exception of Exhibit No. 7 in Exhibit No. 101.)

16 MR. BOUDREAU: Very good. Thank you.

17 DIRECT EXAMINATION (CONT'D) BY MR. BOUDREAU:

18 Q. With respect to the written response that we
19 have been discussing, does that contain a full and
20 comprehensive response to all the issues that were raised at
21 the public hearing?

22 A. I think this represents a good summary of what
23 was represented at the hearing. What we have today is
24 witnesses that can delve into much more detail of each one of
25 these issues so the Commissioners can get complete

1 understanding of each one of those facts.

2 Q. Very good.

3 What I'd like to do is to ask you to address
4 today your views on the general topics that were raised at the
5 public hearing. And I'd ask you to -- I'd ask you to start
6 with the concept of the statements that a number of the public
7 speakers stated to the effect that there was no need for this
8 peaking facility. And I understand that deals on a number of
9 different levels, but if you would proceed.

10 A. Well, let me basically just kind of refer
11 everybody to the document itself. I think as background
12 information, we currently serve about 295,000 customers in the
13 state of Missouri. On a normal annual basis we see customer
14 growth of about 3.2 percent a year. In this area of Cass
15 County, it's growing about 5.4 percent a year. We have
16 information in the filings that shows that it is one of our
17 more rapidly growing parts of our system in Cass County.

18 And as that system grows and you add more
19 residential customers, it does require you to develop some
20 generation requirements that would meet that peak demand put
21 on by residential customers on that hot day. So this area of
22 our system is what they would classify as a load center or a
23 growth center. And Mr. Terry Hedrick will address more
24 information about that when he is called to the witness stand.

25 But it was also important for this site, it

1 does cross a transmission line that we had in existence, a
2 69 kV transmission line and it also has two different natural
3 gas interstate pipelines right on the site, Southern Star and
4 just a few miles south of the site we do have Panhandle
5 Eastern.

6 And that's a really important consideration for
7 us as we're starting to look for what is an appropriate site
8 to build a peaking facility. You want to have ready access to
9 attach to the transmission system and also have the fuel
10 necessary. And by having two different natural gas suppliers,
11 it gives us the ability to provide a competition on the lowest
12 cost possible.

13 It also had, as part of the infrastructure, a
14 waterline. And I think we heard testimony at the public
15 hearing the importance of the -- the role not only for us for
16 water for the facility, but more importantly, what we're doing
17 to help establish 20 more fire hydrants in that area to help
18 support the area around the City of Peculiar and in Cass
19 County.

20 We also on this site back in July we were
21 approached by the mayor of the City of Peculiar with an
22 interest in having us come into this location. So it was an
23 important consideration for us that we had some support not
24 only from the mayor, but from the Board of Aldermen, from the
25 water district and several other entities within the city.

1 And then the land site itself, there's been a
2 lot of discussion about this land site. It is a 74-acre land
3 site. If I might for a minute --

4 Q. Yes.

5 A. -- stand and just refer to an overall aerial.

6 Q. Please. And let me do this. There were
7 some -- there were some comments, I believe, in the opening
8 statement of the attorney for stopaquila.org that this is
9 largely being built in a residential neighborhood. Do you
10 have a photograph that might illustrate the placement of the
11 plant?

12 A. Yes, I do. And what -- what will happen when
13 Mr. Hedrick takes the stand, he'll have a series of photos
14 that have been taken from all four directions. What I want to
15 do today is just to give a sense, since maybe several of the
16 Commissioners have an opportunity -- have not had an
17 opportunity to visit the site, to describe the site, what
18 we're doing at the site with more detail to follow from
19 Mr. Hedrick.

20 Q. Very good. If you'd place that in view of the
21 Commissioners.

22 A. I apologize. Can I place it in view of the
23 Commissioners with the general audience not being able to see
24 it?

25 Q. Probably more important for the Commissioners

1 at this point.

2 A. What I'll do is just kind of hold it up right
3 now. And you will get an aerial like this in your packet.

4 Q. Now, you said you had visited the scene at the
5 South Harper peaking facility?

6 A. Correct. This would be the site itself.

7 Q. Is that a photograph of that location?

8 A. It is. This photograph -- this is 243rd Street
9 coming in and Harper Road. You can see the construction
10 activity that's going on right here (indicating). Essentially
11 if you were to look at what our site is, we do own 74 acres
12 that goes up the road, across 241st, down this area and
13 across. This is the compressor station that's already there,
14 the Southern Star compressor station. This is the gentleman,
15 Mr. Bremer, that sold us the land. This is also a relative of
16 Mr. Bremer's that lives right across the street from the land
17 (indicating).

18 Our site construction is really going on this
19 lower part of 30 acres, but the actual footprint -- and it's a
20 little deceiving because we have a lot of construction
21 activity -- the footprint of the substation itself is just
22 about 8 acres. The footprint of the turbines where they will
23 be situated is again about 8 acres.

24 Then we'll have -- this is a staging area right
25 now for the construction activity, but north of this site,

1 over 40 acres then will be maintained as a buffer for all the
2 residents that live north of that land. And that will not be
3 developed into any use but an agricultural buffer between
4 where our facility is.

5 It's hard to tell from this site, but Terry
6 again -- Mr. Hedrick will talk about the construction of this
7 site. As you tour the facility itself, it has been cut into
8 the side of a hill, so it reduces it -- it's down about
9 14 feet from the upper end of this site. Then we're putting
10 berms -- and you can see the berms here (indicating) -- on top
11 of that. So you'll have another 12 to 14 foot of berm area
12 and then trees on top of that berm. So we're doing everything
13 that we can to try to shelter the view from the north.

14 On the south side, when I was down on the plant
15 touring, Tom Miller, the local construction guy, was talking
16 about they had some excess dirt. So what he was doing, as you
17 can see here, he's also building a berm to the south part of
18 the plant. So from the south view, even though there really
19 isn't much development as you can see here in the south part,
20 you will have a berm there and then we're cutting on the east
21 side into the bank and also be providing some berm there.

22 So we're doing everything that we can in order
23 to really make this something that will be not as -- kind of
24 non-obtrusive in the area. So that -- and there's a detailed
25 site aerial like this that will be given to you in a little

1 while in the book, but that just gives you an overall
2 perspective of the land location that we're going on.

3 Q. And you mentioned that Mr. Hedrick will have
4 much more detail in terms of photographs and a number of
5 photographs to illustrate that point?

6 A. That is correct.

7 Q. Okay.

8 A. So that -- that kind of covers just a general
9 description of the -- the land site. The next part of our
10 response basically talks about some of the outreach that we
11 did. And, again, Terry will get into more detail about the
12 meetings, meeting with the chamber and --

13 Q. That's Mr. Hedrick? I apologize.

14 A. Mr. Hedrick will give more detail about that.

15 Q. Okay.

16 A. On page 8 of our filing, No. 15, area 15, it
17 talks about our relationship with the City of Peculiar. A
18 witness at the hearing mentioned that there were a lot of
19 e-mails going back and forth between our company and the mayor
20 and the City of Peculiar. I mean, this was a natural type of
21 communication.

22 They did approach us in July to work with us on
23 site location. They're also working with us on the
24 Chapter 100 bond financing. And so there was a whole
25 series -- and we're more than willing to provide all of the

1 e-mails that were developed as part of that communication as
2 part of the record if the -- they were not provided after the
3 hearing.

4 In the next section we talk about the noise and
5 plant mitigation efforts. Again, we'll provide some detailed
6 testimony by Block Andrews on what the noise level is at the
7 edge of the site, some of the things that we have done.

8 A comment was made at the public hearing that
9 they initially thought the stacks were only going to be about
10 50 feet tall and now they're 70 feet tall. The reason that we
11 have gone to a 70-foot stack is because we have put some noise
12 mitigation factors into the stacks themselves at a cost about
13 \$1.2 million.

14 But it's also important as I describe this site
15 location, when I talk about it cutting into the side of a hill
16 and the berms and the trees, that the real visible part of
17 that stack will be less than that as you view it from the
18 north. So it will not be a 70-foot stack that will be up in
19 the air.

20 The next section talks about security. As
21 Mr. Boudreau mentioned in his opening comments, this was a
22 surprise to us at the public hearing. We had not received any
23 complaints. I had personally not received any complaints nor
24 had anybody in my organization received complaints. We have
25 gone out and we have tried to research whether some things did

1 happen. And we were not able to document some of the
2 accusations that were made at the public hearing.

3 But it's -- I think it's important for us --
4 and there was an incident that occurred early on the
5 construction when we had minimal supervision there, minimal
6 security, is that we did have a vehicle trespass onto our site
7 and when the vehicle was leaving, it almost hit one of our
8 workers. And when that incident was reported to me, I did ask
9 the project manager, Mr. Hedrick, to increase the security.

10 We have an obligation to the workers there to
11 make sure they're in a safe and protected environment. We
12 have an obligation to our customers to make sure that the
13 plant we're putting in place is not damaged. I think we have
14 an obligation to the general public that they would not come
15 into this site and somehow be hurt as they were into the site.
16 So we did ask that we have some security put at the site.

17 We also were building a transmission line from
18 this site up to the substation, so as identified in -- on
19 page 12, we did have a lot of external inspections going on of
20 the various locations along our transmission site going from
21 South Harper up to the substation up north.

22 And they did have a route there. That route
23 did require them on four different occasions to do a
24 turnaround. At that time there might have been some
25 inadvertent headlights flashing on homes, but it was clearly

1 not our intent nor was it the instruction of any of management
2 to do anything in any way that would be intimidating to the
3 residents. We have now -- given that the transmission is
4 basically constructed, we have ended those external as a
5 result of the comments that were made on March 19th.

6 The section on page 13 talking about
7 degradation and use of local roads, we clearly acknowledge
8 that when you have heavy hauls going on the roads, there can
9 be some damage. We are working very closely with Mr. Leeper,
10 who is the superintendent of roads and bridges for Cass County
11 to make sure we repair that -- any damage.

12 But it's also important, and what was not
13 stated at the public hearing, is to understand there's a rock
14 quarry just a little bit north and west of this property. And
15 that rock quarry has been using the road and has been an issue
16 within Cass County and the City of Peculiar for some time.

17 And it is important -- we cannot determine at
18 this time if the damage is all related or somewhat related to
19 what our trucks are doing or it's the damage created by the
20 rock quarry. And this was also brought out in the court
21 proceeding before Cass County where Mr. Leeper said he could
22 not determine whether or not the damage was done by -- whose
23 trucks were causing the damage. But we are committed to
24 repair any damage that would be done and have posted a bond to
25 make sure that's going to happen.

1 Q. You mentioned Mr. Leeper. Who is Mr. Leeper?

2 A. Mr. Leeper, as indicated on page 13, he is the
3 superintendent of roads and bridges for Cass County.

4 Q. Thank you.

5 A. Another aspect of this, Mr. Hedrick brought it
6 to my attention when I was touring. The concern about
7 highway -- of the street coming into the plant 243rd Street.
8 And he's been working with the county on a plan where they
9 provide some of the grading and some of the subsurface support
10 that we will, in fact, now pave that road coming into the
11 facility and then the road right into our facility. And we
12 believe that again will be an added benefit to that
13 neighborhood, but also will cut down on any future dust or
14 other issues that might be there.

15 On page 14, just to address again
16 Mr. Dearhoff's concern about the taxes, that's a separate
17 hearing that will take place dealing with this project. But
18 on page 15, when Mr. Dearhoff raised those concerns, we did go
19 to the Missouri State Tax Commission and ask them to clarify
20 for us just how the calculation was made for Chapter 100
21 bonds. And whether it's spread over the pole miles, if you're
22 not Chapter 100, what those pole miles consist of.

23 And Mr. Doerhoff is confused in that I think he
24 testified at the hearing that it was spread over the pole
25 miles within Cass County if you do not build -- or do not use

1 Chapter 100. Instead, it's over our entire surface territory.
2 And that factor alone would reduce what he claimed I believe
3 was \$24,000 benefit by a factor of 10 if you go through the
4 calculation.

5 And we talk about -- the next question on the
6 financial difficulties, obviously we are moving very quickly
7 with the construction of this facility. We have expended the
8 majority of the dollars that are required to get it built. We
9 intend to have this plant ready to test fire by the end of
10 June, to start producing electricity by the middle of July.
11 So there has been no issue about our ability to finance this
12 project and to make sure it could become operational in time
13 to meet our needs.

14 And I think the final -- the issue, I'm sorry,
15 on page 17 was dealing with the Knight Road. And there was
16 some confusion. We believed and were informed by the county
17 that this still had not been a vacated road. We probably took
18 a little aggressive posturing on that by trying to make sure
19 that we could have access on what we believed was a public
20 road to service the substation site across from the
21 Bockelman's property.

22 We ended up buying the property from
23 Mr. Efferts and there was a letter then that was raised -- I
24 think the Commission expressed some concern that perhaps the
25 letter was a little intimidating for the landowner. But it

1 was intended to go to his lawyer. We believed that we wanted
2 to express our belief anyway that we had the right to use the
3 road. With the resistance that developed, we vacated that and
4 we went ahead and built a parallel road coming into our
5 property.

6 On the air emissions and health concerns,
7 really I'll leave that up to Block Andrews. He has some
8 detailed information about the -- the permit. Again, we do
9 have the permit from the state of Missouri, but he also has
10 some information just about the general environment that
11 exists there today as far as air quality that I think would be
12 very enlightening for the Commissioners to hear.

13 So that's kind of a brief overview of our
14 filing.

15 Q. Did you have any reaction -- I think there was
16 some comment about challenging the integrity or honesty of
17 Aquila throughout this process. Do you recall those comments?

18 A. I do. And I think --

19 Q. What was your reaction to that?

20 A. Well, disappointed I guess. We did make an
21 effort when we started the process in July, to work with the
22 City of Peculiar to make it known that we were interested in
23 this site by having a series of meetings, issuing a press
24 release before we advanced to start construction.

25 We did not make the decision to really start

1 construction until we received the air permit. Even though we
2 did acquire the land finally about October 5th, we only did it
3 after we had received permission from the county as far as the
4 grading that was required. And we did that to make sure that
5 we could meet our in-service date of this summer.

6 So there were a series of meetings. And,
7 again, Mr. Hedrick will go into detail about the number of
8 meetings, the people, the tours we had people go out on
9 Greenwood.

10 Our outreach at efforts at times were not
11 accepted by the people, but we did find -- and I think it was
12 a good example is when we built this -- we were going to build
13 the substation that Mr. Bockelman referred to, that we sat
14 down with the residents of Grand Oaks, which is a neighborhood
15 just right north and northwest and northeast of this site and
16 we went to a homeowner's meeting, explained to them what we
17 were doing. They were very willing to work with us on what
18 modifications might be made to that site. And our people did
19 make modifications then on how it was aligned, where it was
20 located and commitments that we would make.

21 So we felt that if you have people that are
22 willing to sit down and talk about what could be done for
23 something that's important to serve our customers, that we
24 could come up with some reasonable solutions.

25 Q. Okay. Touching on one item that was mentioned

1 by counsel for Staff and let me ask you, in your view is the
2 Commission being asked to make any rate-making determination
3 or prudence determination with respect to the South Harper
4 facility or the associated substations in the context of this
5 case?

