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BEFORE THE PUBLIC SERVICE COMMISSION

2

STATE OF MISSOURI

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4

TRANSCRIPT OF PROCEEDINGS

5

HEARING

6

May 4, 2006

7

Jefferson City, Missouri

8

Volume 11

9

10

In the Matter of the Application)
11 of Aquila, Inc., for Permission and)
Approval and a Certificate of Public)
12 Convenience and Necessity Authorizing)
It to Acquire, Construct, Install, Own,)
13 Operate, Maintain, and Otherwise)
Control and Manage Electrical)
14 Production and Related Facilities in)
Unincorporated Areas of Cass County,)
15 Missouri, Near the Town of Peculiar) Case No. EA-2006-0309

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RONALD D. PRIDGIN,
18 REGULATORY LAW JUDGE.
19 JEFF DAVIS, Chairman
STEVE GAW
20 ROBERT M. CLAYTON, III,
LINWARD "LIN" APPLING,
21 COMMISSIONERS.

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REPORTED BY:
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1 P R O C E E D I N G S

2 (Exhibit No. 128 was marked for
3 identification.)

4 JUDGE PRIDGIN: All right. Good morning.
5 We're back on the record in Case No. EA-2006-0309.

6 If counsel recalls anything to the contrary,
7 please let me know, but I understand we have Mr. Peshoff back
8 on the stand and we may have some questions from the Bench for
9 him as well as perhaps some recross.

10 And also I believe at the Commission's
11 request, Mr. Peshoff and Cass County have also brought some
12 documents and we'd certainly like Cass County to identify what
13 those documents are.

14 Does counsel recall anything else or have
15 anything else to bring up? Ms. Shemwell?

16 MS. SHEMWELL: Judge, thank you. Judge, since
17 we just saw the map yesterday and didn't really have the
18 opportunity to examine it during the hearing, I would ask your
19 leave to ask Mr. Peshoff a few more questions about the map
20 this morning. That's all. Thank you.

21 JUDGE PRIDGIN: All right. That's certainly
22 fine. Anything else? Does counsel recall anything else
23 before we go into cross-examination?

24 All right. Mr. Comley, if you could briefly,
25 you know, identify those documents that the Commission asked

1 Mr. Peshoff to gather.

2 MR. COMLEY: Thank you, Judge. Thank you very
3 much. And I understand it's kind of breaking up the
4 cross-examination.

5 BRUCE PESHOFF testified as follows:

6 REDIRECT EXAMINATION BY MR. COMLEY:

7 Q. Mr. Peshoff, do you recall that we were
8 requested by the Commission to produce documents that were in
9 connection with the other boards and commissions you
10 identified in your testimony?

11 JUDGE PRIDGIN: Before you answer, I'm sorry.
12 Mr. Peshoff, just to remind you, you're still under oath from
13 yesterday.

14 THE WITNESS: Yes, sir.

15 JUDGE PRIDGIN: All right. Thank you.

16 BY MR. COMLEY:

17 Q. Do you recall the question?

18 A. Yes.

19 Q. And what is the answer?

20 A. That -- that we have compared, looked at what
21 other jurisdictions that have Public Utility Commissions, how
22 they conduct their site analyses.

23 Q. Before we came on the record, I handed you
24 what has been marked as Exhibit 128 in this matter. Can you
25 explain to the Commission what Exhibit 128 is?

1 A. This is 128? These are the materials that we
2 reviewed when we started our research. And what would be
3 typical for most planning professionals is to look at the
4 states that have a strong history of growth management, of
5 solid planning practices.

6 And you'll notice on the state here -- on the
7 list here, we've got materials from California, from Florida,
8 Massachusetts, Oregon and specifically, if asked, go into a
9 little more detail about California, Florida and Oregon and
10 their planning practices as being national leaders generally.

11 Q. And these were the jurisdictions that were
12 identified in your testimony?

13 A. Yes, sir.

14 MR. COMLEY: Your Honor, pursuant to the
15 Commission's request, we prepared this exhibit and move
16 Exhibit 128 into the record.

17 JUDGE PRIDGIN: Any objections?

18 MS. SHEMWELL: Yes, Judge, I have. While
19 certainly Commissioner Gaw may review anything he'd like to
20 see and Staff has no objection to that, I would like to note
21 that in making this decision, it's a certificate of
22 convenience and necessity. Siting is a great deal more --
23 there's a great deal more to consider than local zoning.

24 Missouri law is certainly not devoid of
25 information concerning factors that the Commission has

1 considered in past CCN decisions. This Commission made a very
2 difficult decision when it sited the nuclear facility and
3 considered many factors in that and that is one guide that the
4 Commission could use. So while it may be interesting to look
5 to other states, certainly it's not necessarily relevant to
6 the issues in this case. Thank you.

7 JUDGE PRIDGIN: All right. Ms. Shemwell,
8 thank you.

9 Any further objections?

10 MR. YOUNGS: Just on behalf of Aquila, I join
11 in Ms. Shemwell's opinion regarding the relevance of these. I
12 think that as she's alluded to and Aquila has indicated on
13 numerous occasions, there is guidance in this Commission's
14 prior decisions from the '60s and the '70s and earlier when,
15 to our understanding, companies did come to this Commission
16 with some regularity seeking site specific approval for
17 various facilities being built within and without their
18 certificated areas.

19 And so we believe that there is already ample
20 guidance and that these -- these don't have any relevance to
21 the Commission's decisions in this case.

22 Secondly, without -- and I don't want to sound
23 whiny, this may sound like a whiny objection, but the record
24 should reflect that this set of documents is about 6 inches
25 thick. And I do respect the fact that they were requested by

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1 the Commission and they've been produced in response to a
2 Commission's request.

3 But I do believe these were dropped on us at
4 about 7:50 or 7:55 this morning and I just would say that I do
5 not believe we've had an adequate opportunity to review these.
6 And I think as a result, we're denied the opportunity to
7 conduct any meaningful cross-examination of Mr. Peshoff on
8 these materials. And so without sounding too whiny, I just
9 want to make that objection for the record as well.

10 MR. COMLEY: It was 7:45.

11 MS. SHEMWELL: I'll let you know that --

12 MR. YOUNGS: By your watch.

13 MS. SHEMWELL: -- we tried to get the
14 documents last night and were unable to do so. And I
15 appreciate it may have taken a long time to copy those, but I
16 certainly was available until late -- not that I would have
17 read this overnight, but made myself available last night to
18 get them.

19 JUDGE PRIDGEN: All right. Thank you. The
20 objections are noted and overruled. Exhibit No. 128 is
21 admitted.

22 (Exhibit No. 128 was received into evidence.)

23 JUDGE PRIDGIN: And at your convenience,
24 I'd --

25 MR. COMLEY: We have a limited number of

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1 copies today. I will express to the Commission we tried very
2 diligently to obtain the appropriate number. We did go to an
3 outside printing organization to get this done.

4 Because of the beauty of EFIS, this might be
5 available readily to other parties who are lacking a copy now.
6 But, of course, we will respond to any request to have another
7 copy made, but we have some for the Bench.

8 JUDGE PRIDGIN: All right. Thank you,
9 Mr. Comley.

10 Commissioner Gaw, when you're ready, sir.

11 COMMISSIONER GAW: What is this exhibit
12 number, Judge?

13 JUDGE PRIDGIN: Number 128, is that correct,
14 Counsel?

15 MS. MARTIN: That's correct.

16 JUDGE PRIGIN: Yes, thank you.

17 QUESTIONS BY COMMISSIONER GAW:

18 Q. First of all, tell me what's in this
19 Exhibit No. 128, Mr. Peshoff.

20 A. On the very front page there is a -- it's
21 titled, State Siting Board Background Research. Now, we've
22 broken out by state documents that we've reviewed. Some of
23 them include guides specifically created by the state, one of
24 the state's departments. There have been -- there are copies
25 of websites that are from state websites and they all deal

1 with siting. They've been included in their totality.

2 We haven't picked and chosen just portions of
3 documents so one reviewing these can get a complete feel for
4 why we felt that these are relevant, that they provide a big
5 picture of how other states -- and not just any other state,
6 but how other states that are important in planning, that have
7 taken planning to the next level, look at the issues, what
8 types of issues they look at, timing requirements. Anyways,
9 there's a lot of information in here and that's how this is
10 broken out by state.

11 Q. Okay. And in looking through this first page,
12 it appears, except perhaps for the state of New York and
13 No. 5, that it is -- it looks like it's just basically
14 guidance that's been placed in informational sites. Would you
15 characterize it for me, please?

16 A. Yes, you're correct. This is all information
17 that's readily available. There wasn't anything that we
18 needed to purchase. It was just through a regular research
19 that we would have done. I don't know if you'd like me to
20 break these out, the documents one by one or -- what I've
21 actually done last night was I've identified about six or
22 seven documents that I feel are representative of the group --

23 Q. Okay.

24 A. -- and I've highlighted specific portions in
25 them to give you a flavor of the types of issues that they've

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1 included.

2 Q. Okay. I don't want to spend a whole lot of
3 time this morning going through this piece by piece because
4 that can be done, but if you want to highlight that --

5 A. Yeah. I think I can probably do this in about
6 five or so minutes --

7 Q. All right.

8 A. -- if I could have that.

9 The very first document would be under Oregon.
10 And it's the Oregon Energy Facility Siting website. And I
11 will have it up here on the screen in just a moment. So that
12 would be under Tab 6.

13 JUDGE PRIDGIN: And, Mr. Peshoff, as much as
14 you're able, if you'd be able to enlarge that screen so we can
15 see it better and folks on the Internet can see it. If you
16 can't, I understand. And I'm sorry. I don't want to put you
17 at any undue trouble. That's fine. Thank you very much,
18 Mr. Peshoff.

19 THE WITNESS: And it might also help if I
20 could turn off the other projector because that light is --

21 JUDGE PRIDGIN: Certainly.

22 THE WITNESS: I'm not sure where the switch
23 is.

24 JUDGE PRIDGIN: There should be a power switch
25 right there, probably to your left.

1 THE WITNESS: It appears there might still be
2 something coming from --

3 JUDGE PRIDGIN: Probably right underneath
4 there. Thank you very much, sir.

5 THE WITNESS: This first page, this first
6 section just identifies the types of issues, energy facility
7 siting standards. And there are a number of items that Oregon
8 would -- State of Oregon would consider. And it also
9 identifies the standard of review, organizational expertise,
10 referring primarily to the entity that's applying, standards
11 that would apply, how to look at land use, protected areas,
12 financial assistance, wildlife habitat.

13 There's a number of different scenic and
14 aesthetic values, which includes quality of life, compliance
15 with the plant, a number of different factors that Oregon has
16 comprehensively identified as -- as key to the process.

17 There's actually two options in Oregon. Just
18 very briefly, either the utility can go directly to local
19 approval or they can go through the council for local
20 approval. But either way there's a special advisory group
21 that considers the applicable substantive criteria identified
22 in the local regulations. So there's a process that
23 specifically identifies what those local criteria are.

24 The next document is also from Oregon. The
25 fourth item, the Oregon Siting Application. This is primarily

1 the statute that identifies what the requirements are. There
2 is some description in here. What's important here is that
3 there's a list of a number of exhibits that should be included
4 with the application. And these exhibits point to the types
5 of factors that the Oregon council is looking for.

6 And that's information about -- I just
7 identified the titles, the location of the proposed facility,
8 a list of names and mailing addresses of all owners of record,
9 and they've identified areas that property owners are notified
10 so that -- so that the process guarantees their input and
11 their awareness of what's happening, information from
12 reasonably available sources regarding soil conditions and
13 uses of the site and facility, information about the proposed
14 facility's compliance with statewide planning goals.

15 And Oregon is rather unique because they've
16 not only allocated -- identified local plan goals and
17 policies, but statewide as well. So the process looks to
18 compliance with statewide goals and planning goals and
19 policies as well as local goals and policies. Information
20 about the proposed facility's impact on protected areas.

21 And I'm identifying just a few of these.
22 There are, I think, approximately 28 factors. Analysis of
23 significant potential impacts of the proposed facility, if
24 any, on scenic and aesthetic values. And it talks about the
25 visual impacts of facility structures and emissions.