6 A. No, they are not.

7 MR. BOUDREAU: I have no further questions of
8 this witness at this time. I'll tender him for
9 cross-examination.

10 JUDGE MILLS: Thank you. We'll do
11 cross-examination. Just for those of you who may not be
12 familiar with the practice here, we're going to do
13 cross-examination from opposing counsel, then we'll do
14 questions from the Bench. Then I'll allow the opportunity for
15 further cross-examination limited solely to topics raised by
16 questions from the Bench. And then we'll have the opportunity
17 for redirect examination on all the previous questions.

18 So cross-examination first to Staff,
19 Ms. Shemwell.

20 MS. SHEMWELL: Thank you.

21 CROSS-EXAMINATION BY MS. SHEMWELL:

22 Q. Mr. Empson, you went through some of the buffer
23 areas. Would you point out where that 40-acre agricultural
24 buffer is for those of us who couldn't see it?

25 A. Sure. I'm sorry. This is our plant -- we own

1 this land right here (indicating) bound by that. So this
2 40 acres is right in this area here (indicating). This is
3 Mr. Bremer's home, he is going to stay living there
4 (indicating). So this is the land that we'll maintain as
5 natural and this is the berm that we're building right here
6 that would help shelter, again, that -- the plant site from
7 the homes to the north (indicating).

8 Q. And how tall is that berm?

9 A. The berm will be probably about 14 feet tall
10 and have trees on top of the berm that will be 10- to 12-foot
11 trees.

12 Q. Evergreens?

13 A. You'll have to ask Mr. Hedrick exactly what
14 they do use in that situation, but we will do our best to do
15 something that will give them some shelter.

16 Q. And that 40 acres, what are going to put in
17 there?

18 A. Absolutely nothing. It will just remain as
19 agricultural land.

20 Q. So you're not going to be planting corn? It's
21 just going to be open land?

22 A. Again, I'll defer to Mr. Hedrick on the
23 specific use, if they have some agreement with Mr. Bremer, but
24 I'm not aware of that.

25 Q. You have some sort of buffer on all sides of

1 the plant?

2 A. Well, as you can see by the aerial, there is a
3 pretty heavy tree line on this side (indicating) of the
4 facility itself on the lower part of that and then it is open
5 on this side (indicating). And, again, Mr. Hedrick might
6 address some of the things he's doing to this those two
7 landowners over there, because we are in conversations with
8 them for some possible fencing and tree planting and stuff to
9 also provide a buffer.

10 Q. Does the street that's shown there in white
11 going from the lower right to the upper left, is that running
12 from the east on the right to the west on the left?

13 A. This street (indicating)?

14 Q. Yes.

15 A. I'm sorry. This is going north.

16 MS. SHEMWELL: Okay. Thank you. That's all I
17 have.

18 THE WITNESS: This is coming in (indicating).

19 JUDGE MILLS: Ms. O'Neill?

20 MS. O'NEILL: No questions.

21 JUDGE MILLS: Mr. Comley?

22 CROSS-EXAMINATION BY MR. COMLEY:

23 Q. Mr. Empson, I have a few questions about the
24 roads. And if you can, can you direct me to the page where
25 you discuss this in Exhibit 101?

1 A. It's on page 13. It's entitled Degradation and
2 Use of Local Roads, paragraph No. 28.

3 Q. Thank you.

4 At the bottom of that paragraph you're saying,
5 Additionally, Aquila is working on an agreement with Cass
6 County that would pave 243rd Street and the property frontage
7 of South Harper Road?

8 A. That's correct.

9 Q. Do you know the extent to which that agreement
10 has been formed?

11 A. In the conversation I had with Mr. Hedrick,
12 which was the day of the public hearing, that they had come
13 to -- we had just gotten the cost estimates from the county on
14 what our share of that would be and he asked for authorization
15 to move forward with that proposal and I gave him
16 authorization at that point in time to do so. So I'm not sure
17 if they've finalized any documents, but he has the authority
18 to move forward with the cost estimates we've been provided by
19 the county.

20 Q. And would this be in addition to the security
21 provided by the appeal bond?

22 A. Yes, it would.

23 Q. All right. You mentioned something about the
24 testimony of Mr. Leeper during the course of the trial?

25 A. Yes.

1 Q. As I recall, you said that Mr. Leeper was not
2 ready to testify that all of the traffic on the road was from
3 Aquila; is that correct?

4 A. That's correct.

5 Q. Were you present at the trial?

6 A. I was not. I've read a formal document that
7 gives the --

8 Q. You read the transcript?

9 A. I did read the transcript provided to me by our
10 lawyers, yes.

11 Q. So technically what you're saying is just what
12 would be in the transcript?

13 A. That's correct.

14 Q. You would have no objection to Cass County
15 providing the transcript of that testimony to the Commission,
16 would you?

17 A. Not at all. In fact, I think it would be very
18 beneficial for the Commission to read several elements of that
19 transcript.

20 Q. Very well.

21 MR. COMLEY: That's all I have.

22 JUDGE MILLS: Thank you.

23 Mr. Eftink?

24 CROSS-EXAMINATION BY MR. EFTINK:

25 Q. Mr. Empson, did you say that Aquila did not

1 decide to start the project until after Aquila got the DNR
2 permit?

3 A. That we did not start the formal construction
4 on the project. We decided to start the grading of the
5 project on October -- when we received from Cass County the
6 grading permit for the site and then we, the day after that,
7 bought the land. But until we had the air permit, we couldn't
8 start any formal construction. We did have discussions with
9 Minnesota DNR and they said grading of the site was
10 permissible before we had received the air quality permit.

11 Q. When did Aquila get the air quality permit from
12 the State of Missouri?

13 A. I believe it was in December sometime. I don't
14 have the exact date. Mr. Hedrick could provide that.

15 Q. Was it December 29?

16 A. That sounds correct.

17 Q. All right. And the trial in Cass County was
18 held on January 5 and January 6 of 2005. Correct?

19 A. That's my understanding, yes.

20 Q. Okay. By the time of the trial, how much work
21 had Aquila done on the buildings?

22 A. I defer that question to Mr. Hedrick. We would
23 have started construction on December -- whenever we received
24 the air quality permit and so whatever progress could have
25 been made between that date and January 5th or 6th.

1 Q. You had never applied for a zoning permit from
2 Cass County for that site?

3 A. That is correct.

4 Q. Okay. By the time you got the air quality
5 permit from the Missouri Department of Natural Resources,
6 Aquila had already been sued by stopaquila and by Cass County?

7 A. That's correct.

8 Q. And those suits had to deal with the fact that
9 Aquila did not have zoning for that site. Correct?

10 A. I couldn't speculate on the total content of
11 what that suit would be.

12 Q. Do you have an idea how much of the buildings
13 were put up after the court issued its injunction to stop
14 Aquila from putting up the buildings?

15 A. After we had posted the \$350,000 bond so we
16 could proceed with construction, we made very good process.
17 We already have one of the turbines and generators in. The
18 second turbine is being installed. So as I indicated earlier,
19 we're on -- on time to get this plant up and operating by
20 mid-July.

21 Q. But, generally speaking, wouldn't it be correct
22 to say that only grading had been done before the court issued
23 its injunction?

24 A. That is my understanding as -- grading and
25 anything else that wouldn't be viewed as a permanent type of

1 step toward building the plant. So the foundations, for
2 example -- we asked if we could start moving toward the
3 foundations and the answer was no, we need to get the air
4 permit first. So we didn't start the actual pouring of the
5 foundations for the facility until after we received the air
6 permit.

7 Q. Okay. Wouldn't it be correct to say that
8 probably about 100 percent of the buildings were put up after
9 the circuit court issued its injunction against Aquila?

10 A. I would say it -- that would be correct in
11 the -- in the case that we had the air permit on December 29
12 and started building the facility.

13 Q. Now, you talked about press releases and other
14 things that you described as outreach by Aquila. And I
15 believe some of these are attached to Exhibit 101. Is that
16 your testimony?

17 A. There are some -- some of that information is
18 attached. And Mr. Hedrick is prepared to go through a lot
19 more details on the presentations that we actually gave to the
20 Chamber, the presentations that were given at Greenwood during
21 the tour.

22 Q. But you verified these documents that are
23 attached to Exhibit 101?

24 A. That's correct.

25 MR. EFTINK: Judge, may I approach the witness

1 to point out one of the exhibits?

2 JUDGE MILLS: Yes, you may.

3 BY MR. EFTINK:

4 Q. Do you have 101 in front of you?

5 A. I do not. They took it away from me.

6 MR. EFTINK: Can I speak from here I guess?

7 JUDGE MILLS: You can. Whatever you say will
8 be reflected in the transcript. It won't be captured in the
9 video capture as long as you're away from a microphone.

10 MR. BOUDREAU: I have an extra.

11 BY MR. EFTINK:

12 Q. Okay. I want to ask you about this part right
13 here first (indicating).

14 A. Okay.

15 Q. Now, Mr. Empson, I've pointed out to you
16 Exhibit 1, which you've attached to Exhibit 101. This is a
17 press release issued by Aquila or a news release issued by
18 Aquila prior to October 1 -- I should say October 11, 2004?

19 A. Yes. Set for October 11th, 2004, an
20 informational meeting.

21 Q. And I circled some language on the second page
22 of that Exhibit 1 which you have verified. And as part of
23 your efforts to educate the public, isn't it true that the
24 press release said, That similar facilities emit no more
25 pollution than a diesel-powered pickup truck traveling 35 to

1 50 miles per hour?

2 A. That is correct. That is in the press release.

3 Q. Yes.

4 A. And Mr. Block Andrews would be happy to address
5 more details about that when he takes the stand.

6 Q. Okay. Since you verified it, I want to ask you
7 a few questions about this. Do you know how much pollution is
8 produced by one diesel pickup truck?

9 A. No, I do not. As Mr. Boudreau said, I'm
10 dependent upon some of the experts that we'll have here to
11 provide the information for this news release. So Mr. Block
12 Andrews will give you the details about that information.

13 Q. The next sentence on Exhibit 1 in this press
14 release issued by Aquila says, Noise levels during operation
15 will be minimal and will meet all requirements?

16 A. That is correct.

17 Q. Okay. You had a noise study done prior to the
18 issuance of this press release. Correct?

19 A. That is correct.

20 Q. And that noise study showed that at the nearest
21 residence, the noise would be 62 decibels?

22 A. That's correct.

23 Q. Okay. And you heard the witness at the public
24 hearing saying that that's much higher than what's required --
25 or the maximum that's required by, for example, St. Louis

1 City. So that's pretty loud, isn't it?

2 A. I disagree. Mr. Andrews again will talk about
3 it. I remember the witness at that public meeting when he
4 started to talk, right away said he was not a noise engineer
5 and could not testify as an expert on that issue. But
6 Mr. Block Andrews will be able to testify about what the noise
7 level is. Also, that we volunteered for any resident that was
8 interested to go out and do a noise test at their home to
9 understand the difference between background noise and what
10 noise might be emitted from this facility.

11 And, again, understanding as we tried -- I
12 tried to explain earlier, that the design of this plant now,
13 we have taken it down 14 feet into a hill, we have a berm and
14 trees. So we've done things for the noise anyway going north
15 from the facility and the east to help mitigate even what
16 would be an acceptable 62 decibels.

17 Q. All that was included in the model which
18 produced a noise reading at 62 decibels at the closest
19 residence.

20 A. I don't believe that is the case, but
21 Mr. Andrews will be able to verify that for you.

22 Q. In that sentence that you verified, it also
23 says, The noise level will meet all requirements. What
24 requirements are those?

25 A. I think they were looking at the -- the

1 requirements that might exist for a residential neighborhood.
2 And we have some testimony that we'll provide that will
3 document that.

4 Q. Was that a PSC requirement?

5 A. No. This was not a PSC requirement. This was
6 our own requirement as we started looking at the design of the
7 plant and looking at what the impact would be on the
8 neighborhood and taking into account what steps we would take
9 to mitigate that noise.

10 Q. Are you saying that the only requirement of the
11 noise level is the requirement set by Aquila itself?

12 A. Looking at what the noise is and whether it's
13 consistent with other standards that do exist. And so that
14 would be the requirement that we are looking at.

15 Q. But can you tell me today what requirements
16 those are? Are there -- are those county requirements or --

17 A. Mr. Block Andrews will go through the detail of
18 that. And he has discussed them with me, but I'm not an
19 expert on noise and I would just defer to him to give that
20 expert witness testimony.

21 Q. If you would turn to Exhibit 3 attached to
22 Exhibit 101, paragraph 8.

23 A. Number 8 in that exhibit?

24 Q. Yes. And this -- I believe it's a press
25 release.

1 A. This is a series of questions and answers that
2 were posed to us by The Kansas City Star where they asked us
3 to develop answers to specific questions they were hearing
4 from the public so they could determine whether they'd publish
5 those in a story or some other way about what we were doing.

6 Q. And this is dated October 29, 2004?

7 A. That is correct.

8 Q. Okay. Now, if you'll return to that
9 paragraph 8, doesn't Aquila say in paragraph 8 that local
10 taxing jurisdictions and others will receive more funds from
11 the plant by participating in the Chapter 100 economic
12 development program?

13 A. That is correct.

14 Q. But the truth is, as stated by Aquila in its
15 filing in EO-205-0156 before this Commission, that if you
16 compare the taxes that Aquila would pay if the Chapter 100 did
17 not go through to the amount of taxes and PILOT payments that
18 Aquila would pay if it goes through, Aquila would save between
19 14 and 17 million dollars net?

20 A. Well, I -- you must -- I must not be reading
21 this correctly. It says local taxing jurisdictions. Local
22 taxing jurisdictions within the Cass County/City of Peculiar
23 will receive more money. Any lower taxes that we would pay in
24 the state are not retained by Aquila. They are flowed through
25 to the customers. We only collect what we actually pay. So

1 there is no financial benefit to Aquila. This is purely a
2 financial benefit to the customers in the state of Missouri
3 that we use Chapter 100 financing.

4 Q. So does that mean Aquila will not ask for a
5 rate increase?

6 A. Based upon taxes being paid, no, they will not.
7 They will not be -- the only taxes that will be part of a
8 filing will be what we actually pay. The lower amount that
9 you indicated, not the higher amount. That higher amount is
10 something -- the delta is a benefit to the customers of the
11 state of Missouri.

12 Q. Right. So you agree that if the Chapter 100
13 bonds go through, Aquila will save perhaps \$17 million in net
14 taxes?

15 A. I agree that our customers will save about
16 \$17 million in rates, not that Aquila will save taxes. Taxes
17 are a flow-through item. It is not something that we somehow
18 create a false level that we're collecting from customers. So
19 the customers benefit by 17 million, not Aquila.

20 Q. Well, let's just try to answer this question
21 yes or no. The way this deal is structured, hasn't Aquila
22 said that it will save between 14 and 17 million dollars in
23 taxes net?

24 A. It will save customers that amount. Aquila
25 flows through in their rate cases actual taxes paid. This is

1 not an amount that would accrue to the benefit of Aquila, Inc.