1 Information about facility retirement and site
2 restoration, what happens when the facility stops to function,
3 whether it's by choice, by financial or just because of age.
4 But something needs -- it's a type of analysis that typically
5 would be conducted with quarries, but this is equally
6 applicable to facilities -- utility facilities.

7 Information about noise generated during
8 construction and during operation, if the proposed facility
9 includes electric transmission lines. And then this starts to
10 deal with, you know, where are the location of the lines in
11 relation to other uses. So it's not just about the facility,
12 but its relationship to the area.

13 The third document, Oregon Siting Guidelines.
14 As you can see from the -- just the table of contents, it
15 looks for standards for facility sites certificates, the
16 siting process, the process for that.

17 Expedited review is an option because most of
18 these identify a review process -- most of these states
19 identify a review process that can be anywhere from 6 to 9 to
20 even 12 months long. So they recognize that there are times
21 when utilities need to act quickly or within certainly
22 parameters of time constraints and they identify a way to try
23 and expedite that process.

24 And the leading question -- or sentence here
25 is actually, The Oregon Office of Energy has prepared these

1 guidelines to explain Oregon's energy facility siting process.

2 And I think that's important.

3 And perhaps what might be the greatest
4 omission here is that these types of guidelines and policies
5 are missing in Missouri from the Public Service Commission to
6 be able to adequately do site plan review.

7 I mean, one of the questions I was asked
8 yesterday was how could we go about doing a site plan review
9 for this facility. Well, it's pretty darn hard when there are
10 no guidelines, when there's no benchmark to be able to shoot
11 for, when there's no unit of measurement that says this is a
12 good example of site planning for a plant, this is a bad
13 example of site planning.

14 So the fact that we've got a -- just a unknown
15 makes it as difficult for us as it should make it for the
16 Commission in trying to make an informed assessment of, is
17 this a good choice, is this a good site. So these provisions
18 identify the use of specific standards. Again, we don't have
19 that here. A one-stop process recognizing that there's a need
20 to try and coordinate the review processes between local and
21 state.

22 Public comment periods at the front end of the
23 process. That's another factor that all of these states
24 identify is detailed public review processes. How to get the
25 public involved not just at the end, not just at the

1 beginning, but throughout the decision making and application
2 review process. And then obviously an opportunity for review.

3 Let me go onto the next one quickly. I don't
4 want to take -- Florida. Let's jump to another state's way to
5 look at this. In Florida the act requires that a land use and
6 zoning hearing by an administrative law judge and --

7 JUDGE PRIDGIN: Mr. Peshoff, I'm sorry to
8 interrupt. What document are you looking at?

9 THE WITNESS: I'm sorry.

10 JUDGE PRIDGIN: That's all right.

11 THE WITNESS: This is Tab 2, the second one,
12 Florida Facility Siting website.

13 JUDGE PRIDGIN: Thank you, sir. I'm sorry to
14 interrupt.

15 THE WITNESS: I should have identified that.

16 This identifies that it be conducted to verify
17 that the site is consistent with and in compliance with local
18 government plans and zoning ordinances. If the site is not in
19 compliance, the applicant's allowed the opportunity to correct
20 the problems. But if they cannot be arranged through a
21 variety of legal recourses, further actions by the agencies
22 are halted.

23 The concept of Florida, and it's a strong
24 growth management state, is it recognizes that local
25 communities are in the best position to make an assessment of

1 what their goals, policies, needs, opportunities, constraints
2 are. And it's not that they should be given ultimate
3 authority, but that they should have been given due
4 consideration for inclusion in the review process by the state
5 agencies.

6 The next document, California Siting
7 Regulations. That would be under the first tab, the third
8 item, California Siting Regulations. And this is a very
9 detailed document.

10 And one thing that I wanted to point out with
11 California is they address local review by identifying the
12 environmental review. California is a somewhat unique state
13 in their planning structure because they actually have general
14 plans, which is the equivalent of a comprehensive plan, but
15 they're very detailed requirements about what ought to be
16 included in a general plan.

17 There are also specific plans that are used
18 very regularly. And specific plans are what we would consider
19 area plans or even project plans such as a -- for a planned
20 unit of development or what have you, but it's a detailed
21 analysis in the same level of detail that one would expect in
22 a comprehensive plan for a specific project.

23 And the purpose is to establish its
24 relationship to other land uses, the ability to provide
25 services, and very critical for California, its relationship

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1 to the environment, which is one reason why an environmental
2 impact report is frequently a strong component.

3 Let me see if there's -- this one I also
4 pulled out because of this relationship with the environmental
5 entities. So there are numerous references in here through
6 Sequa and different -- because they recognize that these
7 environmental groups in California effectively supplement the
8 local planning boards and planning commissions.

9 There's not a planning -- development
10 application that goes through a development review process
11 that likely -- that's of any significance, that has no impact,
12 no input rather from one of the environmental entities. Sequa
13 is an extremely broad, encompassing impact that requires its
14 inclusion and its consideration in virtually every development
15 proposal.

16 And the purpose here is notice of the
17 intention of proceeding. It'd be to engage the applicant, the
18 Commission, interested agencies and members of the public in
19 an open planning process designed to identify sufficiently
20 acceptable sites and related facilities.

21 Another key factor here with sufficient
22 acceptable sites is based on alternatives, looking at is
23 this -- is a proposed site the only site, why was it selected,
24 what alternatives were considered and whether or not other
25 alternatives might also be appropriate.

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1 Let me go onto the next. I don't want to be
2 repetitive. This document is under Tab 1. The first
3 document, California Energy Aware Planning Guide, Line 2.
4 Very lengthy document, provides quite a bit of information.

5 And just in the preface here, The Energy
6 Aware Planning Guide is intended to help meet the California
7 energy Commission's mandate under public resource, blah, blah,
8 to assist local agencies in the siting of energy projects,
9 encourage local agencies to expeditiously review permit
10 applications and to encourage project developers to consider
11 all cost effective, environmentally superior alternatives that
12 achieve their project objectives.

13 So again, they're looking also towards, are
14 there better ways to site project. It's not -- and I'm not
15 trying to suggest that this is the worst possible site in Cass
16 County, but that the consideration of, is this a good site,
17 ought also to consider, why is this a good site in comparison
18 to other locations in the county.

19 I believe I just have one document after this
20 that there's -- Washington State. This would be the first
21 bullet under Tab 7. And this one I identified as just this
22 portion for the consistency hearing that the council would
23 hold -- the utility council would hold a land use hearing to
24 ascertain if the proposed project is consistent with county
25 original land use plans or ordinances. And making that

1 determination of consistency is -- is key to the process in
2 Washington.

3 Now, something I found interesting as a -- is
4 that in the materials that were submitted by the Staff, with
5 the materials there were -- some of the articles on there were
6 just very light, but Kentucky was one of the examples of
7 materials that was provided. Well, as you're seeing on my
8 list, I also included Kentucky, but for completely opposite
9 reasons.

10 With all due respect to the great states of
11 Kentucky, Nebraska and Iowa, they do a lot of good planning,
12 but the really good planning is coming from more progressive
13 states. I identified Kentucky as an example of how a
14 Commission would take a superficial view of siting
15 considerations, not how it should be a model or as an
16 exemplary comparison of what to achieve to.

17 The Kentucky example I included as a, again,
18 way to brush on -- lightly brush on the site planning issues,
19 but primarily it's focused on what I believe most of your
20 focus has been traditionally, which is rates and the demand,
21 the need for facilities.

22 A comment that relates to this also is one
23 that was made in the -- yesterday during my testimony and as
24 well as this morning in the objections is that this is
25 something that the Commission has done back in the '60s and

1 '70s. Well, I don't know about everyone else here, but in
2 the -- that's a long time ago. And relying on precedents from
3 that long ago, that there may even still be a process, I
4 believe is flawed.

5 Planning has come a long way in the past
6 40 years or so. There have been a lot of -- there's been a
7 lot of work in how to include the public, there's been a lot
8 of work in how to better assess site conditions.

9 And I would suggest any processes that were
10 taking place in the '60s and '70s might be a very good
11 starting point, but merely that, a starting point. Because
12 there is so much more information that's readily available and
13 that's why we provided this because it is relevant. What
14 other states do that other planners look to as being leaders
15 is critical and relevant to what we're doing here. Thank you.

16 COMMISSIONER GAW: Thank you, Mr. Peshoff. I
17 don't believe I have any questions besides the information
18 that we just received.

19 Judge, thank you very much. And I'm done.

20 JUDGE PRIDGIN: Commissioner, thank you very
21 much.

22 Let me see if we have any recross.
23 Ms. Shemwell, I think you mentioned you had some
24 cross-examination. Any other parties? Thank you.
25 Ms. Shemwell, when you're ready.

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1 MS. SHEMWELL: Thank you.

2 FURTHER RECROSS-EXAMINATION BY MS. SHEMWELL:

3 Q. Mr. Peshoff, you referenced Oregon. Oregon
4 siting is established -- those criteria are established by
5 statute; is that correct?

6 A. Yes.

7 Q. And in Oregon, combustion turbines are -- I'm
8 sorry.

9 Are you aware that this Commission has
10 received a list of all of the residents within a mile or
11 two-mile radius?

12 A. No, I'm not.

13 Q. You, yourself, said that Oregon is unique; is
14 that correct?

15 A. Yes.

16 Q. Oregon refers to large energy facilities. How
17 are large energy facilities defined?

18 A. I don't know. I've not purporting to be an
19 expert on Oregon. What I'm trying to identify are processes
20 and factors --

21 Q. Excuse me, sir.

22 MS. SHEMWELL: Move to strike as
23 non-responsive.

24 JUDGE PRIDGIN: Sustained.

25 BY MS. SHEMWELL:

1 Q. Do you realize that in Missouri the public is
2 ably represented by the Office of the Public Counsel in
3 hearings before this Commission?

4 A. I do not necessarily agree that that is a true
5 statement. I believe that the public has a right to
6 participate in the process directly and not just through a
7 representative agency.

8 Q. The public in this case has had at least four
9 hearings in front of this Commission -- or four opportunities
10 to present information to this Commission; is that correct?

11 A. I don't know.

12 Q. I'd like to turn to Florida. Have those
13 standards been established by statute?

14 A. Yes.

15 Q. And in Florida, do combustion turbines require
16 power plant siting overview?

17 A. I'm sorry?

18 Q. Do combustion turbines require power plant
19 siting overview?

20 A. I -- I don't know. I'm not purporting to be
21 an expert on any of these state programs --

22 Q. Well, let me --

23 A. -- I'm just identifying them for purposes of
24 review.

25 Q. Thank you. Let me note that in your

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1 information that you handed us this morning, and I'm going to
2 cite -- I'm sorry, I don't know the page because it's not
3 numbered. Under power plant siting overview --

4 MS. SHEMWELL: May I approach?

5 JUDGE PRIDGIN: You may.

6 BY MS. SHEMWELL:

7 Q. If I may, I'm going to read to you this
8 statement. Combustion turbines can be permitted in
9 conjunction with a certified facility, but in and of
10 themselves do not trigger the certification process.

11 Have I read that correctly?

12 A. Yes, you have.

13 Q. Thank you.

14 A. Key word there being process.

15 MS. SHEMWELL: I'm going to move to strike his
16 last comment as non-responsive.

17 JUDGE PRIDGIN: Sustained. And if you'll try
18 just to answer the questions, Mr. Peshoff.

19 THE WITNESS: Yes, sir.

20 BY MS. SHEMELL:

21 Q. Is California -- are those standards
22 established by statute?

23 A. Yes.

24 Q. Are you aware that the Missouri Department of
25 Natural Resources reviews and approves sites for environmental

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1 issues?

2 A. Yes.

3 MS. SHEMWELL: That's all that I have
4 concerning this document, but at some point I'd like to ask
5 Mr. Peshoff a few questions concerning the map. But perhaps
6 this is not the best time to do that.

7 JUDGE PRIDGIN: All right. In that case I'll
8 let Mr. Youngs go ahead if you have any questions for
9 Mr. Peshoff on these documents.

10 MR. YOUNGS: I have several questions for
11 Mr. Peshoff that I think are fairly encompassed within all the
12 questions that have been received from the Bench and I'd like
13 to do that, if that's okay.

14 JUDGE PRIDGIN: Certainly. Yes, sir.

15 MR. YOUNGS: All right. Thank you.

16 MR. COMLEY: First, Judge Pridgin, could we
17 clarify the extent to which Mr. Youngs is going to examine the
18 witness? Is it for questions from the Bench today or does it
19 include questions that may have arisen yesterday?

20 JUDGE PRIDGIN: Well, because the
21 cross-examination from the Bench was a little bit broken
22 yesterday, I mean, I do want to give him some opportunity to
23 ask whatever questions of Mr. Peshoff. And obviously, you'll
24 have the chance to redirect on whatever his recross is.

25 MR. YOUNGS: Just so everybody's clear, that

1 is my intention. It was my understanding that Commissioner
2 Gaw was not completed with his questions yesterday --

3 JUDGE PRIDGIN: Yes, sir.

4 MR. YOUNGS: -- and that's why I'm standing up
5 here to do that today; is that --

6 JUDGE PRIDGIN: Yes, sir.

7 FURTHER RECROSS-EXAMINATION BY MR. YOUNGS:

8 Q. Okay. Mr. Peshoff, you talked about the
9 impact or at least the emphasis and the importance that you
10 give on the public's input on these processes in response to
11 questions from Ms. Shemwell. Do you recall that?

12 A. Yes, sir.

13 Q. And you understand that the public in this
14 proceeding and in a proceeding prior to this is represented
15 by -- at least they're authorized and obligated to represent
16 the public's interest, and that is the Office of the Public
17 Counsel. You understand that?

18 A. Yes, I do.

19 Q. Were you aware that in the proceeding that
20 resulted in an order from this Commission in last April, the
21 Office of the Public Counsel said in a prehearing brief that
22 Aquila already possesses all of the Commission authority
23 necessary to construct whatever electric facilities it needs
24 in order to provide safe and adequate service to the public,
25 pursuant to Commission Order No. 9470 in 1938?

1 MR. COMLEY: Your Honor, I'm going to question
2 the relevance of this line of questioning.

3 MR. YOUNGS: Mr. Peshoff is questioning the
4 ability of agencies and entities that are charged with
5 protecting, among other things, the public's interest in these
6 proceedings. And I think it's fair to talk to him about what
7 those agencies' and entities' positions have been in prior
8 proceedings related to these facilities.

9 MR. COMLEY: Your Honor --

10 JUDGE PRIDGIN: I'm sorry, go ahead.

11 MR. COMLEY: -- I'm not sure that that was a
12 question. It was a quote supposedly from a prehearing brief,
13 I assume in the 248 case. It was taken out of context. I
14 mean, we don't have that here.

15 The line of questioning appears to be who the
16 Public Counsel currently believes it is representing in this
17 specific case. I don't think the Public Counsel is asserting
18 that it has the ability to represent landowners or land use
19 stakeholders in this case. I don't know. It seems to be
20 something that should be inquired of the Office of the Public
21 Counsel.

22 JUDGE PRIDGIN: I'm going to overrule because
23 the witness did get into, you know, a massive set of documents
24 about what sort of public input should be allowed. And so I
25 will let Mr. Youngs cross-examine on his understanding and on

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1 the witness's understanding of what public input has been
2 allowed or should be allowed in Missouri.

3 BY MR. YOUNGS:

4 Q. Do you recall my question, sir?

5 A. Could you repeat it, please?

6 Q. Sure. Do you have any recollection of the
7 fact that in the prior proceeding related to these very
8 facilities, the Office of the Public Counsel said in a
9 prehearing brief before this Commission that it believed
10 Aquila already possesses all of the Commission authority
11 necessary to construct whatever electric facilities it needs
12 in order to provide safe and adequate service to the public?
13 Were you aware of that?

14 A. I do believe I've read that.

15 Q. And were you also aware that the Public
16 Counsel said that Aquila's request for additional specific
17 authority to construct a specific power plant within this area
18 is completely unnecessary and inconsistent with Missouri law?
19 Do you recall reading that?

20 A. Yes.

21 Q. And do you also recall reading that Public
22 Counsel believes that Aquila, Inc. currently possesses a valid
23 certificate of convenience and necessity that provides Aquila
24 with all of the regulatory authority needed to construct an
25 electric generation facility on the South Harper tract of

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1 unincorporated Cass County? Do you remember --

2 MR. COMLEY: Your Honor, I think this
3 cross-examination is exceeding what cross-examination is
4 intended for. I think Mr. Youngs is now making argument with
5 this cross-examination and asking questions of a legal
6 character to the witness and --

7 MR. COFFMAN: Or just reading a pleading.

8 MR. YOUNGS: The question has been raised
9 about what the position and what level of representation the
10 public has received related to these facilities and this is
11 fair cross-examination regarding that topic.

12 MR. COMLEY: I think the topic is
13 miscommunicated. I think we're talking about an overruled
14 case and how it may apply in this case. And I think that is
15 the wrong line of questioning and improper. And I object to
16 it.

17 JUDGE PRIDGIN: All right. I'm going to
18 overrule. The Commission is aware that 0248 was overruled by
19 the Circuit Court of Cass County. And I will let Mr. Youngs
20 continue to cross-examine on this, but I expect you to be
21 brief.

22 MR. YOUNGS: I have two more questions and it
23 includes that one.

24 THE WITNESS: Yes, I've read that.

25 BY MR. YOUNGS:

1 Q. All right. And did you know that at the time,
2 the Office of Public Counsel was represented by John Coffman,
3 an attorney for one of the intervenors in this proceeding?

4 A. I'm not aware of that.

5 Q. Okay. You talked a little bit about the
6 various states. And would it be fair to say that, in your
7 opinion, the states that are in this massive exhibit that
8 we've been talking about this morning are states that you
9 believe are progressive states with regard to their regulation
10 of public utilities?

11 A. Yes.

12 Q. And the planning processes involved in siting
13 those?

14 A. Yes.

15 Q. And one of those would be Florida; is that
16 correct?

17 A. That's correct.

18 Q. And you would agree with me that all of these
19 states provide the authority to their Public Service
20 Commissions for doing the various types of things they do with
21 regard to evaluating and approving the siting of power plants
22 and related facilities, that the authority to those
23 commissions is granted to those commissions by state statute?

24 A. Expressly, yes.

25 Q. And state statutes that are expressly enacted

1 by the legislatures or General Assemblies in those respective
2 states --

3 A. Yes.

4 Q. -- is that correct?

5 A. Uh-huh.

6 Q. And you would agree with me that Missouri's
7 Public Service Commission Act is a statutory enactment. True?

8 A. Yes.

9 Q. And it was the statutory enactment that was
10 enacted back in 1913. Correct?

11 A. I do not know the date.

12 Q. And specifically Section 393.170, were you
13 aware that that's remained essentially unchanged since that
14 time?

15 MR. COMLEY: This question has been asked and
16 answered of the witness about his knowledge of Section
17 393.170.

18 MR. YOUNGS: I'm asking if he knows --

19 THE WITNESS: I don't know what its amended
20 history has been.

21 MR. YOUNGS: Okay. Fair enough.

22 JUDGE PRIDGIN: Overruled, the objection.

23 BY MR. YOUNGS:

24 Q. Specifically with regard to Florida, which is
25 one of the progressive states that you cited to, are you aware

1 that there are bills pending in the legislature in Florida
2 that would streamline the process to obtain approval for a
3 plant and reduce the number of public hearings and allow the
4 state to overrule any local ordinances or zoning rules that
5 could slow or halt the location of plants that use nuclear
6 energy, coal or gas? Are you aware of pending legislation in
7 Florida to that effect?

8 A. Yes. I've read about that. There are always
9 bills pending. And it's not necessarily a bad idea.

10 Q. Okay. With regard to California -- could you
11 remove that so I can use the overhead projector?

12 Well, you know what? Rather than wait for
13 that, in the interest --

14 MR. YOUNGS: May I approach?

15 JUDGE PRIDGIN: Certainly.

16 BY MR. YOUNGS:

17 Q. I'm showing you, Mr. Peshoff, a page from -- a
18 page from the California, I think it's called the Energy Aware
19 Planning Guide, Energy Facilities. And it's true, is it not,
20 Mr. Peshoff, that according to that document, investor-owned
21 utilities -- the CPUC asserts jurisdiction over investor-owned
22 utilities for most energy projects and considers its authority
23 preemptive of all local regulations.

24 I've read that correctly, haven't I?

25 A. Yes.

1 Q. And that's your understanding --

2 A. I'd like to read that next paragraph
3 because it looks like it might --

4 Q. I'm asking my questions. If Mr. Comley wants
5 to ask you some more, he's free to do that.

6 MR. EFTINK: Your Honor, I think the witness
7 should be entitled to read the next paragraph --

8 JUDGE PRIDGIN: I don't. This is
9 cross-examination.

10 MR. COMLEY: Maybe we should be entitled to
11 see what the exhibit was that Mr. Youngs showed Mr. Peshoff.

12 JUDGE PRIDGIN: Certainly.

13 MR. YOUNGS: You can fish it out of the mass
14 there, but I'll give you my copy of it.

15 BY MR. YOUNGS:

16 Q. And I don't have any problem with this. The
17 fact of the matter is it does say that, Although the CPUC has
18 preemptive authority over most investor-owned utilities'
19 projects, it does encourage the utilities to consult with
20 local agencies. Was that the paragraph you wanted to read?

21 A. That would have been it.

22 Q. All right. We can talk about the level to
23 which Aquila has done that with Cass County in just a minute.

24 You've talked about the absence of standards
25 and we've talked about the statutory enactment that governs

1 this Commission's consideration of these and other
2 applications. Just so I can confirm that prior to 1980,
3 are you aware or not that utilities regularly came to this
4 Commission for approval for sites?

5 MR. COMLEY: Your Honor, that misstates the
6 law, I object.

7 MR. EFTINK: Your Honor, I also object. That
8 does misstate the law and it also assumes matters that are not
9 in evidence.

10 JUDGE PRIDGIN: I will overrule. He can
11 answer the question if he knows and if he doesn't know, he can
12 simply say so.

13 BY MR. YOUNGS:

14 Q. I'll re-ask the question so maybe it's a
15 little clearer.

16 Are you aware, or are you not, whether or not
17 public utilities prior to 1980 regularly came to this
18 Commission for site specific approval for facilities they were
19 constructing? Are you aware or not?

20 A. I've only heard that has been the process.

21 Q. All right. You certainly haven't looked at
22 the cases -- any Commission cases regarding any of those types
23 of applications to see what actions the Commission took or
24 what factors the Commission looked at under those
25 circumstances, have you?

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1 A. No.

2 Q. The extent of your review has been to go
3 outside the state of Missouri to look at these states that
4 you've encompassed in this exhibit you've provided today?

5 A. No. I've also looked at information that has
6 been readily available from the Public Service Commission
7 about the types of matters, what their prospective, what their
8 goals, policies, its areas of expertise are --

9 Q. And just so we're clear --

10 A. -- currently.

11 Q. -- that examination was limited to an
12 examination of the Public Service Commission's website; is
13 that correct?

14 A. That's correct.

15 Q. All right. So you're unaware of what factors
16 this Commission might undertake to review to determine whether
17 or not these facilities are necessary or convenient for the
18 public service. Is that fair to say?

19 A. Pertaining to land use siting?

20 Q. Well --

21 A. I'm not aware of those factors.

22 Q. Are you aware or are you not aware of what
23 factors the Commission reviews to determine whether a facility
24 is necessary or convenient for the public service?

25 A. No. Because that's not my area of expertise.

1 Q. Nor are you aware of what factors the
2 Commission either currently or historically has reviewed to
3 determine whether or not the facilities promote the public
4 interest. Correct?

5 A. That's correct. I have not seen those.

6 Q. There was some discussion regarding the
7 factors that you take into account or that you believe should
8 be taken into account in determining the compatibility of this
9 site and I just want to ask you some questions relative to
10 those. We talked yesterday about the proximity of Peculiar to
11 the South Harper facility. Correct?

12 A. Yes.

13 MR. COMLEY: Your Honor, we've gone over this
14 already and this is just a rehash of what we did yesterday
15 during Mr. Youngs' recross.