2 Q. Your statement in Exhibit 8 attached to
3 Exhibit 101 that local taxing jurisdictions and others will
4 receive more is simply false, isn't it?

5 A. That is not correct.

6 Q. How --

7 A. Local taxing jurisdictions, because they create
8 more of a value within the county to be retained within the
9 county, will receive more taxes versus less. And we can have
10 a witness address that for you in more detail on the
11 calculation

12 MR. EFTINK: May I approach the witness, your
13 Honor?

14 JUDGE MILLS: Yes, you may.

15 BY MR. EFTINK:

16 Q. This is Aquila's application in the case of
17 EO-205-0156. Paragraph 17, doesn't Aquila tell the Public
18 Service Commission that Aquila will have a net savings of
19 between 14 to 17 million dollars?

20 A. That is correct. And I've explained to you
21 what that means. It means that the savings will be flowed
22 through to our customers. There's nothing retained by Aquila,
23 Inc. as far as a financial benefit for Chapter 100 bonds. We
24 are indifferent on the -- on the financing mechanism used.
25 This is a benefit that we believe -- we, as a company -- this

1 is a benefit for our customers.

2 Q. Has Aquila entered into a power purchase
3 contract to get power for June 2005?

4 A. I will defer the total answer to that question
5 to Jerry Boehm when he takes the stand, but we knew the
6 contract was expiring, we have taken competitive bids for what
7 the alternatives would be. Included in that 500 megawatts of
8 loss capacity will be the 300 megawatts that we'll get from
9 this peaking power facility and that we're looking for some
10 other types of purchase power agreements to supplement or make
11 up the difference between the 500 we're losing and the 300
12 we'll generate.

13 Q. I'm not sure if I understand. Has Aquila
14 entered into a contract to purchase power for June 2005?

15 A. I will defer the answer whether we've actually
16 physically signed any contracts to Jerry Boehm. I don't know
17 if we have physically. We're in negotiations to make sure we
18 have adequate power for this summer.

19 Q. Do I understand your testimony that there's no
20 way that Aquila will have any of the turbines operational in
21 June 2005?

22 A. It is my understanding, and Mr. Hedrick can
23 confirm, that we will test fire these facilities during the
24 latter part of the month of June and the first turbine will
25 come -- become commercial sometime during the first two weeks

1 of July.

2 Q. And the second and third turbine could become
3 operational in August?

4 A. Shortly thereafter. I mean, they follow --
5 and, again, Mr. Hedrick could give the exact schedule, but my
6 recollection is about every two weeks after that.

7 Q. Would you agree then Aquila has got to enter
8 into some kind of power purchase agreement at least for June
9 and July 2005?

10 A. We need to identify what the contingency plans
11 would be. And, again, Mr. Boehm could explain to you how we
12 plan to address our contingency if the peaking is needed
13 before the turbines come on.

14 Q. Now, you said in your testimony when asked by
15 Paul, that there were two gas lines on the site?

16 A. No, I did not. I said that Southern Star was
17 actually there with a compressor station. About 2 miles south
18 of the facility or the site was Panhandle Eastern. So we had
19 the ability to contract with both of them for services.

20 Q. But Aquila will have to lay pipe for at least
21 2 miles to get to that Panhandle Eastern?

22 A. That 2 miles of pipe, if we do execute the
23 contract with Panhandle, would be reimbursed to Aquila once
24 the plant becomes operational.

25 Q. Now, you said that you personally had no

1 complaints from people who lived around the site. Did you
2 ever give your telephone number to people that live in the
3 area?

4 A. I said I personally had not received a concern
5 about security. I am -- I did not personally give my
6 telephone number, but I am on the website for Aquila, Inc. and
7 my name is there and could be reached through the central
8 office down in Kansas City.

9 Q. Now, I'd like to ask some questions about the
10 proposal by Calpine to supply energy to Aquila. Are you the
11 person to ask about that?

12 A. I will defer that again to Jerry Boehm or
13 another witness that we might have that could give you the
14 details about that.

15 Q. Are you familiar with the statistics on the
16 need or lack of -- well, let me rephrase that.

17 Are you familiar with the studies that have
18 been done on excess capacity of electric generating units in
19 this area?

20 A. I can't say that I'm familiar with -- when you
21 say in this area, if you're talking about Cass County
22 specifically, I've never seen an analysis that shows there's
23 excess peaking capacity available in Cass County.

24 Q. What about the Southwest Pool?

25 A. Again, I would defer that question to

1 Mr. Boehm. We're looking at what our internal needs are for
2 what our growth and peak demand has become over the last five
3 years.

4 Q. Now, Aquila was a partner in building the Aries
5 plant outside of Pleasant Hills just a few years ago?

6 A. The -- when you say "Aquila," we had a
7 subsidiary of our company that was Aquila Merchant Services
8 that formed another entity that was a partner with Calpine. I
9 personally have been on the utility side of the business and
10 was not involved with any of the arrangements on the Calpine
11 partnership.

12 Our role on the utility side is to take
13 competitive bids for power. And at the time in 1999 when we
14 needed power, that's what we did was to go out and take bids
15 and took the lowest cost option available to our customers at
16 that time.

17 Q. Uh-huh. And Aquila exited that plant.
18 Correct?

19 A. The merchant part of our operation did exit the
20 ownership. As you're well aware, we're exiting virtually
21 everything that we have on the merchant side of our business
22 and we're realigning our whole strategy around our utility
23 operations.

24 Q. Do you know what the capacity is at the Aries
25 plant at this time?

1 A. I couldn't say specifically. I know that we
2 had a contract in the summer for about 500 megawatts.

3 MR. EFTINK: Pass the witness, your Honor.

4 JUDGE MILLS: Okay. We've been on the record
5 about an hour and a half. We will take a short recess, about
6 10 minutes, and then we'll come back with questions from the
7 Bench.

8 (A recess was taken.)

9 JUDGE MILLS: Okay. We're back on the record.
10 We're ready to proceed with questions from the Bench.
11 Commissioner Murray?

12 QUESTIONS BY COMMISSIONER MURRAY:

13 Q. Good morning, Mr. Empson.

14 A. Good morning.

15 Q. What recent plants has Aquila built in
16 Missouri?

17 A. We haven't built a facility on the regulated
18 side probably for about 20 years.

19 Q. And then the Aries plant was -- explain that
20 one.

21 A. The Aries plant was built through a partnership
22 essentially of our Aquila Merchant business and Calpine. I
23 believe that was one built back in -- completed about 1999.
24 And that was purely a -- a merchant facility at that time.

25 Q. So it had nothing to do with your certificate

1 from the Public Service Commission; is that correct?

2 A. That is correct. It would have been a totally
3 non-regulated enterprise.

4 Q. Okay. Are you aware of any authority that
5 Aquila has to build a power plant within its certificated
6 territory?

7 A. The -- the advice I have received is that our
8 existing certificate of -- of public convenience and necessity
9 addresses that, that we have the -- the requirement to meet
10 the needs of our customers and the needs of our customers
11 requires us to build facilities, whether it's generating plant
12 or transmission facilities. And that's the general direction
13 that we have historically taken.

14 Q. Is it your understanding that that is also the
15 general direction that other utilities in the state of
16 Missouri have taken?

17 A. That is my general understanding. I think
18 there's some cases -- and as a non-lawyer, but some cases that
19 have been cited in the various briefs where people have come
20 in for some specific authorization perhaps. But just, in
21 general, that is the overall authorization that enables us to
22 build power plants.

23 Q. Now, you were asked earlier about Aquila's
24 proceeding after the court order. And it's my understanding
25 from what you said, that you posted a bond; is that correct?

1 A. That is correct. A \$350,000 bond.

2 Q. So you are not violating any court order by
3 proceeding, are you?

4 A. We are not. We are in compliance with the
5 court order.

6 Q. And has the noise level been taken below that
7 62 decibel level that you know?

8 A. The witness, Block Andrews, will talk about
9 that when he's on the stand coming up. I'd prefer not to
10 pre0state what he is going to testify to.

11 COMMISSIONER MURRAY: Okay. That's all I have.
12 Thank you, Judge.

13 JUDGE MILLS: Thank you.

14 Commissioner Gaw?

15 COMMISSIONER GAW: See if Commissioner Appling
16 has questions.

17 JUDGE MILLS: Commissioner Appling?

18 QUESTIONS BY COMMISSIONER APPLING:

19 Q. Just one question. Good morning, Mr. Empson.
20 How are you doing?

21 A. I'm doing fine, Commissioner.

22 Q. About a month ago I did have the privilege when
23 I was in Kansas City to visit your South Harper site and also
24 the nearby Greenwood site. That's not a question, but I was
25 on both of those sites less than a month ago to take a look

1 and walk the sites.

2 But share with me -- I'm sure that you had some
3 reason for doing this and maybe you already thought that you
4 had all the permission you needed from the county, but share
5 with me and my fellow Commissioners why did you not go through
6 the zoning permit process?

7 A. Okay.

8 Q. What caused you to -- I'm sure you didn't do
9 something to circumvent that process, but what was the reason
10 for not doing it?

11 A. Well, first of all, the advice we did receive
12 was our existing certificate does enable us to go to this site
13 and to build the power plant. I'll back up a little because
14 there's been some discussion about, well, you had another
15 plant site at one point in time, and that was at
16 Harrisonville, and you did, in fact, apply for zoning. And
17 they are correct, we did, in fact, apply for zoning.

18 And that was a judgment that I personally
19 recommended that we -- even though I was advised at the time
20 that we already had all the authority we needed to build the
21 power plant at that location, I asked our people to go through
22 the process to try to work with the neighbors to come up with,
23 if there were some concerns, a viable solution to put the
24 power plant at Harrisonville.

25 So we went through that proceeding. And in

1 that case, we did not have, when we went before the zoning
2 board, support from the City of Harrisonville, the support
3 from anybody to build at that location. And so they did vote
4 us down as far as the recommendation for zoning change to go
5 before the full commission.

6 So at that point in time, we were -- as they
7 were going through those trials, we did -- we were approached
8 by the city manager of Peculiar saying, We have an alternative
9 for you that we'd like to consider because we would like to
10 have you part of our county.

11 And so at that point in time, without doing
12 anything else yet on Harrisonville, we sat down and worked
13 with them. And, in fact, we had some other people approach us
14 about potential interests. And so we worked with them.

15 And the difference now being in the Cass County
16 site by Peculiar is that we do have the support from the City
17 of Peculiar. They have issued the Chapter 100 bonds. We do
18 have support from the local school district there. We do have
19 support from the water district. So we felt we had gained
20 some support in that area to go ahead and advance and use our
21 existing certificate.

22 The decision had to be made of whether or not
23 we could further delay by trying to work out other issues that
24 might deal with whatever requirements might be imposed on us
25 or did we need to start construction under our certificate to

1 make sure we could get in service by the summer. And we did
2 make that decision that we felt the location where we had this
3 facility was a good location, that we were doing things to be
4 a good neighbor.

5 As I mentioned, we have 74 acres. We'll not be
6 occupying that 74 acres. And we're doing things to try to
7 buffer that site from -- or the area where we're building from
8 the local neighborhoods.

9 Q. That clears up something I had. Thank you very
10 much, sir.

11 JUDGE MILLS: Commissioner Gaw?

12 COMMISSIONER GAW: Thank you, Judge.

13 QUESTIONS BY COMMISSIONER GAW:

14 Q. Good morning, Mr. Empson.

15 A. Good morning.

16 Q. The zoning at the -- at the other location that
17 you failed to get, did -- is it -- was it Aquila's decision to
18 abandon that site in part or in total because of failure to
19 get the zoning approved?

20 A. I -- it was Aquila's decision. The legal
21 advice was we could go ahead and proceed to build with our
22 existing certificate. What we looked at was a community
23 coming to us, the City of Peculiar, wanting us to come into
24 their area.

25 And so what we did was we decided then not

1 because -- just because the zoning, it had not gone to the
2 Cass County yet, but we were advised by them that they were
3 going to deny the zoning. We instead decided to go into an
4 area where we had some support to build the plant and so that
5 was the primary motivation for changing from one site to
6 another, even though obviously not having zoning -- or using
7 our certificate and going through that zoning did create some
8 conflict.

9 Q. And, again, your legal advice was you didn't
10 have to have the zoning --

11 A. Yes.

12 Q. -- approved?

13 A. In fact, at the -- at the hearing before it was
14 voted -- denied, our lawyers did stand up and say, We are here
15 trying to work to be good neighbors, we're trying to do this
16 in a way that would be supportive of the residential area, but
17 we are in no fact -- not in any way saying that we don't
18 already have the authority.

19 And then that information was also read into
20 the record as far as the Cass County court when we went before
21 them. But we've always preserved and reserved our right that
22 we have an existing certificate that would enable us to build
23 the plant.

24 Q. So if you had not had this invitation from the
25 City of Peculiar, would you have gone ahead with the plans in

1 Harrisonville without zoning approval after you'd asked for
2 it?

3 A. It's hard to speculate now because we didn't
4 have to get to that decision point. But it was our belief
5 that our existing certificate would have allowed us there, to
6 build there. And given the alternatives, we decided not to
7 pursue our legal remedy. But I would assume if we would not
8 have had a choice, in fact, we would have pursued our legal
9 remedy.

10 Q. And the City of Peculiar, you say, invited you
11 to look at this alternative -- alternate site?

12 A. The City of Peculiar approached us and said
13 they had identified a site. We worked with them on that site.
14 At the time the landowner --

15 Q. If you could -- if you could just answer my
16 question, Mr. Empson. And I'll let you expand in a moment, if
17 you want to, but --

18 A. Not the specific site -- I'm sorry.

19 Q. The City of Peculiar approached you -- Aquila
20 in regard to an alternate site; is that correct?

21 A. That is correct.

22 Q. And did you personally discuss this with the
23 representatives of Peculiar?

24 A. I personally did not.

25 Q. Who did?

1 A. It would be Terry Hedrick was heavily involved,
2 he'll be a witness. Glen Keefe (ph.), our operating vice
3 president, and Mark Dawson, who is head of our economic
4 development group.

5 Q. All right. And so you don't know, of your own
6 personal knowledge, who the representatives of Peculiar would
7 have been that they discussed this invitation with?

8 A. Yes, I do. City manager, Mike Fisher.

9 Q. Mike Fisher. And this property that they told
10 you they thought would be a good site, was it specifically the
11 property that you have the aerial photo of that you're
12 constructing on today?

13 A. The initial site was not.

14 Q. It was not. Was the initial site somewhere
15 inside of the city limits of Peculiar?

16 A. It -- the best of my knowledge, it was not. It
17 was right on the outside of the city limits. But, again,
18 Mr. Hedrick could address that in more detail.

19 Q. And do you know why that site was not utilized?

20 A. When we approached the landowner, he was not
21 willing to sell.

22 Q. Was that site a site that had the gas line
23 close by?

24 A. Again, I -- I wasn't involved in the direct
25 evaluation. And since we didn't get any further than seeing

1 if he was willing to sell, we never completed the detailed
2 site review for that alternative location.