16 MR. YOUNGS: The questions that I'm going to
17 ask are not questions that I asked of this witness yesterday.
18 There are questions that are directly related to the
19 conversations that this witness had in response to questions
20 from Commissioner Gaw and questions that Mr. Comley raised in
21 redirect and I think it's fair cross-examination.

22 Especially given the fact that yesterday, for
23 the first time, we heard opinions from this witness relative
24 to the compatibility of this site to these other areas and I
25 think that this is proper.

1 MR. COMLEY: Mr. Youngs cross-examined
2 Mr. Peshoff concerning the opinions rendered in the testimony.
3 And as far as cross-examination based on my redirect, that
4 would be an offense to the rules of this Commission in terms
5 of advocacy and I think that the rules should be observed in
6 this connection.

7 MR. YOUNGS: Your Honor, with regard to the
8 rules of this Commission, this witness last week for the first
9 time did an extensive review of the facilities, took
10 photographs. Yesterday, in response to friendly
11 cross-examination he offered opinions that were not contained
12 within his rebuttal and surrebuttal testimony.

13 And I'm okay with the rules of advocacy, but
14 they presume fairness and I should have have a fair
15 opportunity to respond to those. And I don't intend to take
16 much more than five minutes of this witness's time doing that,
17 but I think I'm entitled to do it.

18 MR. COMLEY: Judge, Mr. Youngs had that fair
19 and meaningful opportunity yesterday afternoon.

20 JUDGE PRIDGIN: Well, based on Commissioner
21 Gaw's recross and this document, that huge stack of documents,
22 I do want to give Mr. Youngs some leeway. And he did mention
23 five minutes and I'm going to watch the clock.

24 BY MR. YOUNGS:

25 Q. Okay. With regard to the services available

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1 to the site, the services available to this site include
2 electricity, do they not?

3 A. Yes.

4 Q. To both of these sites, with regard to the
5 Peculiar substation as well?

6 A. Okay.

7 Q. You assume that. Correct?

8 A. Yes. I -- yes.

9 Q. And in that area nobody has sewer service, do
10 they?

11 A. I don't believe so. No, they don't.

12 Q. The areas are both served by a public water
13 supply district. Correct?

14 A. Yes.

15 Q. There's a fire protection district that
16 encompasses both of those sites; is that correct?

17 A. Yes.

18 Q. And there is law enforcement coverage for
19 those sites through the Cass County sheriff's office; is that
20 correct?

21 A. Yes.

22 Q. You're not aware that there's any nuisance or
23 interference with farming operations relative to these sites?

24 A. I do not know that.

25 Q. In fact, just so we're clear, north of the

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1 facility on South Harper Road, we've established that there
2 is, in fact, a farm there; isn't that correct?

3 A. That's correct.

4 Q. You're also aware since you looked at the
5 special use permit applications that were attempted to be
6 filed in January of this year, that a special use permit was
7 not sought for the entire 74 acres of the South Harper site.
8 You're aware of that, aren't you?

9 A. Yes.

10 Q. And you're also aware that a special use
11 permit was not sought for the entirety of the 55 acres that
12 encompass or that include the Peculiar substation site.
13 You're aware of that?

14 A. No, I'm not.

15 Q. With regard to environmental issues, you're
16 familiar with the environmental permits that have been sought
17 and obtained for these facilities by Aquila, aren't you?

18 A. Somewhat.

19 Q. You're not aware of any environmental issues
20 that have been raised by any regulatory agency. Correct?

21 A. No.

22 Q. In other words, the answer to my question was
23 you're not aware?

24 A. I'm not aware. That's correct.

25 Q. Thank you. There's no issue with regard to

1 the construction of this facility in any flood plane, is
2 there?

3 A. I don't believe so.

4 Q. And that would include the Peculiar
5 substation; is that correct?

6 A. I don't know. Most of our -- my research has
7 been looking at the facility itself, the South Harper Road
8 facility. That was the focus.

9 Q. All right. So you're just not aware with
10 regard to the Peculiar substation?

11 A. That's correct.

12 Q. No issue, as far as you know, with regard to
13 the disturbance of any significant natural resources at the
14 sites?

15 A. No, I'm not aware of that.

16 Q. No issue, as far as you know, with regard to
17 any storm water runoff?

18 A. I'm not aware of that, but I have heard
19 questions about the runoff.

20 Q. You, yourself, have not examined that issue
21 though?

22 A. No, that's correct.

23 Q. No issue with regard to drainage easements of
24 any kind?

25 A. No.

1 Q. The site does have access to roads that also
2 then have access to major highways, does it not?

3 A. Yes.

4 Q. No chance that this parcel has any chance of
5 becoming a residential subdivision to your knowledge, does it?

6 A. Not likely.

7 Q. There's no specific yard or open space
8 requirements for these facilities that you're aware of?

9 A. Well, by yard requirements, that would include
10 setback, yard setback so I believe that there are some -- at
11 least floor area ratio would fall under that category.

12 Q. You're aware that the South Harper facility is
13 set back from South Harper Road?

14 A. Yes.

15 Q. And that obviously is in comparison with the
16 gas compressor station, which is, from your review of it,
17 pretty much right on South Harper Road without any significant
18 setback; isn't that correct?

19 A. It's -- it's closer to the front, but there is
20 still some setback there. I don't know how close to the right
21 of way it actually is.

22 MR. YOUNGS: Last set of questions, Judge.

23 JUDGE PRIDGIN: Yes, sir.

24 BY MR. YOUNGS:

25 Q. With regard to the cooperation that you talked

1 about --

2 (Exhibit No. 129 was marked for

3 identification.)

4 BY MR. YOUNGS:

5 Q. Mr. Peshoff, you have in front of you
6 Exhibit No. 129. And the reason that I'm talking to you about
7 this is that there was some discussion by you, I think in
8 response to questions from Commissioner Gaw, about road issues
9 related to the site and standards and processes for repairing
10 those roads that you had some discussion about. I think you
11 used a 6-inch measurement or something like that. Do you
12 recall that testimony generally?

13 A. Yes.

14 Q. All right. Were you aware, as is reflected on
15 Exhibit No. 129, that on April 6th, 2005, Terry Hedrick, on
16 behalf of Aquila, sent a letter to Mr. Leeper from the Cass
17 County Commission regarding working with the county to improve
18 243rd Street via a joint venture to perform road preparation
19 and asphalt pave in that area? Were you aware of that?

20 A. No, I was not.

21 Q. And were you also aware that, as reflected in
22 that letter as per previous discussions, the road project will
23 be designed and constructed under the direction of Cass
24 County? Were you aware that that took place?

25 MR. COMLEY: Objection, your Honor. He's

1 reading from the letter as if it's already in evidence. There
2 has been no foundation laid for the introduction of this
3 exhibit.

4 Mr. Peshoff has already said that he's unaware
5 of some of the circumstances that led into this line of
6 questioning. I object to the further line of questioning
7 about this letter until it's properly given foundation.

8 MR. YOUNGS: I'm asking this witness
9 questions. I'm using the letter as a reference, but I'm
10 asking him whether he's aware that the county and Aquila in
11 April of 2005 worked together to do road construction and
12 repair in the area surrounding the South Harper site. And I'm
13 assuming that if he doesn't know that, he'll tell me.

14 JUDGE PRIDGIN: I'm going to overrule. I
15 agree. He's simply asking questions from that letter and
16 asking if he knows the information from that letter to be true
17 or not and the witness can answer.

18 BY MR. YOUNGS:

19 Q. Were you aware that, as per previous
20 discussions between Cass County and Aquila, the road project
21 that they were going to partner on was going to be actually
22 designed and constructed under the direction of the county?
23 Were you aware of that?

24 MR. COMLEY: Your Honor, the question presumes
25 that Mr. Peshoff believes those things are true, and I object

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1 to the form of the question.

2 JUDGE PRIDGIN: I'll overrule. He can answer.

3 And obviously that's something you can firm up on redirect.

4 He can answer if he knows the answer.

5 THE WITNESS: I was not aware.

6 BY MR. YOUNGS:

7 Q. Okay. And were you aware, as is reflected in
8 the exhibits to this April 6th, 2005 letter, that Aquila
9 working in partnership with the county received bids from
10 companies to perform that work?

11 A. I was aware that Aquila has done roadway
12 improvements. I was not aware of the bidding process or any
13 participation by the county.

14 Q. So you weren't aware of the fact that in the
15 spring of 2005, Aquila partnered with the county to perform
16 road repair around the South Harper facility?

17 A. That's a correct statement.

18 MR. YOUNGS: Your Honor, I know this witness
19 doesn't have any knowledge of this, but in light of his
20 testimony and in light of the fact that these issues were
21 first presented to us yesterday late in the day before we were
22 able to make arrangements to have a witness come in to lay a
23 proper foundation for this possibly, I offer Exhibit 129 for
24 whatever weight the Commission decides to give it with regard
25 to Mr. Peshoff's testimony.

1 MR. COMLEY: Your Honor, we object to the
2 exhibit. This could have been identified through other
3 witnesses in the course of the proceeding. The matter of
4 permitting and other road conditions have been brought up
5 during the course of the proceeding. The fact that this
6 material was supplied today and the other things should not
7 have any bearing on whether or not this exhibit should be free
8 to the foundation requirements. We object to its entry.

9 JUDGE PRIDGIN: Mr. Youngs?

10 MR. YOUNGS: Again, I believe that this is the
11 best we could do under fairly exigent circumstances. We heard
12 his testimony regarding the lack of cooperation between Aquila
13 and the county yesterday at about five o'clock or after and we
14 just flat weren't able to get a witness down here who could
15 lay the foundation to rebut that testimony today. So again,
16 I'm offering it for whatever weight the Commission intends to
17 give it.

18 I would also refer the Commission to exhibits
19 that are already in evidence that discuss this issue. And
20 those are the special use permit applications for the South
21 Harper facility and the Peculiar substation that are in
22 evidence that were attempted to be filed in January of 2006.

23 MR. COMLEY: Then I'll have the objection that
24 this is cumulative of other evidence and should not be
25 admitted.

1 JUDGE PRIDGIN: Thank you. The objections are
2 overruled. Exhibit 129 is admitted.

3 (Exhibit No. 129 was received into evidence.)

4 MR. YOUNGS: Those are all the -- I'm probably
5 well over my five minutes that I promised. I apologize for
6 that, Judge. I have no further questions at this time.

7 JUDGE PRIDGIN: All right. Mr. Youngs, thank
8 you.

9 Any further recross? Ms. Shemwell, I know you
10 had mentioned recross about a map. I do want to get this done
11 and get Mr. Peshoff on his way.

12 FURTHER RECROSS-EXAMINATION BY MS. SHEMWELL:

13 Q. Mr. Peshoff, do you have the map? It's on
14 this side. Mr. Peshoff, are you ready, sir?

15 A. Yes.

16 Q. Now, can you tell us what spot zoning is?

17 A. Zoning a parcel largely irrespective of what
18 the adjacent uses are. Spot being precisely what the
19 vernacular definition might be -- common definition might be
20 of. It is just a spot that is zoned atypical, not consistent
21 with its adjacent uses.

22 Q. And you looked at the map yesterday in
23 response to my question, didn't you, and confirmed that it is
24 what you would have seen perhaps six weeks ago. Is that a
25 fair characterization of our conversation yesterday?

1 MR. EFTINK: Your Honor, I object. This is
2 beyond the scope and Ms. Shemwell has already had recross.
3 This would be what, her second attempt at recross? And we can
4 go on and on if you continue to let people get up and ask
5 questions that they should have asked before.

6 MS. SHEMWELL: My point was that we did not
7 have the opportunity to see the map until yesterday.
8 Mr. Wood had asked for it repeatedly. He had not received it
9 so we did not really have the opportunity yesterday to look at
10 the map and ask questions.

11 MR. EFTINK: But she asked questions just a
12 half an hour ago and now she's up asking the same questions --
13 or questions that she could have asked when she got up earlier
14 this morning.

15 JUDGE PRIDGIN: Well, I mean, she specifically
16 mentioned that she may have questions for the map. And I do
17 remember the record pointing out that Mr. Wood had a hard time
18 seeing this map when he went to Cass County and I do want to
19 give Staff the chance to ask questions about that map. So
20 that objection's overruled.