3 Q. All right. So you don't know?

4 A. I do not know.

5 Q. Is this site inside of the city limits of
6 Peculiar?

7 A. It is not.

8 Q. How far outside is it?

9 A. It's about 3 miles south and west of the City
10 of Peculiar.

11 Q. And were you invited by representatives of the
12 governmental body that it -- whose territory it's located
13 within to site in their territory?

14 A. We were not invited by Cass County, no.

15 Q. That is within Cass County], in other words?

16 A. Yes, it is.

17 Q. And it is not in any other incorporated area?

18 A. To the best of my knowledge, it is not.

19 Q. So Peculiar invited you to come in outside of
20 its city limits?

21 A. That is correct.

22 Q. It wasn't a case of, We want you here but we
23 don't want you too close?

24 A. No. The best of my knowledge would be when
25 you're locating this site, you're going to have to move out

1 from the City of Peculiar or any probably city limits in order
2 to find the acreage that you need and the infrastructure that
3 you would need with the transmission and natural gas
4 interstate pipeline site or facilities.

5 Q. Okay. Do you know that specifically there
6 wasn't a site within the city limits that would have worked?

7 A. I do not know.

8 Q. Okay. From the standpoint of the taxes and the
9 changes in the taxes and the Chapter 100 treatment, do you
10 have specifics on the differences in all the political
11 subdivisions as a result of the change in the taxes from what
12 would be the case if you did not build under Chapter 100?

13 A. Our company would have that. I do not
14 personally have it with me.

15 Q. Does someone have it available to us?

16 A. I will -- I'll check. We can make it
17 available.

18 Q. I think that may be something that should be
19 done, if you could do that, Mr. Empson.

20 A. I'll be glad to.

21 Q. Do you know where the location would be of the
22 pipeline that would be constructed to go to the Panhandle
23 Eastern line?

24 A. I couldn't give you specifically where it is
25 coming in, but it's my understanding it's going to come in

1 from the south part of the site. But Mr. Hedrick could
2 probably give you more what the alignment is going to be
3 coming in.

4 Q. Okay. The 69 kV line that runs there, will
5 that line be sufficient without being improved to carry the --
6 to transmit the electricity generated from this plant if it's
7 built?

8 A. No. We are rebuilding part of the transmission
9 going up to 161 kV, which will also help reenforce the
10 reliability in the general vicinity.

11 Q. Is that going on now?

12 A. Yes, it is. My understanding is the majority
13 of the transmission itself is completed. We have the
14 substation at the site and the substation north is still under
15 construction.

16 Q. When will that transmission improvement update
17 be completed?

18 A. In time for us to fire the plants coming up
19 mid-June -- mid to late June.

20 Q. Okay. Mr. Empson, you asked earlier whether
21 we'd received those e-mails. I don't know if we have or not.
22 And the judge may be able to verify that.

23 JUDGE MILLS: I know there were a large number
24 of e-mails made a part of the record from the local public
25 hearing.

1 COMMISSIONER GAW: If they're already in, then
2 I don't need additional copies, but if there are some missing
3 or you wish to update them, I will allow that to happen -- I
4 mean, that would be fine with me. So I'm not going to ask you
5 questions, but I'm -- you mentioned it and I'm not sure what
6 we have here so if counsel could check and see whether or not
7 it's complete.

8 BY COMMISSIONER GAW:

9 Q. Mr. Empson, you said that you didn't need any
10 additional authority. Is that still the case if the Western
11 District upholds the circuit court decision in Cass County,
12 that you don't need any additional authority in order to site
13 and build this plant?

14 A. I'd probably need to defer to our lawyers on
15 that question, Commissioner. I could not answer.

16 Q. So you're not sure of the answer to that
17 question in regard to the circuit court decision in answering
18 that question earlier about whether or not you need additional
19 authority?

20 A. That is correct.

21 Q. Did the circuit court tell you not -- did the
22 circuit court grant an injunction against you constructing
23 this plant?

24 A. Yes, they did.

25 Q. And you're constructing it despite that

1 injunction as a result of posting a bond to cover damages as a
2 result of pursuing the construction contrary to the
3 injunction; isn't that correct?

4 A. We are -- yes, we are continuing to build the
5 plant with our bond posted.

6 (Hearing interrupted.)

7 JUDGE MILLS: That reminds me to issue my usual
8 warning. Please turn off your cell phones during the course
9 of this proceeding so we're not disturbed.

10 COMMISSIONER GAW: Judge, it's usually mine
11 going off. Fortunately or unfortunately, Judge, you have
12 distracted me from my next question.

13 BY COMMISSIONER GAW:

14 Q. Mr. Empson, earlier you were asked a question
15 about whether -- in regard to taxes and tax savings. Do you
16 recall some of those questions?

17 A. Yes, I do.

18 Q. And when you were asked about the savings, I
19 think counsel for stopaquila was inquiring as to whether or
20 not those savings would -- were savings for Aquila. And to
21 paraphrase, I believe you said something like those would be
22 passed along to consumers; is that correct?

23 A. There were -- yes, it is correct, that they're
24 more of a phantom savings because we'll never be taxed that
25 amount. So that benefit is to our customers. So there is no

1 outlay of cash.

2 Q. So that would be the case so long as there was
3 a rate case that would have captured that savings; isn't that
4 correct?

5 A. No, it would not be correct.

6 Q. So you would pass those savings along
7 immediately despite the fact there was no intervening rate
8 case?

9 A. Again, I guess it's -- I've complicated this
10 too much. If -- if we were outside of a rate case, our
11 shareholders bear all the taxes that are being paid until we
12 file a rate case and collect those costs in our case.

13 Q. But they would also benefit from any tax
14 savings that occurred since the last case?

15 A. But these would be all incremental taxes
16 applied to a new facility. And so that incremental amount
17 and -- if I might digress just a minute and make sure. If we
18 were -- I think the numbers that Mr. Eftink used was a savings
19 of let's say \$14 million. That savings exists but is never
20 billed. The only thing that's going to be billed is the net
21 amount of the Chapter 100 bonds.

22 So if we would not have used Chapter 100, we
23 would have paid, in effect, 14 to 17 million dollars more in
24 taxes that now we're not required to pay.

25 Q. In fact, Mr. Empson, isn't it likely that

1 you're going to -- you would file an intervening rate case to
2 capture the new assets as closely as possible to the time
3 they're put into service?

4 A. Yes.

5 Q. Have you filed that rate case yet?

6 A. We have not filed that rate case yet.

7 Q. But you intend to?

8 A. We do intend to file a rate case coming up in
9 May of -- of this year that reflects changes since our last
10 rate case. And as also you might recall, our interim energy
11 charge expires in two years. So we need to come back in and
12 have that reconsidered and either reinstituted or some other
13 action taken to recover fuel costs.

14 Q. So if you filed in May, you would anticipate at
15 the maximum taking 11 months from filing?

16 A. That is correct.

17 Q. Who owns those generating units currently, the
18 three generating units?

19 A. I don't know if I can give the -- the legal
20 answer, but right now they are part -- I consider them part of
21 our utility operations and we have -- we are using those
22 turbines to build South Harper.

23 Q. Was there cash paid over to -- let me ask you
24 this. Who owned those three turbines last year?

25 A. Our Aquila Merchant Services -- in general,

1 I'll just classify it as that and I'm not sure of the legal
2 entity, but it was owned by the merchant side of our business.

3 Q. And is that a separate corporate entity or is
4 it a division of Aquila?

5 A. A legal question, but I -- my understanding is
6 it was owned by a subsidiary, so it would have been a legal
7 subsidiary that would have then transferred them over to the
8 utility.

9 Q. When did that occur?

10 A. I can't give you the exact date. It would have
11 occurred in 2004, sometime toward the latter part of 2004.

12 Q. Was there money paid by Aquila to the
13 subsidiary in that transfer?

14 A. It would be my -- my understanding that it was
15 just kind of transferred from one book entity to another --
16 another book entity because the turbines move from the
17 merchant side to the utility side.

18 Q. What value was given to the subsidiary in
19 exchange?

20 A. Well, realizing this was an affiliate
21 transaction, we went out and hired R.W. Beck to determine what
22 that value should be. Because given the standard in Missouri
23 being lower of cost or market, we wanted to make sure we were
24 transferring what we thought was an appropriate value. R.W.
25 Beck did go out, did detailed analysis that has now been

1 submitted as part of another proceeding where that value will
2 be judged and evaluated by the Commission. I don't know the
3 exact dollar amount, but I know that we did take some write
4 down on those turbines as they were moved from the merchant to
5 the utility.

6 Q. But you don't know whether there was cash paid
7 or whether there was something else recorded on the books to
8 indicate there's now money owed to the subsidiary by Aquila?
9 You don't know the answer to that?

10 A. I do not know, but I'll be sure --

11 Q. Is there somebody --

12 A. I'd be happy to defer.

13 Q. It somebody here that knows that?

14 A. I will check to see. If not, we can make a
15 call to find out.

16 Q. Okay. You already testified that the Aries
17 plant was a co-venture by one of the subsidiaries of -- may
18 have been called UtiliCorp at the time. I don't know when it
19 started out. You can clarify whatever you want to on how that
20 was done, but it was a co-venture with Calpine; is that
21 correct?

22 A. Yes. I just have basic knowledge about that
23 because I've always been on the utility side of the business.
24 So I would not have been in the details of how that
25 transaction developed. Our interest was purely in 1999, we

1 needed some power, we took some competitive bids for power.

2 Q. So you don't know anything about the Aries
3 plant at all, Mr. Empson? If I ask you questions about it,
4 you're going to tell me I need to ask somebody else, before I
5 start down that road of asking questions about the Aries plant
6 and taking a few minutes?

7 A. Yes. I -- I'm really on the utility side of
8 the business. We're required to keep separations, so I was
9 not involved in the details except for understanding that we
10 took competitive bids for power back in 1999.

11 Q. And you wouldn't know anything about the
12 decisions made on the unregulated side of UtiliCorp or Aquila,
13 whatever the case may be, in regard to who they thought would
14 be in need of the power when the Aries plant was initially
15 planned and later constructed?

16 A. I really couldn't testify to that,
17 Commissioner.

18 Q. Someone's here who could though, aren't they?

19 A. I'm not sure we have representatives from our
20 merchant business here today. We have primarily utility
21 personnel here today. And they can talk only about our side
22 of that transaction. I'm not aware we have someone that could
23 talk about the merchant part.

24 Q. But there are people here who can talk about
25 the availability of that energy and the costs and prices for

1 that energy?

2 A. Very much so. Mr. Boehm will be glad to
3 address those details.

4 Q. You also stated earlier that there was no --
5 something to the effect, correct me if I'm wrong, that there
6 was no longer much merchant business or unregulated business
7 for Aquila, that you were winding those operations down,
8 something to that effect?

9 A. That's correct.

10 Q. Are you completely out of that business today
11 or can you give me some idea --

12 A. Essentially we are. We -- we still from a
13 corporate perspective -- my understanding is the merchant has
14 three peaking facilities located maybe in the Chicago area and
15 down south somewhere. I'm not real familiar with them. We
16 have a minor part of our trading book that's just kind of
17 winding down, but I think that is pretty much what's left of
18 the merchant business.

19 Q. You've also made public announcements of late,
20 have you not, that you're not -- that you're in the process of
21 putting up for sale portions of your regulated business at
22 this point? And I'm saying you, I mean Aquila.

23 A. That's correct.

24 Q. One of those -- well, what entities on the
25 electric side are up for sale in the Missouri/Kansas region?

1 A. We took the St. Joe part of the Missouri
2 electric operations and included that as one of the six
3 properties. We took our Kansas electric operations and
4 included that as part of the process. We have a total of
5 about six properties that we are going out to the marketplace.
6 And then we will sell a subset of that based upon the
7 valuations in the marketplace.

8 Q. All right. And is the Kansas portion of
9 Aquila's business close to the Missouri line or not?

10 A. It's spread out a lot in Kansas. Primarily
11 you're going almost north to south and then through the center
12 part of the state. Our office there is in Great Bend for our
13 Kansas electric operations.

14 Q. So is there spillover across the line there of
15 Aquila's business from Missouri to Kansas along the Cass
16 County/Jackson County areas? I'm just not sure how that
17 service territory looks in Kansas. So if you can help me with
18 that, that --

19 A. If they're -- I'm not sure if there's
20 spillover. They really are operated as two distinct different
21 utilities. They're not operated as a single utility business.
22 So the peaking facility that we're building in Missouri is to
23 meet the demands of our Missouri customers, not to meet the
24 demands of our Kansas customers.

25 Q. Does Kansas have adequate generation currently

1 without adding any generation?

2 A. At the present time we do.

3 Q. And is that -- okay. Are those two systems
4 interconnected?

5 A. They are interconnected by a transmission
6 system, yes.

7 Q. Do you have -- do you think someone might have
8 a map of those service territories that could get -- that we
9 could look at a little later?

10 A. We can get -- I don't know if anybody brought a
11 map, but we can sure try to get one sent over from Kansas
12 City.

13 Q. Okay. Perhaps Staff has some. I don't know.
14 Someone else might.

15 MS. SHEMWELL: Not of Kansas.

16 COMMISSIONER GAW: I see heads shaking no at
17 this point.

18 BY COMMISSIONER GAW:

19 Q. Is the St. Joe area -- is it separated from the
20 rest of Aquila's territory in Missouri, the St. Joe portions
21 that are up for sale?

22 A. I guess there's two forms of separation, one on
23 a tariff basis. We have separate tariffs for MPS and separate
24 tariffs for St. Joe. But as far as an operational basis,
25 they're integrated to some extent. And I couldn't give you

1 details of how they are integrated as far as electricity flows
2 or anything, but we do have other people here that could
3 address that.

4 Q. Okay. They are all under one corporate entity,
5 not in separate subsidiaries or corporations though. Correct?

6 A. That is correct.

7 Q. That took place when Aquila purchased
8 St. Joe -- UtiliCorp purchased St. Joe, they were merged
9 together. Correct?

10 A. In a -- yes, they are merged together, but
11 they've maintained, as I mentioned, separate tariffs and cost
12 structures.

13 Q. Do you know the generating units that are
14 allocated to St. Joe and those that are allocated to MPS?

15 A. I could not answer that question, but we do
16 have someone here that could.

17 Q. Who is that?

18 A. That would be Glen Keefe. He's not one of the
19 listed witnesses, but he's head of our Missouri electric
20 operations in total.

21 Q. I would like to ask him some questions I think
22 at some point. I will spare you going through that,
23 Mr. Empson.

24 A. I appreciate that. Thank you.

25 Q. Yes. Do you know if the Iatan facility is

1 allocated to one or both?

2 A. I can't answer that question, Commissioner.

3 Q. And do you know anything about additional sites
4 that were examined by Aquila in addition to these -- to the
5 three sites I believe that you have mentioned, the one in
6 Harrisonville and the two around Peculiar?