21 MR. COMLEY: Your Honor, I'll add the
22 objection that this map could have been discoverable through
23 the data requests or other discovery devices available to the
24 Commission and there is no official request through data
25 requests or otherwise for this map. I propose that the Staff

1 had adequate time to prepare for this kind of questioning and
2 the line of questioning now is too late and I'll object on
3 those grounds.

4 JUDGE PRIDGIN: Ms. Shemwell.

5 MS. SHEMWELL: Well, Mr. Wood went up and
6 asked for it repeatedly and accompanied by Debra Moore went to
7 the office and they didn't find it. As a result of that, they
8 did not voluntarily provide it and it's supposed to be open to
9 the public.

10 I know that Mr. Wood mentioned that Mrs. Moore
11 would not necessarily be expected to know where the map was,
12 but he had requested of the Cass County counselor to see the
13 map and have a copy of and it could have been provided.

14 MS. MOORE: You know, I will object on behalf
15 of the county and respond to this line of questioning. I was
16 asked on a Friday afternoon at four o'clock to go down to the
17 zoning office to find a zoning map. Our zoning director was
18 not present and I have no idea where the zoning department
19 keeps the official zoning map.

20 This is unfair that we are told that, you
21 know, Cass County was not willing to provide information in
22 reference to this case. We've been just so -- to prepare for
23 a case like this in a month, it has just been absurd. And for
24 any suggestion that the county has not been responsive to this
25 Commission, I'm offended by it. Thank you.

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1 MS. SHEMWELL: The idea that this is an
2 emotional case has certainly been demonstrated.

3 JUDGE PRIDGIN: And I didn't get any type of
4 inclination that anybody was trying to purposely not be
5 responsive. I think Ms. Shemwell is saying they simply have
6 not seen it, without necessarily laying any blame on anyone.
7 And I understand also that that information could have been
8 discoverable.

9 So, Ms. Shemwell, if you could be rather brief
10 in your questions on this matter.

11 MS. SHEMWELL: Yes, sir. It's largely in
12 relation to his testimony yesterday too that he had seen it
13 six weeks ago, but anyway.

14 BY MS. SHEMELL:

15 Q. Is the map --

16 A. That's not true.

17 Q. -- consistent with the Cass County 1999
18 comprehensive plan?

19 A. I'm sorry. Could you repeat that?

20 Q. Is the map consistent with the Cass County
21 199-- 1999 comprehensive plan?

22 A. It's consistent with -- actually it's -- it's
23 a zoning map that would have relied on the 1997 comprehensive
24 plan.

25 Q. Is it consistent with that plan?

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1 A. I -- I believe it is largely consistent.

2 Q. Are you familiar with the 2003 plan?

3 A. Yes, I am.

4 Q. And I'm referring to the county's
5 comprehensive plan. Is the map consistent with that?

6 A. The map has not been updated to reflect
7 changes since 1999.

8 Q. So if I ask you if it's consistent with the
9 2005 plan, would your answer be the same?

10 A. Yes.

11 Q. As a land use planner, is spot zoning the
12 preferred way to do land use planning?

13 A. No.

14 Q. Why not?

15 A. The idea is to establish areas where types of
16 uses should be located, not just a particular use. Trying to
17 identify larger areas for types of uses also provides a way to
18 provide buffers between more intensive uses, which might
19 include commercial, industrial, high density residential; and
20 less intensive uses, large lot, typical subdivision, suburban,
21 residential. So it's way to try and create some order out of
22 the landscape.

23 Q. In looking at the map, is it representative --
24 more representative of spot zoning than, I don't know,
25 whatever other type of zoning there might be?

1 A. I think it's more indicative of a growing
2 rural county that is accepting more and more intensive and
3 urban type uses. You're going to find --

4 Q. But is it representative of spot zoning?

5 A. No. I would say spot zoning would be -- a
6 typical example of spot zoning, putting a commercial or
7 industrial facility in a residential area, trying to clearly
8 put something inappropriate where it should not be. Locating
9 commercial and industrial sites in rural developing areas,
10 that's part of a logical, reasonable growth pattern. That's
11 what happens.

12 MS. SHEMWELL: Thank you. That's all I have.
13 Thank you, Judge.

14 JUDGE PRIDGIN: Ms. Shemwell, thank you.

15 Any further recross?

16 MR. COMLEY: I think Mr. Coffman had some
17 recross.

18 MR. EFTINK: Your Honor, could I ask to see
19 the brief of the Office of Public Counsel that Mr. Youngs was
20 reading from when he was asking questions of this witness? I
21 think I should have the opportunity to look at that document.

22 MR. YOUNGS: It's a public document, Judge.

23 MR. EFTINK: I don't have a copy in front of
24 me.

25 MR. YOUNGS: Well, I've got a copy, but it's

1 got stuff I don't want Mr. Eftink to see on it. And it's the
2 only copy I have.

3 MR. EFTINK: Does anybody else have a copy of
4 it?

5 FURTHER RECROSS-EXAMINATION BY MR. EFTINK:

6 Q. Probably haven't seen this in a year, so if
7 you would bear with me.

8 Mr. Peshoff, I'm looking at the brief that
9 Mr. Youngs was asking you questions about. It's a brief filed
10 by the Office of Public Counsel in Case No. EA-2005-0248.

11 And I notice that the next paragraph right
12 after he stopped reading says, Unfortunately, Aquila is
13 attempting to place the Commission in the middle of a local
14 zoning dispute and no reason exists for the Commission to take
15 sides in this dispute. It is neither within the Commission's
16 legal authority nor good public policy for the Commission to
17 interject itself into this local land use dispute.

18 Were you aware of that?

19 A. No, I was not.

20 MS. SHEMWELL: Is Mr. Eftink doing redirect,
21 Judge?

22 MR. EFTINK: I'm asking questions about a
23 document that Mr. Youngs asked him questions about, but did
24 not reveal the entire document.

25 MS. SHEMWELL: It seems to be a redirect.

1 JUDGE PRIDGIN: It's certainly friendly cross
2 and I'm going to be -- I'm going to limit it.

3 BY MR. EFTINK:

4 Q. And in that same document that Mr. Youngs was
5 asking you questions about, it cites to a Missouri Power &
6 Light case. Are you familiar with that case?

7 A. I am not. I'm not sure which case you're
8 referring to and I'm not here to talk about any of the cases.

9 Q. And on Page 3 of that brief, the Office of
10 Public Counsel writes that, The Public Service Commission
11 emphasized in that case the requirement that a public utility
12 comply with municipal zoning requirements before construction
13 of any electric facility.

14 Do you agree that it's -- just from a planning
15 standpoint, that it's a good idea to require the utility to
16 comply with local zoning before construction begins?

17 MR. YOUNGS: I don't know if it's fair game or
18 not.

19 THE WITNESS: Yes.

20 MR. YOUNGS: Excuse me. I have an objection
21 to make, but I will object to Mr. Eftink trying to shoehorn
22 legal opinions from this witness in the form of questions of
23 this witness in his capacity as a planning person. I don't
24 think that's proper based on the witness's admitted
25 foundation.

1 MR. COFFMAN: Your Honor, that question is an
2 exact mirror image of what Mr. Youngs had asked. It was
3 simply reading a sentence from the very same prehearing brief
4 and asking Mr. Peshoff to comment.

5 MR. EFTINK: I think if Mr. Youngs is
6 permitted to read some sentences out of this brief, I'm
7 entitled to read the other sentences to give it context, to
8 show what the Office of Public Counsel really said.

9 JUDGE PRIDGIN: I'll overrule. And I don't
10 want a whole lot more reading from a brief that has been filed
11 a long time ago.

12 BY MR. EFTINK:

13 Q. Do you remember the question?

14 A. Could you repeat it, please?

15 Q. Well, basically the question is, just like the
16 Public Service Commission said before, it should require that
17 a public utility comply with municipal zoning requirements
18 before construction begins.

19 MR. YOUNGS: I'm going to object to this. You
20 know, he's doing something quite a bit different than I was
21 doing. He's espousing legal principles and asking if this
22 witness agrees with them. That's different, I think, than
23 what I was doing with this exhibit, but that's my objection.

24 JUDGE PRIDGIN: I'll overrule.

25 THE WITNESS: Planners would forward that

1 principle.

2 MR. EFTINK: Your Honor, I would ask the
3 Commission to take official note of the brief called The
4 Prehearing Brief by the Office of Public Counsel filed in
5 EA-2005-0248, so that the counsel can see what actually was
6 said by the Public Counsel.

7 JUDGE PRIDGIN: So noted. The Commission will
8 take notice of that case and that brief.

9 Further recross? Hearing none, any redirect?

10 MR. COMLEY: Yes, your Honor.

11 MR. WHEATLEY: Judge --

12 JUDGE PRIDGIN: Yes, sir, I'm sorry.

13 MR. WHEATLEY: -- there's been quite a bit of
14 discussion about the function of the Office of Public Counsel
15 and I would like to ask a few clarifying questions so that --
16 because I believe the true function has been obscured.

17 JUDGE PRIDGIN: Okay. And how is this witness
18 going to help you clarify your office's role, I guess is where
19 I'm confused?

20 MR. WHEATLEY: Mr. Youngs has indicated and
21 asked this witness what the function of the Office of the
22 Public Counsel is. And I believe that through his questioning
23 and answering, he has obscured the true functions of the
24 Office of Public Counsel.

25 MR. YOUNGS: Well, your Honor, on behalf of

1 Aquila, I think the Office of the Public Counsel is able to
2 put that issue -- to the extent the Commission is not aware of
3 that, its understanding certainly supercedes that of this
4 witness who has already indicated that he has no idea about
5 such issues. I think this is an opportunity for Mr. Wheatley
6 to get up and make a speech and I object to it.

7 JUDGE PRIDGIN: Ms. Shemwell?

8 MS. SHEMWELL: Staff has enormous respect for
9 the Office of the Public Counsel, but would agree that this is
10 a matter that could be briefed, if necessary.

11 JUDGE PRIDGIN: I agree. I mean, I don't see
12 any reason to ask this witness's understanding. I think the
13 Commission understands the Office of the Public Counsel's role
14 and certainly anything it wants to add into a brief, it
15 certainly can. I don't see any point in giving any
16 questioning on it.

17 Any recross before we go onto redirect?
18 Mr. Comley? I'm sorry. Any recross?

19 MR. COFFMAN: Yes. If I might.

20 JUDGE PRIDGIN: Mr. Coffman.

21 FURTHER RECROSS-EXAMINATION BY MR. COFFMAN:

22 Q. Good morning, Mr. Peshoff.

23 A. Good morning.

24 Q. You were asked a question by Mr. Youngs when
25 he was permitted to get into several factors apparently

1 related to the questions that had gone on earlier, asking you
2 about features of the particular site. Do you recall that?
3 Do you recall a question regarding whether there had been any
4 agricultural disruption? Do you recall that question?

5 A. Yes.

6 Q. And are you aware of any horses that are kept
7 in the nearby area?

8 A. No.

9 Q. You're not. So you've not heard any
10 complaints about horses being disturbed by the power plant?

11 A. No. We have not done a detailed site plan
12 review.

13 Q. Okay. When you had commented about the
14 compressor station, the gas compressor station there, is it
15 fair to say that in agricultural areas, gas tanks of some sort
16 are not unusual to be found in a rural setting in
17 agriculturally zoned areas?

18 A. They're not unusual.

19 Q. Is it unusual to find large metal sheds in
20 agricultural rural areas?

21 A. No, it's not

22 MR. YOUNGS: Excuse me, your Honor. Is
23 Mr. Coffman intimating that the gas compressor station is a
24 gas tank? Is that what I'm understanding him to say? Because
25 if he is, I object to it. That's a mischaracterization of the

1 facility.

2 MR. COFFMAN: I'm merely asking yes or no
3 questions. Albeit in a rather broad way, but in a manner I
4 don't think is any different than what Mr. Youngs was just
5 permitted to do.

6 JUDGE PRIDGIN: I'll overrule.

7 BY MR. COFFMAN:

8 Q. Can I ask you then conversely, if it is common
9 or consistent with agricultural zoning to have 75-foot gas
10 turbines in an area of this type?

11 MR. YOUNGS: I'll object. There is no
12 evidence that there is any such thing as a 75-foot gas turbine
13 on the South Harper site. That's a mischaracterization of the
14 facility. Again, I object to that.

15 MR. COFFMAN: Your Honor, it's over 70-foot
16 gas turbines.

17 MR. YOUNGS: The gas turbines are not 70 feet
18 tall. I mean, that shows a misunderstanding of the facility
19 that maybe I ought to let the questioning go on because it's
20 indicative of the lack of understanding of the nature of the
21 facility if there's actually a claim that the turbines
22 themselves are 75 feet tall.

23 MR. COFFMAN: My question was merely would a
24 75-foot turbine -- I imagine the evidence in this case would
25 reflect whether or not what they would like to build and

1 actually have already built actually is a 75-foot turbine.

2 JUDGE PRIDGIN: All right. I'll overrule.

3 And, of course, the record will eventually show how tall those
4 turbines are, but Mr. Coffman --

5 BY MR. COFFMAN:

6 Q. Let me just say, leaving the feet off, would
7 gas turbines be consistent with agricultural zoning in this
8 type of area?

9 A. I don't know.

10 Q. Okay. Consistent with your review of various
11 states and siting-type decisions and also your knowledge of
12 land use planning decisions and how those may interrelate,
13 maybe not, is it normally a consideration that would be part
14 of a land use review, whether or not the use for that -- the
15 proposed use for that land affected the shareholders of the
16 entity making the application?

17 A. I'm not sure I understand the question.

18 Q. Would the impact of a proposed land use -- or
19 would a particular land use that you were reviewing as a land
20 use planner, would one of the factors that would be relevant
21 to your review be what the impact would be on the shareholders
22 of the applicant?

23 A. Not typically. Communities would look at
24 return, internal rate of return, return on investment more
25 typically when there is some type of an inducement that the

1 community's offering when there's some type of a tax abatement
2 program or what have you. That's when the analysis would lead
3 to, is this a wise use of public dollars or -- or anticipated
4 tax revenues. But just for a straight development review
5 where there's not a component of it, that wouldn't even come
6 into the discussion.

7 Q. Are you saying that to the extent that there
8 would be an economic review, that would typically be the
9 economic impact on the jurisdiction's taxes or --

10 A. Yes. Now, that -- that's another component
11 because now we're looking at how much would it cost to provide
12 facilities and services to this use. And a more intensive use
13 typically is going to have a higher demand for facilities and
14 services. It's one of the reasons -- I had talked yesterday
15 about roadways. That while there may be other electric
16 plants, power plants in rural type areas, their location
17 adjacent to a roadway, an adequate roadway would be a more
18 defining factor than just being in a rural area.

19 And as I mentioned, this is a roadway that is
20 clearly -- as what would be labeled by the county and -- I
21 think it's reasonable to label it as a collector street, it's
22 a two-lane paved, swales on each side. It's a rural roadway.

23 Q. Okay. I guess I'm still interested in nailing
24 down exactly what you believe would be proper in a land use
25 review. And my question is, would the impact on the

1 ratepayers of the applicant from the proposed use be something
2 that you believe would be an appropriate thing to consider in
3 a land use review?

4 A. Those might be issues that someone in the
5 review process would bring forward. And the review process
6 should be very broad and open and inclusive. So if the
7 applicant or an interest group felt it was important to talk
8 about the need, the effect on the ratepayers then, that would
9 be something that ought to be considered.

10 The development -- the development review
11 process should not be trying to filter out topics, but trying
12 to get as much information as possible to reach consensus
13 agreement on what the proper decision should be.

14 Q. Do you have an opinion about whether it is
15 relevant whether any of the nearby landowners are actually
16 customers of the applicant electric utility?

17 A. I do not know.

18 MR. COFFMAN: That's all I have. Thank you.

19 JUDGE PRIDGIN: Mr. Coffman, thank you.

20 Redirect?

21 MR. COMLEY: Your Honor, just a few.

22 REDIRECT EXAMINATION BY MR. COMLEY:

23 Q. Mr. Peshoff, in questioning by Ms. Shemwell,
24 she asked you -- she mentioned something about when you saw
25 the county zoning map. Can you explain to the Commission when

1 the first time was you saw the Cass County zoning map?

2 A. Yeah. The first time I saw it was over a year
3 ago. And it was not in relation to working with or for the
4 county. I was just a planner working for a private property
5 owner in the county and I timed my -- because we deal with
6 communities all the time with planning administrators.

7 And what we typically do is call ahead before
8 showing up because, especially for rural counties, it's
9 difficult to maintain maps and data. I don't want to waste my
10 time or my Staff's time so we try and call ahead to see if
11 someone's going to be there.

12 When we stopped by, there was someone there,
13 was able to show us -- he was able to show us the map, we
14 talked in detail about the county's collection. And, again,
15 it was just as a unknown third party coming in, asking
16 questions, not anyone working for a party. But it's been
17 quite some time.

18 And actually I have not seen this map since
19 that point. While we did our analysis for this project, we
20 relied on Staff to provide us with updated versions of the
21 map. We had asked specific questions about land uses, about
22 zoning designations and we've seen updates that were hand
23 prepared and we've turned those into electronic GIS files.

24 Q. So right now you're in the process of updating
25 the map?

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1 A. Yes, sir.

2 Q. Ms. Shemwell also asked you about whether or
3 not the zoning map was consistent with the comprehensive plans
4 that have been in place since 1997. Explain to me the
5 difference between the comprehensive plan and the zoning on
6 the map.

7 A. The comprehensive plan -- and I'll even say
8 plans from '97, '03 and '05 identifies a number of people that
9 have reiterated the guide, the framework for land uses within
10 the county. And the zoning identifies specific uses that are
11 designated for parcels in the county. The map is one tool to
12 be able to identify and ascertain what the zoning is for a
13 particular parcel.

14 The fact that the map stopped being updated
15 physically, graphically in 1999 doesn't mean that the ability
16 to designate and identify a parcel zoning stopped in 1999. It
17 was just maintained in a textual file format rather than a
18 graphical mapping format. And we're working now to actually
19 make the map a active real time graphical representation of
20 the county's zoning.

21 Q. The updates you're referring to, those updates
22 refer to what, zoning decisions?

23 A. Yes. Before planning board and Board of
24 County Commissioners.

25 Q. And how are those zoning decisions governed?

1 A. They --

2 Q. What is the guide for those zoning decisions?

3 A. They would be subject to being consistent with
4 the comprehensive plan that was adopted at the time of the
5 application, as well as the requirements and the zoning and
6 subdivision regulations that were adopted at the time of the
7 application as well.

8 Q. So when the updating process is complete, the
9 zoning map will reflect what?

10 A. The zoning map will reflect the decisions that
11 the county has made regarding zoning since 1999. The
12 decisions now that are not as available at a fingertip will be
13 available at someone's fingertip.

14 Q. Mr. Chairman, I'll discuss with you spot
15 zoning. What is leapfrog zoning?

16 A. Leapfrog development might be a better phrase,
17 is what one could -- would expect looking at the proposed --
18 as an example, the proposed annexation of the South Harper
19 facility to Peculiar. Because you have a incorporated area --
20 and if we had a map here, I could show it, but you have an
21 incorporated area, and then you have residential development
22 in the county and then leapfrogging literally over that was
23 the proposed annexation of the South Harper facility.

24 And that is a textbook case of taking a more
25 intensive use, an industrial-type use that may be more

1 appropriate in a urban area, where urban services and
2 infrastructure are available such as roadways -- and
3 leapfrogging, literally leaping over, less intensive
4 developments to get to an area that may have less regulatory
5 structure, lower land prices.

6 That's the concept behind sprawl that
7 virtually every community across the country is trying to
8 prevent. We're trying to establish rational reasonable growth
9 and expansion policies.

10 Q. During the course of the examination with
11 Mr. Youngs, he was discussing an exhibit concerning road
12 repairs and road construction. Is an issue such as road
13 repair a matter of discussion during development review
14 processes with municipalities prior to construction?

15 A. It could be. A preapplication conference
16 should be. And you're saying prior to construction?

17 Q. Yes.

18 A. Prior to construction, yes. Even prior to
19 development review, discussion of necessary improvements
20 should be discussed so there are no surprises when the
21 applicant gets to the planning commission or to the
22 legislative body.

23 Q. Do you have any knowledge of whether
24 development review issues such as road repair were dealt with
25 between Cass County and Aquila in this matter prior to

1 construction?

2 A. No. My only understanding of roadway
3 improvements was that they were either conducted or bond was
4 established because of a -- a legal proceeding.

5 Q. Final question, Mr. Peshoff. Why did you
6 review the procedures in other states and jurisdictions in
7 connection with the citing procedures for power plants for
8 purposes of your testimony in this case?

9 A. I thought it would be as informative for
10 myself as it would be for the Public Service Commission.
11 There are a multitude of topics in planning and one can't be
12 an expert and fully informed on all of them.

13 This provided the opportunity to enhance my
14 understanding and at the same time point out that there are a
15 number of factors that the Commission ought to be aware when
16 making a decision. And those factors would include the
17 processes, the expectations, the standards, the factors that
18 other states have identified in a very similar circumstance.

19 Q. By a way of comparison, Mr. Peshoff, were
20 those same procedures applicable in the Missouri Public
21 Service Commission?

22 A. I have not seen those.

23 MR. COMLEY: I have no other questions on
24 redirect.

25 JUDGE PRIDGIN: Mr. Comley, thank you.

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1 Any further questions from the Bench?

2 All right. Seeing none, Mr. Peshoff, thank
3 you very much, sir, for your time and your testimony. We
4 appreciate it.

5 This looks to be a convenient time to break.
6 The clock on the back of the wall shows about 8 after 10:00.
7 Let's try to resume about 10:20 and I believe we will have
8 Mr. Wood from the Staff. I believe the Bench will have
9 questions for Mr. Wood. Anything further from counsel before
10 we break?

11 All right. Hearing none, we are off the
12 record.

13 (A recess was taken.)

14 JUDGE PRIDGIN: All right. We're back on.
15 Mr. Wood has taken the stand. I believe that the Bench may
16 have some questions of Mr. Wood. You are still under oath.

17 The Bench may also have questions for
18 Ms. Mantle from Staff as well. And as well the Bench may also
19 have questions again for Mr. Empson from Aquila. So if we can
20 just keep parties advised as we have other questions.

21 So Chairman Davis, any questions for Mr. Wood?

22 WARREN WOOD testified as follows:

23 QUESTIONS BY CHAIRMAN DAVIS:

24 Q. Mr. Wood, it's my understanding that you made
25 efforts to look at the planning and zoning maps of Cass

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1 County; is that correct?

2 A. Yes.

3 Q. And did you actually go to Cass County to
4 the -- well, I guess could you describe what your efforts were
5 in that regard?

6 A. Certainly. On March 30th, counsel received a
7 copy of the master plan 2005 document we referred to quite a
8 bit in this hearing. Looking through that, I noticed that
9 there was a reference to a zoning map. I've noticed -- noted
10 in my testimony I knew I was going to be there on April 6th, I
11 believe, and I called up to the office because the --

12 Q. What office did you call up to?

13 A. I called the Planning and Zoning Department,
14 Darrell Wilson.

15 Q. Okay.

16 A. Darrell Wilson's office from a business card
17 that was stuck into the book that counsel brought back and
18 provided to me. At that point in time I learned that there
19 was a larger copy available of the -- what's referred to as
20 the comprehensive plan update map that I could get a copy of.

21 And that -- and I asked about, Well, is that
22 the zoning map? And he said, no. And, Well, could I get that
23 too? And they said, Well, that's the map we have that you can
24 pick up.

25 And then on the 6th when I came up, I came by,

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1 got the copy of the 11-by-17 and asked, Well, is there --
2 where's this other map? Could I get a copy of that? And
3 said, Well, that's the map we have. And I said, Okay. So I
4 came back and called again, you know.

5 And obviously throughout these discussions
6 there may have been some, you know, confusion. And I'm sorry
7 that Mrs. Moore feels that she was offended or attacked in
8 some way. That was certainly not my impression, what I desire
9 to achieve. I've never felt they were trying to hide
10 anything. I just feel we weren't clear on what we were trying
11 to get or wasn't being provided to us.