7 A. I would -- it would be best to defer to Chris
8 Rodgers. He'll be able to testify about all the different
9 sites that were looked at --

10 Q. All right.

11 A. -- and what factors were considered.

12 Q. Do you know if he intends to discuss that or
13 not?

14 A. It's my understanding Mr. Rodgers does intend
15 to discuss that as part of his formal testimony.

16 Q. Okay.

17 COMMISSIONER GAW: I believe that's all I have,
18 Judge. Thank you.

19 Thank you, Mr. Empson.

20 THE WITNESS: Thank you.

21 JUDGE MILLS: Yes, Ms. Shemwell.

22 MS. SHEMWELL: Before we break, I would like to
23 let Commissioner Gaw know that Cary Featherstone is here and
24 may be in a position to answer questions he may about the
25 Aries plant.

1 JUDGE MILLS: Thank you.

2 I think at this point -- it's about 12:20,
3 we're going to go ahead and take a lunch recess. When we come
4 back, we'll do cross-examination based on the questions from
5 the Bench and then a round of redirect. But we will be off
6 the record until 1:30.

7 (A recess was taken.)

8 JUDGE MILLS: We're back on the record after
9 the lunch recess. We are ready to begin with
10 cross-examination from the parties based on questions from the
11 Bench beginning with the Staff. Ms. Shemwell.

12 MS. SHEMWELL: No questions. Thank you.

13 JUDGE MILLS: For Public Counsel.

14 MS. O'NEILL: No questions.

15 JUDGE MILLS: Mr. Comley.

16 CROSS-EXAMINATION BY MR. COMLEY:

17 Q. Mr. Empson, I'm going to follow up on some
18 questions that Commissioner Appling asked you. Correct me,
19 did you say in your testimony that you acquired a grading
20 permit from the county?

21 A. We had a letter from the chairman saying that a
22 grading permit was not required --

23 Q. Okay.

24 A. -- we could go -- so we went ahead and
25 proceeded. I'm sorry.

1 Q. I wanted to clarify that. I think that's also
2 a matter of our joint stipulation --

3 A. Okay.

4 Q. -- and that fact is covered in that point.

5 Let me go through you -- Commissioner Appling
6 asked you about why you did not go through the zoning process
7 with Cass County. And let me have it straight, the chronicles
8 of events. My understanding is that the company had selected
9 a site in unincorporated Cass County near Harrisonville at one
10 point for this plant; is that correct?

11 A. That is correct.

12 Q. And at that point the company did apply for a
13 special use permit to construct the plant just outside of
14 Harrisonville in an unincorporated area of Cass County; is
15 that correct?

16 A. That is correct.

17 Q. And that would have been -- I'm trying to
18 recall the name of that area. Was it Camp --

19 A. Camp Branch.

20 Q. Camp Branch energy area. Excuse me. I'll find
21 it here in a moment.

22 That was in June of 2004, if you can recall?
23 Was that in June 2004 when you applied for a special use
24 permit for the plant near Harrisonville, do you know?

25 A. Yes. Right about the middle of June of 2004.

1 Q. Okay. Now, my understanding was that that
2 special use permit was denied after a public hearing; is that
3 correct?

4 A. Well, I don't believe it was formally denied.
5 A recommendation was made by a -- kind of a sub-organization
6 with the county that these -- the special use permit not be
7 granted. But it never went before the full commission to be
8 denied.

9 Q. Now, are you talking about the County
10 Commission?

11 A. Yes.

12 Q. All right. See if you understand this. There
13 would be a Planning and Zoning Board that would first review
14 the application. Are you familiar with that process?

15 A. Yes, I am.

16 Q. And then there would be a Board of Zoning
17 Adjustment, which I think is composed of all the commissioners
18 of the county; is that correct?

19 A. That's my understanding, yes.

20 Q. And your testimony is that that special use
21 permit -- the next step for it would have been the plan -- the
22 Board of Zoning Adjustment; is that correct?

23 A. That's my understanding, yes, it's correct.

24 Q. Now, at some point did Aquila request that the
25 hearing before the Board of Zoning Adjustment be continued?

1 A. That's my understanding, yes.

2 Q. And can you tell me why that was the case?

3 A. At the time we were approached by another
4 interested party in the City of Peculiar.

5 Q. City of Peculiar?

6 A. Right.

7 Q. Was that Mr. Mike Fisher at that time was
8 talking to Aquila?

9 A. Yes. He was talking to our economic
10 development personnel, yes.

11 Q. And Mike Fisher did not talk with you directly;
12 is that correct?

13 A. Not with me directly, no.

14 Q. And the e-mails that we've been talking about,
15 would the e-mails have been between Mr. Fisher and your
16 economic development person?

17 A. I think it was between several people. It
18 might have been between Mr. Fisher and economic development,
19 could also be Terry Hedrick --

20 Q. Terry Hedrick?

21 A. -- who was the project manager on this case,
22 yes, sir.

23 Q. All right. All right. Aquila eventually
24 withdrew the application for special use permit for the
25 Harrisonville site; is that correct?

1 A. That is correct.

2 Q. And I'm gathering that is because negotiations
3 with the Peculiar folks had gone to a stage where you were
4 ready to go and focus more on the Peculiar area. That's kind
5 of a funny way of saying it. I hope the record will put a
6 capital P on Peculiar.

7 A. That's my understanding, that's correct.

8 Q. Okay. Did Aquila select the Bremer property
9 for the site of the plant we're talking about, the South
10 Harper facility, because it could have been annexed by the
11 City of Peculiar?

12 A. That was one of the condition -- or one of the
13 considerations, yes, that the City of Peculiar was agreeable
14 to annex that property, that's correct.

15 Q. So I'm gathering that this property was also in
16 a place where the City of Peculiar and Aquila believed it
17 could be annexed voluntarily?

18 A. That is correct.

19 Q. Isn't it true that there was a residential kind
20 of uprising against having that annexation go through?

21 A. I believe there was some -- some residents that
22 went to the Board of Aldermen to protest against that. I
23 don't know what you characterize as an uprising. I'm not sure
24 I -- how to characterize that.

25 Q. Anyway, there was some dissent by residents.

1 Ultimately, the City of Peculiar did advise Aquila that that
2 area would not be annexed; is that correct?

3 A. That is correct.

4 Q. Can you remember when you were advised of that?

5 A. I don't call -- recall the exact date, but I'm
6 sure Mr. Terry Hedrick would.

7 Q. It's true, isn't it, that Aquila did file for
8 rezoning of the area for the Peculiar substation with the
9 County of Cass?

10 A. We did initially, that's correct.

11 Q. And I think -- I'm looking at a stipulated fact
12 here. On September 29th, 2004 Aquila filed an application for
13 rezoning of the Peculiar substation tract from agricultural to
14 industrial one for purposes of constructing Peculiar
15 substation. Is that a correct rendition of the facts as you
16 understand them?

17 A. The way I understand them, yes, that's correct.

18 Q. All right. Were you aware that at the request
19 of Aquila, the application for rezoning of that tract was
20 continued from the Planning and Zoning Board hearing scheduled
21 for October 26th, 2004?

22 A. I was, yes.

23 Q. Okay. And isn't it true that on November 19th,
24 2004 Aquila withdrew its application for rezoning of tract B?

25 A. I believe that is correct, yes.

1 Q. I think in your testimony and in your response
2 to Commissioner Appling, you said that Cass County told you
3 that it would deny zoning -- the rezoning request for Aquila?

4 A. That is correct.

5 Q. Who did you talk with at the county about that?

6 A. Mr. Keefe, Mr. Stamm (ph.) and several others
7 met with Gary Mallory to say what could we do to hopefully
8 overcome some of the -- the issues that were raised in Cass
9 County at the Harrisonville site.

10 And basically the reaction was we had very
11 little support -- since we didn't have any local support or --
12 or from the city of like Harrisonville and others, that he --
13 he was telling us the vote would be to deny the special use
14 permit.

15 Q. Did you personally have conversations with
16 Mr. Mallory?

17 A. I did not.

18 Q. So your information is coming from Mr. Stamm?

19 A. Coming from Mr. Stamm or Mr. Keefe. Mr. Keefe
20 reports directly to me.

21 Q. Did you happen to review Mr. Stamm's testimony
22 at the hearing in front of Judge Dandurand?

23 A. I don't recall. I read part of the transcript.
24 I don't remember focusing on what Mr. Stamm said at the
25 testimony before Mr. Dandurand.

1 Q. But your testimony, you understood that
2 Mr. Mallory was the one who told you that Cass County would
3 never approve an application for rezoning of that area?

4 A. I will -- I will defer to Mr. Keefe. He is
5 here. I think we plan on calling him, but that's my
6 understanding, the advice was they were not -- they were going
7 to deny the special use permit for the Harrisonville site.

8 Q. I'm presuming that that kind of information
9 came after you had withdrawn your special use permit request
10 for the Peculiar substation site?

11 A. You know, all the timing for this, I'd have to
12 really sit down and look at notes but -- I couldn't tell for
13 sure, but I assume so, yes.

14 Q. You said Mr. Keefe -- you understand that
15 Mr. Keefe did have direct conversation with Mr. Mallory?

16 A. Met with the Cass County -- it's my
17 understanding Mr. Mallory was present during that meeting,
18 yes.

19 Q. It's true, isn't it, that Aquila did not ever
20 file an application for a special use permit for the 74-acre
21 tract for the South Harper facility; is that correct?

22 A. That's correct.

23 Q. The only special use permit you filed was for
24 the Peculiar substation?

25 A. I believe we filed not a special use permit,

1 but it might have been a zoning application for the
2 substation.

3 Q. You're exactly right. It was an application
4 for rezoning.

5 And in the same context, you did not file an
6 application for rezoning for the South Harper -- South Harper
7 plant site; is that correct?

8 A. That's correct.

9 Q. We've referred to that as tract A in our
10 stipulation.

11 MR. COMLEY: That's all I have.

12 JUDGE MILLS: Thank you.

13 Mr. Eftink.

14 CROSS-EXAMINATION BY MR. EFTINK:

15 Q. The application for the special use permit for
16 the Camp Branch facility was finally withdrawn after the trial
17 that was held in January 2005; is that correct?

18 A. It was withdrawn. I can't remember if it was
19 before or after the trial was held.

20 Q. And the application for rezoning for the
21 substation was withdrawn before the trial. Correct?

22 A. I'm sure it's in the stipulation of facts.

23 Q. Okay. Now, you talked about how -- I think
24 your words were that there was public support for this peaking
25 facility about 3 miles outside of Peculiar. You were aware

1 that there were news reports on television in Kansas City
2 about the number of people who came to the City Council
3 meetings in October and November 2004. Correct?

4 A. Correct.

5 Q. Okay. And at the City Council meeting in
6 October 2004, there were a large number of people protesting
7 this power plant. Correct?

8 A. I'm not sure what the purpose of that City
9 Council meeting was, if it was on the annexation and the steps
10 to be taken to annex or if it was on Chapter 100 and what
11 their protest was. So I couldn't just agree with the exact
12 words that you used.

13 Q. Regardless, it had to do with the power plant?

14 A. That's correct.

15 Q. And that was in October 2004. Correct?

16 A. If it's in the stipulation of facts when that
17 occurred, then that's correct.

18 Q. Well, I'd like to ask you if you were aware of
19 the television reports about the big crowd of people that came
20 to the City Hall meeting in Peculiar in mid-October 2004 to
21 protest this?

22 A. I am aware, I just cannot specify the timing
23 for that. It's been a long time so I couldn't tell you if it
24 was mid-October, early November or late September. But I am
25 aware that there was some people that showed up at the Board

1 of Aldermen's meeting.

2 Q. And you're aware it was a crowd of about 150
3 people protesting?

4 A. I'm not aware of the numbers, no.

5 Q. And you're aware that there was a news report
6 about a meeting held in November at the Lion's Club in
7 Peculiar that had to do with the Department of Natural
8 Resources and this power plant?

9 A. Again, I know there was a public hearing that
10 was held on our air permit. I couldn't tell you if it was at
11 the Lion's Club specifically or the exact date in November.

12 Q. And are you aware that the news media reported
13 that there was a large crowd that appeared to be opposed to
14 the power plant?

15 A. I will agree with that. I did not -- I don't
16 recall reading the story specifically on the air permit.

17 Q. Okay.

18 MR. EFTINK: No further questions.

19 JUDGE MILLS: Thank you.

20 Mr. Boudreau, redirect.

21 MR. BOUDREAU: Yes, thank you. Just a few
22 questions.

23 REDIRECT EXAMINATION BY MR. BOUDREAU:

24 Q. Mr. Empson, first, just kind of a housekeeping
25 matter. I believe early in your testimony in response to a

1 question that you received from Mr. Eftink, you referred to
2 the Minnesota Department of Natural Resources or DNR. Did you
3 misspeak?

4 A. I did misspeak. It should have been the
5 Missouri Department of Natural Resources. Thank you.

6 Q. Commissioner Appling has also asked you about
7 why the company decided not to go through the planning and
8 zoning process with Cass County with respect to the South
9 Harper facility in contrast, I suppose, to its filings
10 associated with the Camp Branch facility. Do you recall that?

11 A. Yes, I do.

12 Q. Was there some expectation from the company
13 that the property upon which the South Harper facility has
14 been constructed or is being constructed was going to be
15 annexed by the City of Peculiar?

16 A. Yes. That was the agreement that we were
17 working with the City of Peculiar on, yes.

18 Q. Okay. And how would that have affected the
19 company's practice or conduct with respect to planning and
20 zoning with respect to that site?

21 A. Well, it would -- once it was annexed, it would
22 not require us to go to Cass County to get it rezoned.

23 Q. So that would be a factor that would
24 distinguish it from the Camp Branch site?

25 A. That's correct.

1 Q. Thank you.

2 I believe Commissioner Gaw asked some questions
3 about the construction activities that have occurred
4 subsequent to the issuance of the final judgment of Judge
5 Dandurand. Do you recall that?

6 A. Yes, I do.

7 Q. And I believe the question was whether or not
8 the company was continuing to build the site basically I
9 suppose at odds or adverse to the judgment. Do you recall
10 that?

11 A. Yes, I do.

12 Q. Would you agree with me, sir, that the
13 injunction of Judge Dandurand has been stayed pending the
14 appeal?

15 A. Yes, I would.

16 Q. So the terms of the injunction are not in
17 effect at this time; is that correct?

18 A. That is correct.

19 Q. I believe there were also some questions about
20 the tax savings. I wanted to explore that. Not in a lot of
21 depth, but I wanted to come back to that.

22 I believe your testimony was that basically
23 this was not an expense because the tax savings is a
24 non-outlay for the company; is that correct?

25 A. That is correct.

1 Q. Okay. Now, with respect to current rates, are
2 any of the taxes or the tax savings associated with the
3 property taxes with this facility reflected in current rates?

4 A. No. At this time there would be zero taxes in
5 current rates for this -- taxes in current rates for this
6 facility being built in Peculiar.

7 Q. Okay. So if some tax bill were to come with
8 respect to this or some PILOT payment associated, that's not
9 going to be reflected in current rates?

10 A. That is correct. It would not be reflected in
11 rates until we file a rate case to get recovered.

12 Q. Right.

13 A. And then it would only be those taxes that we
14 were paying, like a PILOT payment, which would not be the full
15 assessed value that we have been discussing back forth.

16 Q. Right. So there's no taxes that are built into
17 current rates? There's no tax expense in terms of regular
18 property tax expense built into current rates associated with
19 this facility with respect to which the company would realize
20 savings during the interim time between now and the time the
21 new -- the rate case or the new rates go into effect; is that
22 correct?

23 A. That's correct. If we were assessed taxes,
24 then we would pay those and not have the recovery in rates.

25 Q. Okay.

1 JUDGE MILLS: Mr. Boudreau, before you go on,
2 can you identify for the record the acronym PILOT?

3 MR. BOUDREAU: Oh, excuse me. PILOT is an
4 acronym for Payments In Lieu Of Taxes.

5 JUDGE MILLS: Thank you.

6 MR. BOUDREAU: Thank you.

7 BY MR. BOUDREAU:

8 Q. One last thing. I believe that you received
9 some questions from Commissioner Gaw about generally the
10 electric service territories in Missouri and Kansas; is that
11 correct?

12 A. That is correct.

13 Q. Have you been able to obtain some information
14 about the electric -- or electric distribution service
15 territories of Aquila in the state of Kansas?

16 A. Yes, I have. We called back and had them fax
17 us -- or send us over a map of where we are in the state of
18 Kansas.

19 MR. BOUDREAU: I would like to mark a document
20 as an exhibit.

21 MR. BOUDREAU: We're up to 103.

22 (Exhibit No. 103 was marked for
23 identification.)

24 MR. BOUDREAU: May I approach the witness?

25 JUDGE MILLS: Yes, you may.

1 BY MR. BOUDREAU:

2 Q. Mr. Empson, I've handed you what has been
3 marked for identification purposes I believe as Exhibit 103.
4 Do you have that document?

5 A. Yes, I do.

6 Q. Do you recognize that document?

7 A. This is the document that we requested from our
8 Kansas operations to be sent over to give a pictorial
9 representation of where our Kansas electric properties are.
10 And as I attempted to describe the question for Commissioner
11 Gaw, we're primarily in the central part of Kansas running
12 from the north to the south.

13 Q. Okay.

14 MR. BOUDREAU: With that, I'd offer Exhibit
15 No. 103.

16 JUDGE MILLS: Are there any objections to the
17 admission of Exhibit No. 103?

18 Hearing none, it will be admitted.

19 (Exhibit No. 103 was received into evidence.)

20 MR. BOUDREAU: Just for the record, I'll
21 indicate that with any kind of luck, I'll be able to get in
22 another document here with a subsequent witness that will
23 reflect the service territories -- electric service
24 territories in Missouri because I believe that was another
25 facet of Commissioner Gaw's question.

1 JUDGE MILLS: All right. Thank you.

2 MR. BOUDREAU: I believe that's all the further
3 questions I have for Mr. Empson. Thank you.

4 JUDGE MILLS: Thank you.

5 Mr. Empson, you may step down.

6 MR. BOUDREAU: I'd like to reserve the right to
7 re-call Mr. Empson to the stand if needed. And he will
8 certainly be available if the Commissioners have any
9 subsequent questions later on in the hearing. Thank you.

10 JUDGE MILLS: Okay. Mr. Boudreau, I believe
11 you indicated your next witness is Mr. Boehm?

12 MR. BOUDREAU: Yes. I'd like to call Mr. Jerry
13 Boehm to the stand, please.

14 (Witness sworn.)

15 MR. BOUDREAU: May I proceed?

16 JUDGE MILLS: Go ahead.

17 MR. BOUDREAU: Thank you.

18 JERRY BOEHM testified as follows:

19 DIRECT EXAMINATION BY MR. BOUDREAU:

20 Q. Would you state your name for the record,
21 please, sir?

22 A. My name is Jerry G. Boehm.

23 Q. By whom are you employed and in what capacity,
24 sir?

25 A. I'm employed by Aquila. My title is manager of

1 resource planning.

2 Q. Would you please state what kind of
3 professional experience you have that qualifies you for the
4 position you hold?

5 A. I hold a degree of electrical -- bachelor of
6 science electrical engineering from Missouri. I'm a
7 registered electrical engineer in the state of Missouri. I
8 have experience as a transmission planner, generation planner,
9 integrated resource planner.

10 Q. Would you briefly describe your
11 responsibilities as manager of resource planning for Aquila?

12 A. There's a number of responsibilities, including
13 fuel budgeting, rate case fuel analysis, resource planning.
14 Today I'm actually representing the -- two factors in here.
15 One is the need for additional capacity, and the second one is
16 an analysis and recommendation of the best resource to use for
17 it to fulfill that capacity.

18 Q. You are aware that the Commission held a public
19 hearing in Harrisonville on the evening of March 15th, 2005?

20 A. Yes, I'm aware of that.

21 Q. Are you aware that there were a number of
22 statements that were made opposing the power plant being
23 constructed near the City of Peculiar, Missouri on a number of
24 grounds, not the least of which is the alleged availability of
25 power from a combined cycle generating plant by the name of

1 Aries?

2 A. Yes, I'm aware of that.

3 Q. Okay. Are you prepared to discuss that
4 particular issue here today?

5 A. Yes, I am.

6 Q. Okay. Just for the record, can you state what
7 company or entity owns the Aries generating plant?

8 A. To my knowledge, it's I think wholly owned --
9 it's a subsidiary -- or ultimately it's owned by Calpine.

10 Q. Okay. Thank you.

11 Well, let me just start from the beginning.
12 Let me just ask you the question. With respect to the South
13 Harper peaking power station, why is Aquila -- well, let me
14 just ask the more general question.

15 Why is Aquila building a power plant?

16 A. In the end of May of 2005, we have a
17 500-megawatt contract with the Aries sub-- power station
18 expiring. And we need to fulfill or replace that capacity and
19 approximately 50 megawatts of native load growth.

20 Q. When you say "50 megawatts of native load
21 growth," what do you mean by that kind of more in laymen's
22 terms?

23 A. The capacity and energy is for the native load
24 customers of our regulated utilities in Missouri.

25 Q. Okay. So this is demand that's created by

1 increasing population and just increasing demand for power in
2 your service area?

3 A. Yes. That's a small part of it. But there
4 is -- the biggest part of the demand is the loss of a contract
5 or the expiration of the contract.

6 Q. What type of power station is being built at
7 the South Harper location in Cass County?

8 A. It's a peaking unit power plant.

9 Q. And that is comprised of what?

10 A. Three 105-megawatt CTs, combustion turbines.

11 Q. When you say that the plant is being built to
12 meet -- well, let me ask you this.

13 Is this being designed to meet peak system
14 demand requirements?

15 A. That's typically the design --

16 Q. Okay.

17 A. -- requirement.

18 Q. And what do you mean by the term "peak system
19 demand requirements"? I mean, what is meant by that?

20 A. Well, I -- it might take a bit of a
21 demonstration of that, if I would.

22 Q. Well, let me come back to that.

23 A. Okay.

24 Q. We'll come back to that topic.

25 Just so the record's clear from your earlier

1 testimony, are all 550 megawatts of capacity needs that you've
2 identified, are they necessary to meet native load
3 requirements?

4 A. Yes. According to the stip-- the rules of
5 Southwest Power Pool and NERC, the capacity is needed, is
6 necessary and required to fulfill the requirements of the
7 native load customers.

8 Q. Let me ask you this. Why doesn't Aquila just
9 renew the expiring contract with Calpine?

10 A. When Aquila's faced with acquiring additional
11 capacity, we always go to competitive bidding process.

12 Q. Okay.

13 MR. BOUDREAU: At this time I think
14 Mr. Boehm's testimony is likely to delve into resource
15 planning criteria, plans, decisions, much of which is
16 considered by the company to be highly confidential in that it
17 can reveal its planning process and perhaps give parties an
18 advantage, or disadvantage Aquila, in the negotiating process.
19 So I would like to request that we go in-camera to explore
20 these various topics.

21 JUDGE MILLS: Okay. Let me ask you a basic
22 question. Has there been a protective order issued in this
23 case?

24 MR. BOUDREAU: There has been a protective
25 order issued. I couldn't tell you the exact date.

1 JUDGE MILLS: That's fine. It's not my case,
2 so I didn't know that off the top of my head.

3 Okay. Let me ask you this. Do you anticipate
4 that this testimony will be lengthy?

5 MR. BOUDREAU: My expectation is the testimony
6 may very well be fairly lengthy.

7 JUDGE MILLS: I'm just specifically talking
8 about the highly confidential portion.

9 MR. BOUDREAU: My expectation is that the
10 testimony will frequently move in and out of highly
11 confidential matters. Depends on the sorts of questions that
12 are asked. It depends on the sort of subject matter that's
13 elicited. A question may not necessarily in and of itself be
14 highly confidential, but the answer it elicits may be.

15 And my sense of it is that the exchange of the
16 information as between counsel and the witness and
17 Commissioners and the witness will be facilitated by not
18 having to pop in and out to be on guard for that instance. I
19 think I want to position Mr. Boehm so that he is free to
20 answer freely and coherently without giving me non-verbal
21 signals about what's highly confidential and what isn't.

22 JUDGE MILLS: I understand that. But I also
23 don't want to have, you know, large chunks of the transcript
24 kept classified as highly confidential, you know, if it's only
25 every tenth question that's going to elicit highly

1 confidential information.

2 So I'd like you to try to structure your
3 cross-examination so that all the highly confidential
4 questions will come together. And, if possible, I'd like to
5 do it at the end of this witness's direct examination. If you
6 need to do it --

7 MR. BOUDREAU: I would suggest that that will
8 not make for the most coherent record in terms of -- in terms
9 of explaining to the Commission the company's decision process
10 with respect to this plant, in particular, the Aries -- the
11 potential of Aries capacity as an option. These things are
12 all going to run together. I've actually given this some
13 thought about is there an easier way to do this and, frankly,
14 not without a totally disjointed record, in my opinion.

15 MS. O'NEILL: Your Honor, we would also object
16 to large chunks of this transcript being designated highly
17 confidential. We've got a large public interest in this
18 situation, we've got a lot of witnesses here and other people
19 from the community in Cass County and around Peculiar. And if
20 there is some way that we can structure this so that they are
21 excluded from as small a part of this hearing as possible, I
22 think that serves a public interest.

23 JUDGE MILLS: I agree, and that's what I'm
24 trying to do.

25 If you need -- for the purposes of setting the

1 foundation for further questions, if you need to do the highly
2 confidential portion first, that's fine. But I don't want
3 to -- there's two things I don't want to really do. I don't
4 want to have a big portion of the hearing classified as highly
5 confidential if it doesn't have to be, and I don't want to go
6 in and out of camera a dozen or more times this afternoon. I
7 mean, if we need to do it a couple times, that's fine, but I
8 want to avoid both of those outcomes, if at all possible.

9 So I'll tell you what, why don't we take a
10 10-minute recess and we'll figure out the best way to proceed
11 that way.

12 MR. BOUDREAU: I think we may have to.

13 JUDGE MILLS: We're off the record.

14 (A recess was taken.)

15 JUDGE MILLS: Please proceed, Mr. Boudreau.

16 MR. BOUDREAU: Thank you. And I apologize for
17 the interruption. I will try -- my objective is to try to
18 move as far down this road as I can staying with public
19 information, although some of the answers that Mr. Boehm may
20 give may be somewhat circumspect as a result of that. And
21 later on in the testimony we will embark on dealing with some
22 highly confidential information, but hopefully we'll only have
23 to do that one time, at least during his direct.

24 JUDGE MILLS: Okay. Great. I appreciate that.
25 And I think it may make it a little harder for you to do the

1 questions, but I think for the audience it will be easier to
2 follow along and I think that the transcript will be hopefully
3 easily followable, so please go ahead.

4 MR. BOUDREAU: We'll give it a try. Thank you.

5 BY MR. BOUDREAU:

6 Q. We were talking about competitive bidding
7 processes. Do you recall that, sir?

8 A. Yes.

9 Q. Let me just ask you generally. You mentioned
10 that -- well, what techniques do you use to develop an
11 analysis about the competitiveness of various bids for
12 electrical energy capacity?

13 A. The technique is overall referred to as
14 Integrated Resource Planning.

15 Q. Okay.

16 A. And the process of Integrated Resource Planning
17 involves collecting the load growth characteristics, the
18 existing resource project -- products that are available,
19 whether they be demand side or supply side resources. Supply
20 side resources would be power plants or purchased power
21 contracts. Demand side resources could be anything from
22 efficiency programs for the customers, possibly buy-back
23 programs for some of the industrials, things like that.

24 It's our job to use computer simulation
25 programs to model the existing facilities. Use those

1 facilities in a forward view of -- of future loads. And with
2 that, try to piece in this -- this new need or this new
3 capacity that is required. And in the process of doing that,
4 we choose and try to find the least cost result in that
5 process.

6 Q. Okay. Is this an ongoing process?

7 A. Yes. It -- it doesn't stop.

8 Q. Has the Commission adopted rules regarding
9 Integrated Resource Planning for use by electric utilities in
10 the state of Missouri?

11 A. Yes, they have.

12 Q. Would you please explain to the Commission
13 generally the IRP methods or the Integrated Resource Planning
14 methods that are used to analyze power plant needs?

15 A. Specifically, I guess you're looking for maybe
16 the programs that we might use or the -- the --

17 Q. Well, to speak a little bit to load forecasting
18 and RF -- the type of RFPs, the process that's gone through to
19 accomplish that objective.

20 A. Oh, yes. Initially we -- we get the load
21 forecast, which is I guess the fundamental piece in there.
22 And that is a forecast of the customer needs anywhere from the
23 next year to possibly 20 or 30 years.

24 We determine if there is a need for additional
25 capacity and energy, and at that time we try to quantify that

1 need. We also may do some preliminary analysis to determine
2 exactly what type of capacity is needed. And I'll get into
3 that later possibly, whether that capacity is a peaking unit,
4 possibly a base old unit or a combined cycle or intermediate
5 unit.

6 Once we have a feel for that, we'll put out a
7 request to anyone who will listen, we'll put out a public
8 request and ask for or request for proposals and state
9 specifically to the best of our knowledge what we need. Now,
10 we won't close the door on other bids, but we might go out and
11 say -- like recently we put out a bid for 2007 capacity needs
12 and we stated that we see a need for speaking capacity 2007
13 and possibly base low capacity 2010.

14 And we invite all interested parties to bid
15 into that process. And we also specify that those parties are
16 not required to fulfill all the needs of that, but are welcome
17 to bid partial needs of -- of the request. That's an external
18 point of view.

19 We also internally go to our engineering
20 department and we ask them if they would prepare
21 specifications and we treat them as if they're an outside
22 bidder. And we say, We want to see your bid to us as to what
23 it would cost to self-build a power plant. And we receive
24 bids from them.

25 Once we receive those bids, we take those bids

1 and do a certain amount of screening. There's some that are
2 just -- have to be weeded out, like possibly someone may bid
3 power to us, but say that we can have this power if we pick it
4 up in Louisiana. The transmission issues involved with moving
5 the power from their facility to ours might make us decide at
6 that point that no matter what their cost price is, the
7 possibility of moving that could be difficult or could be --
8 you know, we go to our transmission people and say, well, you
9 might be able to do it. But in some cases we get some bids
10 which are -- you know, we have to throw out, they just aren't
11 going to make it there.