12 And then when we came back, I wouldn't have
13 expected Mrs. Moore to know where it was. But we did take a
14 look and nonetheless didn't see it in Mr. Wilson's map room.
15 Okay?

16 CHAIRMAN DAVIS: Okay. No further questions
17 at this time.

18 JUDGE PRIDGIN: Chairman, thank you.

19 Commissioner Gaw, any questions for Mr. Wood?

20 COMMISSIONER GAW: A few, Judge, thank you.

21 QUESTIONS BY COMMISSIONER GAW:

22 Q. Mr. Wood, I want to -- the document that you
23 provided to us I think it's Exhibit 115.

24 COMMISSIONER GAW: Judge, is that correct?

25 JUDGE PRIDGIN: Let me verify that. I believe

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1 that's correct.

2 THE WITNESS: Is this the one with the 16
3 factors and then the subsets of different state stuff?

4 COMMISSIONER GAW: Yes.

5 JUDGE PRIDGIN: That's how I show it. If
6 counsel sees anything to the contrary, please let me know, but
7 I believe he's referring to Exhibit 115 and some extra
8 information that the Bench requested from Mr. Wood.

9 BY COMMISSIONER GAW:

10 Q. The list of factors that you have on the front
11 of that multi-page document, tell me what those factors
12 represent.

13 A. In looking at the different, you know, state
14 information and looking at some of our past cases, and this
15 was, you know -- understand that the document I provided you
16 was my little -- you know, quote/unquote, cheat sheet that I
17 put together when I started looking at describing a process
18 for this case.

19 And I -- and I understand that some of these
20 overlap, some of the -- you know, this is not a product that
21 was put together for testimony, but it was requested and I
22 didn't think it was fair for me to come back and try to clean
23 it up and make it something that would look right.

24 What I was doing when I went through all these
25 different documents was to simply, you know, start writing

1 down the different things I was seeing in different -- in
2 different states and different cases. And just trying to, you
3 know, get a feel as to what the issues were that we would want
4 to be thinking about.

5 And some of these overlap. Like I said, I
6 don't know if the list would be 16 after you took out some of
7 the overlaps. It might be a little longer if you decided to
8 put some additional detail in.

9 Q. Okay. But are these the things that you found
10 as factors in the documents and the pages that follow in
11 Exhibit 115?

12 A. Yeah. I'm glad you asked that. This gives me
13 an opportunity to clarify something. I think from the
14 testimony Friday, there may have been the impression that all
15 of the documents here were looked at before I started my
16 rebuttal.

17 And I would clarify that I had not looked at
18 the Illinois -- you know, the spread -- I'd got in contact
19 with Illinois after Surrebuttal so it's in this package, but
20 it's post-Surrebuttal. The Arizona, I hadn't looked at that
21 until after Rebuttal, but before Surrebuttal.

22 And the Nebraska information, although I had
23 talked with Nebraska on numerous occasions, the document
24 that's in there, I actually pulled off the web after
25 Surrebuttal. Okay?

1 I just want to clarify that because I don't
2 want to leave the impression that everything here is what I
3 looked at before Rebuttal. But what is in this list of 16,
4 this was developed before Rebuttal based on the remaining
5 states and other past cases.

6 Q. Okay. What I'm trying to gauge though here,
7 Mr. Wood, is whether if I look through all of these pages in
8 115, will I find those 16 factors somewhere?

9 A. Between those pages and the '73 Missouri
10 Power & Light case, the 1980 UE --

11 Q. Hold it. Go slowly.

12 A. You bet.

13 Q. What else that is not in 115 slowly, if you
14 would give me --

15 A. You bet.

16 Q. -- the information.

17 A. The 1973 Missouri Power & Light case. I don't
18 have the case cite, I'm sorry. The 1980 AmerenUE case. I
19 believe that one may have been EA-79-119. There was a '99
20 Empire case.

21 Q. '99?

22 A. Yeah, I think it was a '99 Empire case.

23 Q. Okay. And the 2003 Callaway Franks
24 Transmission Line case.

25 Q. All right.

1 A. And I wouldn't guarantee beyond a shadow of a
2 doubt that I may not have stuck in an additional factor here
3 when I was typing it up at that time putting together this
4 list back then. There may be additional items in here that I
5 stuck in that I thought if I hadn't seen, they should be on
6 the list.

7 Q. You can't identify that for me right now
8 though?

9 A. I'm sorry. I don't remember what they were.

10 Q. Now, if I look at your Rebuttal Testimony
11 again, on pages -- beginning at 6 where you talk about site
12 determination --

13 A. Yes, sir.

14 Q. -- in your testimony there, are you setting
15 forth factors that a utility should go through in your opinion
16 in regard to making an analysis and decision regarding what
17 might be an appropriate site. Or are you giving us those
18 factors as factors that the Commission should look at in
19 deciding a siting case?

20 A. Let me try to remember the different parts of
21 your question.

22 Q. We can have her read it back, if you'd like.

23 A. I think I remember. What I was doing when I
24 was writing the -- starting on Page 6 of my Rebuttal
25 describing this 10-step process and then later describing some

1 of the mechanisms that would potentially offer -- alter that
2 process for a simple-cycle natural gas-fired generation unit,
3 I had -- earlier when I started my rebuttal, I was trying to
4 figure out, well, should I go back and put together this long
5 list of factors and create a checklist?

6 And I opted not to do that and instead provide
7 for a timeline and description of process. And I figure, you
8 know, when I look through the factors here, I think there's
9 been -- the record in this case is ample on hitting a lot of
10 these different factors, but nonetheless, it's probably
11 helpful now that we've brought this in based on your request.

12 But anyways, I wasn't trying to create a list
13 of checklist or factors for the Commission. I was trying to
14 describe a timeline and process since I thought it had some
15 relevancy in this case.

16 Q. That doesn't exactly answer my question.

17 A. Okay. Well, I must not have remembered it.
18 Sorry.

19 Q. You list factors on pages -- on the page
20 beginning on Page 6 and I think it goes through Page 8?

21 A. Yeah.

22 Q. 10 factors --

23 A. Yes.

24 Q. -- correct?

25 A. It's really kind of 10 steps in a process.

1 Q. And are those 10 steps designed to indicate
2 what you believe a utility should do in identifying an
3 appropriate site for a gas peaking unit?

4 A. It goes -- yes, it -- I believe so.

5 Q. Okay.

6 A. Did you say process for how they should go
7 about arriving at a site?

8 Q. Yes.

9 A. Yes.

10 Q. All right. Now, are you also suggesting to
11 this Commission that in the Commission's analysis of what an
12 appropriate site should be, that we utilize these factors?

13 A. Starting from a greenfield site, I would say
14 that you would need to put the factors on top of this process
15 to say if it looks like you've addressed everything.

16 Q. Well, it would appear to me that you're
17 suggesting to us that what we are doing is analyzing the
18 reasonableness of the decision that's made by the utility
19 rather than determining what is the best site in regard to the
20 placement of a plant. And I'm asking you whether or not
21 that's the case?

22 A. Maybe if you could read that question back.

23 THE COURT REPORTER: "Question: Well, it
24 would appear to me that you're suggesting to us that what we
25 are doing is analyzing the reasonableness of the decision

1 that's made by the utility rather than determining what is the
2 best site in regard to the placement of a plant. And I'm
3 asking you whether or not that's the case?"

4 THE WITNESS: I would say no. And would you
5 like me to clarify?

6 BY COMMISSIONER GAW:

7 Q. Yes, I would.

8 A. Okay. What I'm going through is providing a
9 process for green field simple-cycle natural gas-fired unit
10 once a self-build option had been arrived at and then stepping
11 through what Aquila did to arrive at the site. At the same
12 time, I then come back and talk about, is this a reasonable
13 site.

14 You know, their process obviously had -- you
15 know, I wouldn't say it was clean, I wouldn't say they
16 followed -- I've said it in my testimony, they didn't follow
17 all the steps here. They may hit on different aspects of it,
18 but not in order.

19 But in the end, I come back and arrive at the
20 conclusion that this is a reasonable site for a combustion
21 turbine generator.

22 Q. Okay. And where did you get -- and not
23 commenting on whether this is a right or wrong legal analysis,
24 but where did you get the basis for suggesting that our test
25 in deciding whether or not a site is the right site for the

1 placement of a plant, that we examine the reasonableness of
2 the decision made by the utility? What is the legal basis for
3 that being your test, your general test?

4 A. Well, I mean, I'm not a lawyer so I won't --
5 it's not a legal reasonableness.

6 Q. Maybe you were given some indication that that
7 is the test. I'm not asking you to necessarily give me a
8 legal analysis. I'm asking you, where did you get the idea
9 that that was the appropriate question to ask in regard to a
10 siting case?

11 A. I understand your question. Obviously when
12 this filing was made in January and you look at the
13 conclusion, you know, my first inclination looking at this was
14 what a mess. And I think many people would look -- come to
15 the conclusions and say what a mess.

16 And -- and rather than focus on that, I
17 thought it was appropriate -- and to answer your question,
18 nobody else told me that this is the way to go. And I didn't
19 have another state or case to say this is it. And it -- the
20 case offered several, you know, unique and new -- new issues
21 to deal with. I thought it was important as part of this
22 case.

23 And, once again, it was my conclusion to do so
24 that we needed to step back to the beginning and understand
25 how we got here. And if the decision makers in this case take

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1 a look at those steps and say, you know, I reach a different
2 conclusion, this wasn't a reasonable process or final site
3 they arrived at, then that would be -- you know, I certainly
4 understand whichever way the Commission goes on that. But I
5 thought it was important to lay out a process.

6 Q. Well, your process is one that sets up a
7 different level of requirement for the utility or for the
8 Commission in order to say, This is okay as far as this site
9 is concerned than some other jurisdictions might require.
10 Wouldn't you agree?

11 A. It could. I would say that some of my steps
12 do fully contemplate working -- and I mention, you know,
13 working with local community. And I think that includes the
14 county, the city and the people living in the vicinity.

15 Q. Well, what I'm driving at is this. In some
16 states there is an analysis -- and I'm not suggesting whether
17 this is the right or wrong way for this state to look at it.
18 But in some states there is a requirement to analyze
19 alternative sites under a set of several factors to determine
20 what is the best site. Correct?

21 A. Yes.

22 Q. Not whether or not the decision of the utility
23 is a reasonable decision to make --

24 A. Uh-huh.

25 Q. -- wouldn't you agree with that?

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1 A. I understand your differentiation there.

2 Q. So, in essence, I mean, it would be possible
3 to select a less than best alternative and still have the
4 decision of the utility be one that's reasonable. Wouldn't
5 you agree?

6 A. Yeah. You illustrate the point that sometimes
7 reasonable minds are different -- different constituencies can
8 look at the same issue and arrive at a different reasonable
9 conclusion.

10 Q. But also wouldn't it be true that there could
11 be several sites that meet some basic minimum requirements in
12 regard to adequate transmission, adequate gas lines being
13 there, but other factors may make one site preferable and yet,
14 it still be a reasonable decision for the utility to place a
15 generation site at a site that is not the preferable one?

16 A. From the view of an outside group, you mean?

17 Q. Yes.

18 A. In terms of it's not preferable?

19 Q. Yes.

20 A. Yes, I would say that's true.

21 Q. Or from the view of analyzing all the factors
22 put together, that there may be another one that's a preferred
23 site if you add all of the numbers up and all of the other
24 factors, but it still not be unreasonable for the utility to
25 place the generation facility in a different site than the

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1 preferred one?

2 A. You mean preferred -- I'm sorry, from which
3 group?

4 Q. From all of the factors analyzed together.

5 A. Uh-huh.

6 Q. Less than the best site could still be a
7 reasonable one?

8 A. Yes.

9 Q. So your standard may be a lower standard than
10 some states set in regard to placement of generation if we say
11 that the standard is whether or not the utility is reasonable
12 in its selection of site. Wouldn't you agree?

13 A. I will answer -- tell me if this answers the
14 question. If not, I know you'll ask it again.

15 In looking at some other states would I say
16 that there are states that have more extensive requirements
17 than those described in my testimony? Yeah.

18 Q. But your testimony discusses and hinges on
19 whether or not the utility is being reasonable, does it not?

20 A. Yes. Did they arrive at a reasonable site?

21 Q. Yeah.

22 A. Yes.

23 Q. Now, in our statutory framework that we have
24 in regard to siting, is the word "reasonable" mentioned, if
25 you know, in any of our statutory provisions?