12 Once we get that screening process done, we use
13 production simulation programs. And these are computer
14 programs that are have robust and -- very long -- they take a
15 long time to run them. These computer programs will run
16 scenarios of these -- each -- of these each individual
17 capacity proposals and test each one of those over a course of
18 anywhere from 5 to 20 years.

19 Once we have those production analysis numbers
20 together, we take a look at that and try to determine what
21 would be the least cost value of -- present value of revenue
22 requirements and declare that to be the least cost plan.

23 Now, we don't just throw everything else out,
24 but we keep some of the other plans and continue to
25 investigate them against sensitivities like changes in load

1 forecast, changes in fuel prices, changes in economic
2 conditions.

3 Q. Okay. So it's a dynamic process?

4 A. Very dynamic.

5 Q. You mentioned a little bit about screening the
6 responses that you get from RFP or request for proposals. Do
7 you recall that?

8 A. Yes.

9 Q. Is there also -- is there a concept called
10 resource screening?

11 A. Yes.

12 Q. And what does that involve?

13 A. That's a process where you take and identify
14 the cost of a power plant to produce power over its capacity
15 factor. Capacity factor would be if you ask the power plant
16 to produce power every hour of the year at its full potential,
17 it would have 100 percent capacity factor. If you want -- if
18 you needed that power plant to produce only half of its load
19 level for every hour of the year, it would be 50 percent
20 capacity factor. And, likewise, if you had a power plant that
21 you only ran half a year at full -- at full throttle, it would
22 also be a 50 percent capacity factor.

23 We investigate the capacity fact-- the cost of
24 producing power for each one of these power plants at those
25 capacity factors and determine -- it's a screening method to

1 determine if one clearly is better than the other, in which
2 case we would get rid of that one.

3 Q. Is this the analysis that goes towards
4 determining whether there's a need or the appropriateness of
5 base load versus intermediate versus peaking capability?

6 A. Yes. And we consider it along the tool of
7 possibly a barometer in that it would give you an indication,
8 but not necessarily make the selection. So it's a first step
9 in understanding what is best to fulfill the need, but the
10 second step would be using a production analysis program, a
11 costing program, that would tell you exactly what the best fit
12 is.

13 Q. Okay. If I might digress a little bit at this
14 point, I've used the term "base load" and "intermediate" and
15 "peaking" --

16 A. Yes.

17 Q. -- do you recall that?

18 I wonder if you could take the time to explain
19 the differences -- just generally the differences between
20 those sort of loads for purposes of production modelling or
21 screening?

22 A. Yes, I can. And I've prepared a three-page
23 mini report at the request of Commission Staff. We discussed
24 this and said that it might be best if we try to just at least
25 cover this ground in a generic sort of way. It's -- it's kind

1 of like pulling you into our world of doing this. It gets
2 much more complicated than possibly these three pages will
3 show. But it does give us a feel for the flavor of why power
4 plants are used in a base load, intermediate and peaking
5 facilities though.

6 Q. Very good.

7 MR. BOUDREAU: I'd like to get another document
8 marked, please.

9 JUDGE MILLS: I believe we're on Exhibit 104.

10 (Exhibit No. 104 was marked for
11 identification.)

12 MR. BOUDREAU: Is this 104?

13 JUDGE MILLS: 104.

14 MR. BOUDREAU: Thank you.

15 MR. BOUDREAU: May I approach the witness,
16 please?

17 JUDGE MILLS: Yes, you may.

18 BY MR. BOUDREAU:

19 Q. Mr. Boehm, I've handed you a document which has
20 been marked for identification as Exhibit 104. Do you
21 recognize that document?

22 A. Yes, I do.

23 Q. What is that document?

24 A. This is a document I've entitled Choosing the
25 Right Type of Power Plant.

1 Q. Was this prepared by you or under your direct
2 supervision?

3 A. I prepared this document.

4 Q. Okay. And, again, the purpose for preparing
5 it?

6 A. Was in helping to explain the different types
7 of power plants in this proceeding.

8 Q. Okay. Is this, in your view, a good synopsis
9 of analysis of different characteristics of power plants for
10 just general understanding?

11 A. Yes.

12 Q. Would you just kind of explain -- walk the
13 Commission through what the various components of this
14 document are?

15 A. Yes, I will. And I want to point out in this
16 document I do use some of the load characteristics of Aquila,
17 but point out that this is somewhat anecdotal. It doesn't
18 necessarily reflect the decisions we're making with -- with
19 the recent Integrated Resource Plan.

20 But I would like to just start you out and look
21 at -- I won't really cover the -- the text that's in here.
22 I'll leave that for people to look through if they want to
23 just refresh themselves and let's just concentrate on the
24 figures that are in the -- the report.

25 If you would look at figure No. 1. And figure

1 No. 1 is basically the -- a graph of the hourly loads for
2 Aquila on a typical sample 2005 day. And if you see during
3 out -- throughout the day, the load varies. And while the
4 load varies, our power plants have to keep up with that. In
5 other words, if there's -- in the morning -- at three o'clock
6 in the morning, there's approximately just a little over 900
7 megawatts of load on the system, but throughout the morning as
8 people wake up, start making breakfast, businesses open, we
9 see the load rise sharply.

10 In fact, for this winter day it looks like you
11 actually see as the day goes on, in the morning it starts to
12 slack off as it warms up and there's less load on the system
13 for heating. Gets into about four o'clock, business closes
14 for the day and you see the effect of our system, which has a
15 high degree of residential users.

16 We start seeing actually a load build up for
17 dinner time as people start cooking, going home, using their
18 homes for doing work at home, entertainment, things like that.
19 And then after the hour of approximately eight or nine
20 o'clock, it starts to slide off as people turn off their
21 lights, quit cooking, go to bed, things like that.

22 If you notice just looking at this, it's
23 interesting to note that you can look at this as how our power
24 plants have to react to this kind of changes in the load.
25 Throughout the day, we have to have 900 megawatts available

1 all the time. It's always on. There's always at least 900
2 megawatts that has to be supplied to the system.

3 But also at -- at one or two points of the day
4 it's almost a double peak here, but you can see at one point
5 of the day we have to have at least 1,200 megawatts of
6 generation being supplied to the customer. And this is the
7 capacity of the plant.

8 So if our power plants -- in the morning we've
9 got 1,000 megawatts of power plants on in the morning. At
10 three o'clock, those 1,000 megawatts have their generators
11 back down a little bit. As that load grows, they start to
12 reach the top of their peak and we may have to add another
13 generator on to follow it.

14 And so what we're seeing here in typical
15 fashion is there's -- based on the load, there are times when
16 we have to have a certain amount of generation on all the
17 time. At other times, you can say approximately another
18 150 megawatts -- let's say around 1,050, that has to be on
19 pretty much a good part of the time. And then just for a few
20 hours of the day, there has to be maybe another 3- or 400
21 megawatts on for just a small part of the time.

22 Let's take this one day then and go to the next
23 figure 2. Now, figure 2 is -- as busy as it looks, it's
24 basically just 365 of those little one-day squiggles put
25 together again, put end to end. And you actually follow for

1 one year the total load patterns that the generation has to
2 follow.

3 On that little figure you will see that at
4 about 450 megawatts is our minimum load. So at no time during
5 the year can we have available anything less than 450
6 megawatts. We have to have that on all the time.

7 But you also look at maybe the 800 megawatt
8 mark. There's a period in there where another 350 megawatts
9 is on some of the time. Well, then you look at the very top
10 and -- and notice that we have to have 1,800 megawatts in the
11 middle of the summer to meet the air conditioning load. So
12 there's almost another 1,000 megawatts there that has to be on
13 just a very short part of the time.

14 We call those -- those positions in the load --
15 in the load graph that the power plants have to fulfill, we
16 call those base load for the power plants that have to be on
17 all the time. Power plants that are on just part -- some of
18 the time are called intermediate power plants. Ones that are
19 on just a very short part of the time are called peaking
20 units.

21 If you go to figure 3, it's basically
22 everything in a nutshell. And it kind of describes why we
23 take these power plants and put them in different categories.
24 And it has to do with how these power plants operate, how much
25 they cost and how long it takes for them to -- to get online.

1 If you look at base load power plants in the
2 first top -- in the first part, that's usually your typical
3 coal power plant, nuclear power plant, something that you turn
4 on and you very rarely want to turn it off. It has a very
5 high construction cost and that is usually because you have
6 steam involved.

7 When you have the steam involved, you have to
8 put a lot more metal into the power plant to make sure the
9 steam system stays enact. It's a very harsh system, it
10 operates at very high temperatures, but once this power plant
11 gets up and running, it runs on a cheaper fuel. And so if
12 you're going to have a power plant that runs all the time, you
13 don't mind the fact that you had to pay a lot of money to put
14 it -- to put it into the ground because what's -- you're going
15 to gain that back from getting lower fuel prices and lower
16 operating costs as that power plant goes on.

17 So what you see is it's got a high construction
18 cost, it has a low energy cost. It costs you a lot to start
19 it up. So once you start it up, you want to keep it on. It
20 takes about 14 -- 15 to 24 hours to bring a large coal power
21 plant up to speed and ready to go. So it's not something you
22 want to just cycle on and off.

23 So your duration in the situation is always on.
24 About the only time you really want to take that off is if you
25 have some severe changes in load, like supposedly you may have

1 a peak -- or a base load power plant that comes off only in
2 some of the lower months of maybe October or April. You also
3 take it off for maintenance. So there is some need that you
4 do take it off.

5 An intermediate power plant is -- a classic
6 example of that is a combined cycle power plant. It uses
7 combustion turbines, but those combustion turbines also
8 produce waste heat. That waste heat is then pushed forward
9 into a -- into generating steam. Once again, now you've got a
10 situation where one -- when you're making steam in a power
11 plant, the costs go up significantly on that.

12 So with an intermediate power plant, you're
13 trying to get a quick start situation like CTs, combine them
14 with some of the lower cost values of pulling steam out of the
15 system -- or pulling heat out of the waste of the system and
16 giving that some value.

17 The good news is, is you don't have to pay as
18 much to build that power plant. It's got a moderate cost,
19 about one-fourth to one-half the cost of the base plant.
20 Its energy cost is moderate. Usually it uses a higher cost
21 fuel like natural gas, but the efficiency of the power
22 plant -- because you paid extra to put the steam recovery
23 system in there, the efficiency of the power plant is an
24 improvement.

25 You have some disadvantages though. When you

1 start that power plant, there is a certain amount of time you
2 have to pay. It takes you about maybe 4 to 8 hours, in some
3 cases depending on how the power plant is built, up to 15 or
4 16 to get that power plant up and running. So once you turn
5 that on, you do want to leave it on for a certain amount of
6 time.

7 However, as your load goes off in the daytime,
8 you have to make a decision whether or not to take that power
9 plant off and possibly lose the momentum you have from
10 building up the heat and the steam or whether you want to keep
11 that power plant back on when -- during times when it wouldn't
12 really be in the money.

13 So the duration of that kind of power plant is
14 you probably want to leave it on for a few days. And
15 typically the best time is on the weekends the load drops off
16 a little bit. So quite possibly what you would want to do
17 with that is turn it on in the afternoon -- on a Monday
18 afternoon as the load's building up for the day, leave it on
19 until maybe Friday afternoon and then turn it off.

20 So that's a typical way you would operate a
21 combined cycle or an intermediate power plant. The duration
22 then is days and not -- not always on. The cycle then is
23 either weekly or possibly you would have that plant and only
24 use it in the summertime when summer loads are up higher than
25 normal.

1 So that comes to the last type of power plant
2 and that's a peaking power plant. Peaking power plant, an
3 example would be just a simple combustion turbine. You're not
4 trying to do anything with the heat that comes out of that
5 turbine, you're just using it to spin a rotor, which then
6 basically produces -- sends the power to a turbine and makes
7 the electricity.

8 So the construction costs, because there's no
9 steam train involved, is much lower. In fact, it could be
10 one-sixth to one-third of the cost of a base load unit.
11 Unfortunately though, the energy cost is quite high. What
12 happens is when you give away what you gain on the fact that
13 you didn't have to spend a lot of money to put it into the
14 ground, you don't really have that many efficiencies already
15 in the plant. So when you run that plant, it costs you a lot
16 of money.

17 But the good news with that is you can choose
18 those times that you want to put that online. You're not
19 stuck trying to carry it over because you're holding steam in
20 the plant and want it to go on. You can turn that thing on --
21 on and off daily or sometimes even twice a day. It has a very
22 quick run -- up to speed time. Some combustion turbines can
23 get online as quickly as 15 minutes.

24 So you can really take a good look at the
25 market, take a good look at your other options and turn that

1 thing on exactly when it makes money for you. So its duration
2 is hours. And it's -- and it's cycled on and off daily.

3 I'm going to go quickly to the last figure and
4 this is -- this is kind of a busy figure here. And I just
5 want you to bear with me. Let's just go ahead and look only
6 at the point where it's 0 percent. What this is is this is a
7 cost curve for each of these power plants, each type of these
8 power plants.

9 And this specifically is taken from the
10 Electric Power Research Institutes 2004 best in class. I
11 found what I thought to be maybe the best combustion turbines
12 that they knew of, the best combined cycle unit that they knew
13 of and best coal unit they knew of and took it and created it.

14 Let's look at 0 percent capacity factor.
15 What that cost there actually represents is, is what it costs
16 you per year to own 1 kilowatt of that plant without even
17 running it.

18 So what you see there is at the very bottom of
19 that, at 0 percent -- if you just bought a power plant and
20 didn't put it online and you were trying to recover your cost
21 every year, that power plant for the combustion turbine would
22 be the cheapest because it was the cheapest to build. So it's
23 around maybe \$75 a kW per year to own this power plant. If
24 you look at a combined cycle plant, because you had to spend
25 more, it was around \$100 per kW. Then if you look straight up

1 at the coal plant, it's much more expensive, it's more than
2 twice the cost of the combined cycle. So you have -- you have
3 these three power plants and you don't run them at all,
4 they're at 0 percent.

5 Let's say you only will decide you're going to
6 call on these plants for 10 percent of the energy they can
7 produce every year. If you look, these curves or each of
8 these lines starts to move, some at different rates. Because
9 this combustion turbine energy costs so much, its rate rises
10 rapidly, it costs a lot to operate this because you're not --
11 you don't have as efficient use out of the fuel so that cost
12 goes up.

13 The combined cycle has a stream train in it.
14 That combined cycle goes up at a much slower rate, but still
15 does climb rather -- at a steep angle. The coal unit, on the
16 other hand, doesn't really climb that much at all. You've got
17 a lot of cost already associated with that power plant and you
18 put it in to get the efficiency out of the fuel. So as you
19 use more and more of that plant, that efficiency has a lower
20 curve.

21 So if you follow this from the zero point, you
22 will see that from 0 to 10 percent, that is, if you only
23 wanted the power plant to produce 10 percent of its total
24 capability every year -- because, let's face it, you have to
25 have 1,800 megawatts for the whole year available to you, but

1 there's only a few times you're going to use the last maybe
2 4- or 500 megawatts of that. So you may only use that for 10
3 percent of the year.

4 So what that tells you is maybe 4-, 500
5 megawatts or more you want to be a combustion turbine because
6 if you're only going to use a plant for 10 percent of its
7 capability total or less, it is the cheapest way to put power
8 onto the system.

9 The next thing you see is that 10 percent there
10 seems to be a little bit -- there seems to be an intersection.
11 And that's the intersection of the combined cycle and the
12 combustion turbine. So the combustion turbine -- or combined
13 cycle at that point is saying -- is showing us that above
14 10 percent the combined cycle is the cheapest way to go. If
15 you're going to only have so much of that power on from
16 10 percent up to 35 percent, the combined cycle is the way to
17 go.

18 So you want an intermediate block in your -- in
19 your stable of generation resources, you want an intermediate
20 block in there to cover times when you have to call on -- on
21 capacity, either a little bit more than 10 percent but less
22 than 35 percent of the time.

23 And as you can see, after you reach 36 percent,
24 the clear winner is the coal plant. And that tells you that
25 any time you think you're going to have to use the capability

1 of a power plant -- the annual capability of a power plant
2 more than 35 percent per year, the choice is to go to a coal
3 plant or go to a base load plant.

4 That in a nutshell is as simple as I can put
5 the process of trying to screen different kinds of power
6 plants. I hope it was helpful, but the reading material that
7 goes along with it may -- may be helpful to review after this,
8 if you want.

9 Q. Thank you for that.

10 And let me ask you this question. Taking into
11 consideration what you've just said about the various cost
12 advantages and operational advantages of various
13 characteristics of plant, these are things that you take into
14 consideration, I assume, in doing your production modelling
15 and your resource planning decision process; is that correct?

16 A. Yes.

17 Q. Okay. Does production modelling involve
18 simulation of power plant operation? Is that the process that
19 you just went through?

20 A. Yes. In fact, that's one thing I wanted to
21 mention is this technique, while it gives you an indication of
22 which way you want -- what type of power plant you want, that
23 indication is there's problems with -- with -- with following
24 that.

25 If you have a situation where the load

1 volatility -- where your load goes up and down quite rapidly,
2 you're going to need responsive generation. So even if you
3 think there's a certain amount of the time of year where you
4 need like maybe a 6- or 700 megawatt block of either base load
5 or intermediate power, you have to understand that the ability
6 of a power system to react to these quickly changing loads is
7 also part of that.

8 So when you do a production model, that
9 production model's job is to go in and simulate how the
10 operators would approach a problem, an upcoming problem. The
11 problem being their increase or decrease in load, which power
12 plants to put on next. So the simulation program will
13 follow -- will do dispatcher logic or as best as it can and
14 use these power plants.

15 Q. Very good. Thank you.

16 MR. BOUDREAU: At this point I'd like to move
17 for the introduction of I believe it's Exhibit 104.

18 JUDGE MILLS: Any objections to the admission
19 of Exhibit 104?

20 Hearing none, it will be admitted.

21 (Exhibit No. 104 was received into evidence.)

22 BY MR. BOUDREAU:

23 Q. Mr. Boehm, I believe you just mentioned that
24 there were some power production modelling tools that you use.
25 What models -- or what do you use on behalf of Aquila?

1 A. There two models which are -- get very much use
2 within our group. One of the models is called MIDAS,
3 M-I-D-A-S.

4 Q. And do you know what that is an acronym for?

5 A. It's an acronym for Multi-Integrated Decision
6 Analysis System.

7 Q. Sounds good. What does it do?

8 A. It does a number of things. In fact, we use it
9 in actually two separate areas within our group. When you --
10 when you operate a system as dynamic as the one we have and
11 it's highly interconnected as we are, there's situations
12 that -- that you cannot -- cannot ignore because they're
13 just -- you need -- they make sense.

14 One of those is that you're going to have to
15 interact with the outside world. Our dispatchers daily look
16 at how they position our power plants against what the market
17 offers them. And so there's an expectations of how that -- of
18 these guys are working with the market and their existing
19 power plants to meet the loads of the customer.

20 So what we have to do is we have to have a good
21 fundamental view of what we think the power market is going to
22 do every hour for the next 10 to 20 years. We use the MIDAS
23 program in a -- in a -- I would say a macro-type of version of
24 it. And that macro version is every power plant in this part
25 of the country is -- is shown within this -- the database of

1 this program.

2 Each of those power plants -- because we're
3 using so many of them, all the power plants from Mississippi
4 on up to Minnesota, we're using so many power plants in there,
5 there's some fundamental adjustments we have to make, like we
6 make some blanket assumptions about the fuel prices in each of
7 these regions, the coal prices.

8 The power plants are -- that are in there
9 basically are tuned by the fact that public information is
10 available by -- for power plants and is reported to the
11 government. We use a company called Energy Velocity which
12 takes all the information about those power plants, assigns
13 their operating characteristics to them. So we have a good
14 feel for what the owners of those power plants say they're
15 capable of doing and how they operate.

16 Power companies also have to report their load
17 forecasts. And so their loads are pushed into this. So what
18 we have is all the tools we need to actually simulate how this
19 part of the country can operate for the next 10 to 20 years.

20 Now, you've got to understand it's a very broad
21 brush, but it still gives us a feel for what we think the
22 power market's going to be based on how that operates. I have
23 one man dedicated to do nothing but that. His job is to
24 understand the overall view of the power market. He's
25 available if we want to get into this. Jim Okenfoose (ph.) is

1 available to discuss this if it's important. But basically
2 his job is to come and present to us a forward-market curve.
3 So he gives us a fundamental piece that says this is what the
4 market is going to be for us for the next 10 to 20 years.

5 We also take our existing -- our internal power
6 plants and we take what the market presents to us, what we
7 have internally in our system and we run that for 20 years.
8 That's in a different piece of MIDAS, but that's what we use.
9 So MIDAS is a production simulation. It will simulate every
10 hour of operation for anywhere up to 20 years in our models.
11 And we -- it takes a while for the program to run, of course,
12 but with today's computers, brute force methods work fairly
13 well.

14 Another thing I wanted to tell you quickly
15 about MIDAS --

16 Q. Please do.

17 A. Okay. Yeah. -- was that MIDAS is a decision
18 analysis tree model. In short, what that says is I can take
19 MIDAS and say, I've got 500 megawatts of need to fulfill. I
20 want you to take and run one -- one power plant and stick it
21 in there and run it using that. So I may stick a coal plant
22 in for that 500 megawatts and let MIDAS run it out for
23 20 years. I'll also stick a combined cycle plant in that hole
24 or a combustion turbine. It will run all of those out and at
25 the very end of the study will tell me which one seems to do

1 the best for our company.

2 Q. All right. Very good.

3 A. Now, the second --

4 Q. Yeah, you mentioned there was a second
5 modelling program.

6 A. I'm going to very quickly go through that
7 because I know I might be kind of stretching this. The second
8 model is called Real Time. And it is a production costing
9 model. The strength of Real Time is that it's not really made
10 to go out 20 years. It's a -- it's more of an intricate
11 model.

12 What Real Time has is probably features in it
13 that more closely resemble how the operator operates. Because
14 MIDAS has to very quickly take and go out 20 years or do a
15 large number of scenarios, it has to make some shortcuts in
16 doing that. But when I finally get down to seeing where MIDAS
17 wants to take me, I take it and put it in a more strengthened
18 production costing program like Real Time, which models the
19 operations a little bit more closely to the operations of
20 the -- of the operators.

21 And that gives me a better feel for if I have
22 two scenarios which look very close, I put them in the Real
23 Time to make sure that they -- the robustness of those
24 scenarios is fulfilled. So those are the two programs we use.

25 Q. Okay. I take it from that, you use the two

1 models because they both have different focuses and different
2 strengths and weaknesses?

3 A. They have different strengths and weaknesses,
4 yes.

5 Q. Did you use these two modelling techniques to
6 determine the -- well, did you use these two modelling
7 techniques in the process of determining whether or not to
8 build the South Harper peaking facility?

9 A. Yes, we did.

10 Q. Okay. What did that -- what did that result --
11 or the result of that process show or demonstrate?

12 A. The results of that process showed that the
13 least cost plan was for us to build a power plant with five
14 combustion turbines at 105 megawatts apiece. That, however,
15 wasn't the plan that we chose -- that we declared to be the
16 preferred plan.

17 Q. Okay. And the preferred plan was what?

18 A. The preferred plan was building three
19 combustion turbines at 105 megawatts apiece and purchasing
20 purchase power contracts as a supplement to that.

21 Q. Okay. Why did the company -- or why did you, I
22 guess, decide that your -- to choose the preferred plan over
23 the least cost plan?

24 A. Well, we -- we considered a too many eggs in
25 one basket type scenario, that because the CTs looked good,

1 piling them on, you know, making them look better, there could
2 have been some pitfalls in there that we didn't see.

3 We also tested that -- once we do these tests,
4 we also examine them and how they operate over a sensitivity
5 range. And that sensitivity range could be -- the biggest I
6 guess teller was if gas prices were high, was this -- was this
7 still a good choice? If gas prices were low, is this still a
8 good choice?

9 And what we saw is we had some -- some
10 scenarios which were very close together and we saw that as
11 gas prices rose, it would have been better that we go out and
12 find possibly contracts which represented either base load or
13 intermediate power along with these CTs.

14 Q. I believe when you and I have discussed this
15 topic before, you've used the term "portfolio approach" --

16 A. Yes.

17 Q. -- do you recall that phraseology?

18 Could you explain to the Commission what you
19 mean -- or the meaning of that term?

20 A. When we sent out a request for proposals, I
21 mentioned before that one of the things we said we made clear
22 in our proposal in order to get as much response as we could,,
23 we made it clear that even though we needed 500 megawatts, we
24 weren't requiring the people proposing to us that they fulfill
25 all 500 megawatts. So we got a number of bids for anywhere

1 from 40 megawatts up to 700, but there were a number of them.
2 There were a number of these bids that were in the smaller 100
3 or less range.

4 We took those and added those as a portfolio,
5 keeping in mind that if we are -- if we are looking for an
6 intermediate type -- intermediate-type product, an
7 intermediate-type product because of load volatility could be
8 fulfilled with a piece of a base load product and a piece of a
9 peaking load product. So we kind of mixed some of these in,
10 tried different versions of that. I'd have to say that in the
11 process of doing this, we looked at well over 60 or 70
12 scenarios.

13 Q. So the results -- or the outcome was that the
14 decision was that the preferred approach was a peaking
15 facility; is that correct? You said the preferred approach --

16 A. Well, the preferred plan was a portfolio --

17 Q. Okay.

18 A. -- which contained --

19 Q. Which contained --

20 A. -- a peaking facility and --

21 Q. Thank you.

22 A. -- a purchase power contract.

23 Q. Thank you for that correction.

24 Now, did your modelling or analysis tell you
25 where to build the peaking facility? In other words, did it

1 direct that it be built at the South Harper location?

2 A. No.

3 Q. Okay. Do you know how that determination was
4 made?

5 A. I assume Mr. Hedrick had -- did that.

6 Q. Okay. But there were some other individuals
7 that are available to address this?

8 A. Yes. We addressed only the need for the plant
9 and did not have anything to do with siting.

10 Q. Okay. That's what I wanted to accomplish.
11 Thank you.

12 MR. BOUDREAU: I think at this stage we're
13 going to get more specific, so I think at this time we'll --
14 in order to address the particular decisions that were made
15 and the particular parties that participated, we'll need to go
16 into in-camera.

17 JUDGE MILLS: Okay. At this point we're going
18 to go in-camera. And what that means is that anyone who is
19 not counsel of record for one of the parties in the case or
20 has signed a nondisclosure agreement pursuant to the
21 protective order in this case is going to have to clear the
22 room.

23 And we've tried to structure this portion so
24 that it's going to go as quickly as possible and we will --
25 once we're done with the highly confidential portion, we will

1 sort of prowl the lobby of the building to try and gather up
2 the people who have been emptied from the room.

3 And, Mr. Boudreau, since it's your client's
4 confidential information, I'm going to rely on you to satisfy
5 yourself that there's no one here who shouldn't be here.

6 MR. BOUDREAU: Understood. Thank you.

7 MR. COMLEY: Judge, could we have clarification
8 of when that motion was granted?

9 JUDGE MILLS: What motion? I'm sorry.

10 MR. COMLEY: Motion for protective order.

11 JUDGE MILLS: Let me check.

12 MR. BOUDREAU: The protective order?

13 MR. COMLEY: Yes.

14 JUDGE MILLS: Yes.

15 MR. BOUDREAU: Protective order was issued by
16 my listing here on February 2nd, 2005.

17 MR. COMLEY: The motion was filed on the 2nd.

18 MR. BOUDREAU: Oh, no, the -- I have order
19 establishing protective order.

20 MR. COMLEY: Okay.

21 JUDGE MILLS: Give me just one second. I'm
22 looking at the docket of the case. I can confirm that.

23 MS. SHEMWELL: I have order establishing
24 protective order.

25 MR. BOUDREAU: I have it dated February 2nd,

1 2005.

2 MS. SHEMWELL: Yes.

3 MR. BOUDREAU: Would you like to see my copy?

4 JUDGE MILLS: No.

5 Yeah, motion was filed February 1st for a
6 protective order and order establishing protective order was
7 issued the following day, February 2nd.

8 MR. COMLEY: Thank you.

9 MR. EFTINK: Mr. Hearing Examiner, this is
10 Gerry Eftink for stopaquila. One of my witnesses, who also is
11 a member of stopaquila, is an engineer. And I was wondering
12 if he could sign a nondisclosure agreement and listen to this
13 testimony?

14 MR. BOUDREAU: If I might address this. The
15 information is considered highly confidential and it's
16 restricted to counsel of record and outside consultants that
17 are hired by the parties.

18 JUDGE MILLS: If you look at the terms of the
19 protective order, I believe that's correct. So as a sort of
20 in-house expert witness, I don't think that stopaquila's
21 engineer would be allowed to listen to highly confidential
22 information.

23 MR. EFTINK: I've been asking him questions as
24 we've gone along. We haven't gone into confidential
25 information yet. What are the restrictions on my asking him

1 questions so I can ask him more intelligent questions of the
2 witness?

3 JUDGE MILLS: We don't really have a lot of
4 time for me to explain what the protective order means, but
5 it's one that the Commission has used for many years and most
6 of the wrinkles I think have been worked out. And it should
7 be relatively self-explanatory and I'll just refer you to the
8 order that was issued February 2nd that tells you who has
9 access to what kind of information and under what
10 circumstances.

11 MR. EFTINK: Okay. Thank you.

12 JUDGE MILLS: You're welcome.

13 Okay. Mr. Boudreau, are you satisfied the room
14 is clear of anyone that shouldn't be hearing this information?

15 MR. BOUDREAU: I am. Thank you.

16 JUDGE MILLS: I see some suspicious people
17 looking people in the back, but I know who they all are.

18 MR. BOUDREAU: I didn't say they weren't
19 suspicious looking, just that they're permitted to be here.
20 And I've asked my client to keep an eye out as people come and
21 go and police that. Thank you.

22 (At this time, an in-camera session was held,
23 which is contained in Volume No. 5, pages 306 through 374 of
24 the transcript.)

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