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1 A. I don't know.

2 Q. Public interest is, wouldn't you say, a
3 general guidepost in regard to siting issue?

4 A. Public interest, convenience and necessity,
5 yes.

6 Q. Yeah.

7 A. Uh-huh.

8 Q. Okay. And public interest, of course, needs
9 to be fleshed out in order to understand what that may mean in
10 regard to outcomes?

11 A. Oh, yeah. And public interest has a lot of
12 different aspects to it. You know, like in this case, Office
13 of Public Counsel is put in a difficult situation, you know.
14 If this did something to rates and affected all their
15 constituents versus all the people that can see the plant, how
16 do they balance those different public interests.

17 Q. It's one of the reasons that in this case we
18 have counsel that are representing certain landowners.

19 A. Yes.

20 Q. Because there is some inherent, built-in
21 conflict for the Public Counsel in this matter. Would you
22 agree?

23 A. Yes, I would.

24 Q. Back just briefly in regard to this question
25 of how we translate your recommendation in regard to what a

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1 utility should do into whether or not this Commission finds
2 that a site is in the -- is appropriate or in the public
3 interest. Some of these factors that you have in here
4 really -- I'm having a little difficulty translating into how
5 this Commission would use them as factors.

6 A. And understand, I didn't clean up the document
7 to make it responsive to that sort of question.

8 Q. Actually, I'm referring to your testimony.

9 A. Oh, okay. I thought you were referring to the
10 list of 16.

11 Q. Not right at the moment.

12 A. Okay. Sorry. Go ahead.

13 Q. And just a minute here. The communication
14 that you refer to in 8 --

15 A. Page 8 of my rebuttal?

16 Q. In factor 8 on Page 8.

17 A. Okay.

18 Q. This communication with any nearby
19 communities, is that something that you're recommending for
20 the utility to do or the Commission?

21 A. If we move forward toward a rule for doing
22 this, I think that's something the Commission would require as
23 part of a rule, some sort of a notice of public hearing in
24 conducting a public hearing.

25 At this point in time -- well, prior to this

1 sort of proceeding, it was our expectation that the utility
2 would notify the local residents, you know, much as they did
3 for the Camp Branch site, and hold a hearing and collect input
4 and, you know, speak with the nearby communities and
5 landowners.

6 Q. Okay. But again, that's something -- if I
7 understand you correctly, this is generally the process that
8 you want the utility to go through; is that correct?

9 A. It was stepping through a process prior to a
10 certificate of convenient -- of public convenience and
11 necessity site specific process, yes. And I would say it's a
12 good clarification you make. Really if we were going to take
13 this process and put it into a rule, some of these would not
14 be what the utility would be doing, but what you would be
15 ordering or requiring by rules.

16 Q. Yes. That's why I'm having a little bit of
17 trouble going back and forth.

18 A. Okay. It's a good clarification.

19 Q. Now, in regard to your factors in 115 --

20 A. Okay, 16 there? Okay.

21 Q. On No. 7 it says, Consideration of land use
22 planning of local authorities. Do you have that factor in
23 your factors in your Rebuttal Testimony?

24 A. Yes. I believe I do.

25 Q. Show me where that is, would you?

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1 A. I'd envisioned that as part of step 6,
2 reviewed county plat books; whereas, identified in step 5 to
3 determine if there are properties in the area that appear
4 suitable for such prospective generation facility.

5 And I'd envisioned that would include looking
6 at land uses in the area around where you're looking at
7 building the plant, which would require going -- necessitating
8 site visits and looking at the land use.

9 Q. Well, now 7 says, Consideration of land use
10 planning of local authorities?

11 A. Right. Uh-huh.

12 Q. So do you envision 6 then to say that you
13 should look at the zoning of that area?

14 A. That's not specifically listed in my list of
15 10 factors. I do think you could receive that input in -- in
16 portion 8 when you communicate with the nearby communities and
17 receive feedback on the concerns.

18 Q. But in your Exhibit 115, it's definitely one
19 of the factors that you've listed?

20 A. Yes.

21 Q. But you did not list it specifically in the
22 things that you recommend for site selection in your
23 testimony?

24 A. No, I didn't.

25 Q. Are there any other factors on the front of

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1 115 that you did not list in your testimony?

2 A. Let me look real quick here. I did not list
3 environmental impacts and compliance with DNR EPA regs. And
4 the reason I didn't -- and I probably should have had a line
5 in the testimony somewhere -- that we generally defer to DNR
6 for the compliance with water, soil, air pollution control
7 permits, things of that nature.

8 Q. Okay.

9 A. Did not specifically note public interest,
10 convenience and necessity. I think I was tying that in with
11 reasonable, even though you wouldn't find it in the list of
12 10.

13 Q. Okay. This is No. 1?

14 A. Yeah. Number 1 on, I think, Exhibit 115 is
15 what you've listed.

16 Q. All right.

17 A. Number 5 is not specifically listed, economic
18 feasibility and impacts to rates. I think that's embodied in
19 the idea of a reasonable site and looking at different --
20 largely embodied in steps 1 through 10, but not listed.

21 It doesn't list No. 8, operating noise levels
22 and local sound regulation. But I'd envisioned that
23 associated with construction buffers and berms and the
24 community feedback in 8 through 10. Same answer on No. 10,
25 dust generation and impacts.

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1 Traffic impacts is not listed. And I'd
2 envisioned property value impacts to be one of the things
3 encompassed in 8 and 9. And I guess I would point out that,
4 you know, once again, this was -- I was describing a process,
5 a place where these factors could be brought into play, but
6 not really making an effort to list the factors as to where
7 they would fall in. If a rule were pursued, my expectation is
8 that these kind of things would be fleshed out.

9 Q. And, of course, in this case we don't have a
10 rule. Correct?

11 A. That's correct.

12 Q. So we're having to flesh this out on the fly,
13 so to speak?

14 A. Yeah. That would be accurate.

15 Q. So in that regard, in regard to public
16 interest, convenience and necessity, that is, would you not
17 agree, the overall umbrella test that we have to satisfy?

18 A. It's the overall chain. And, you know, I
19 think really many of all the items below that kind of fall
20 into different aspects of how you can -- how you read that,
21 yes.

22 Q. Try to make a determination about --

23 A. Yes.

24 Q. -- public interest?

25 A. I would agree.

1 Q. In regard to environmental impacts and
2 compliance with DNR and EPA regs, would it not be correct that
3 in some states and some jurisdictions, alternative sites are
4 evaluated in part based upon the relative impact to the
5 environment, not just whether or not there is compliance?

6 A. Yes. That is true.

7 Q. And that would be something that some
8 jurisdictions take evidence on in regard to alternative sites?

9 A. Yeah. Actually, based on a quick review of
10 about six inches of paper this morning, you know, some of the
11 other kind of things that I noticed looking through his -- you
12 know, there were some that talked about climate change
13 factors, which were really more about, you know, CO2 emissions
14 and different type of --

15 Q. Type of plants?

16 A. Right. Interference with communications,
17 does -- like a wind tower, you know, that's an issue
18 interfering with microwave communications. Farmland and
19 forest exclusionary is something I noticed in Oregon. And I
20 know in California you get into green belt areas where they
21 make sure that everybody in the city can see the green
22 mountains and, you know, cover them with houses.

23 Q. Right.

24 A. Signing and some of them deal with
25 decommissioning as well. And those are just based on, once

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1 again, a very quick review of what I saw. There were some
2 other factors that I noticed in some states.

3 Q. Sure. Number 8, operating noise levels and
4 local sound regulation compliance, that's something that,
5 again, at least in part, has to do with local regulation,
6 local oversight. Correct? Similar to but -- perhaps to a
7 small extent, maybe not, to 7, which is the land use planning?

8 A. Yes. And that -- I remember why -- you know,
9 one of the reasons I listed that separately is in some cases,
10 like in Empire service territory, many of their generation
11 units are in county areas where they have no zoning
12 regulations in place.

13 And operating noise levels in those cases are
14 something that they sometimes have to negotiate with the
15 people in the immediate vicinity of the plant, but there's
16 really no local ordinances. And here there is a local sound
17 regulation, as I understand it, so yes.

18 COMMISSIONER GAW: Okay. Just a second.

19 Judge, thank you.

20 JUDGE PRIDGIN: Commissioner Gaw, thank you.

21 Any recross?

22 MR. COMLEY: Your Honor, I have some recross.

23 JUDGE PRIDGIN: Mr. Comley.

24 MR. COMLEY: If the Bench will permit me, I'll
25 do it from here.

1 JUDGE PRIDGIN: Absolutely.

2 RECROSS-EXAMINATION BY MR. COMLEY:

3 Q. Mr. Wood, you had questions from Mr. Gaw about
4 the 10-step process in your testimony. And I think you would
5 agree with me, I think you did perhaps on Friday, but just to
6 clarify, that this is not a process that's been formally
7 adopted by the Commission?

8 A. True.

9 Q. And it has not been adopted by the Commission
10 in any previous proceeding as far as you know; is that
11 correct?

12 A. That's true.

13 Q. And it's not to be found in any of the
14 promulgated rules of the Commission; is that correct?

15 A. True.

16 Q. Or on the website, for that matter?

17 A. True.

18 Q. And it's not published in any other guidelines
19 promulgated by the Commission; is that correct?

20 A. Correct.

21 Q. And it's your testimony that you did go out
22 beyond the borders of the state of Missouri to look at siting
23 procedures for power plants in other states; is that correct?

24 A. Not all the states in the country, but some
25 outside states --

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1 Q. In other states?

2 A. Yes, I did.

3 Q. And that was the reason you tendered
4 Exhibit 115, to show the Commission that you had done so; is
5 that correct?

6 A. Yes. In response to Commissioner Gaw's
7 questions as to how did I come up with this, yes.

8 Q. Would it be your testimony, Mr. Wood, that you
9 believe it was relevant and, in fact, it was necessary and
10 appropriate for you to look beyond the borders of the state of
11 Missouri to find practices in other states to develop your
12 proposed 10-step process?

13 A. Yes.

14 Q. And your incorporated factors identified other
15 states in -- you incorporated factors identif-- let me back up
16 and read my own writing here.

17 You incorporated factors that were identified
18 by other states in developing your 10-step process; is that
19 correct?

20 A. Yes.

21 Q. Now, as I understand, you've also incorporated
22 processes that you thought were part of previous Missouri
23 Public Service Commission cases; isn't that correct?

24 A. That's true.

25 Q. And you did overhear Ms. Shemwell yesterday

1 that indicated that Missouri Public Service Commission cases
2 really have no precedent, didn't you remember that?

3 A. I'll defer to the record.

4 Q. But at least for your purposes, you believe
5 that the Missouri Public Service Commission cases did have
6 some relevance?

7 A. Yes.

8 Q. I think you agreed with -- in fact, I think it
9 was your statement that when you were asked about the time
10 when the case was filed, you looked at it and your reaction
11 was quite a mess; is that correct?

12 A. That's what I said.

13 Q. In your approach then, you sort of stepped
14 back to the beginning to see how we got to this place; is that
15 correct?

16 A. There was an effort to do so, yes.

17 Q. And from that step-back approach you developed
18 the process that utilities should follow in the future?

19 A. Under the limited applications of this case,
20 yes.

21 Q. And then you determined that Aquila, although
22 not perfectly, had followed that process sufficiently to
23 warrant Staff recommending to the Public Service Commission
24 the issuance of a site specific certificate of convenience and
25 necessity; is that correct?

1 A. As I've testified, there were some twists and
2 turns to get there and there were certainly parts that I would
3 have liked to have seen done better, but I did arrive at the
4 conclusion that this was a reasonable site.

5 Q. Given the way questions have been conducted
6 throughout the proceeding, I'm going to ask the question,
7 would you agree with me that the Staff has consistently been,
8 if not always been, of the view that the South Harper plant
9 and Peculiar substation should not be dismantled?

10 A. I don't know.

11 Q. Is it your testimony that the process you have
12 identified is not influenced by the objective or a factor of
13 saving the plant from dismantling?

14 A. I'm sorry. Could you ask that again or if you
15 could just read it back from the record?

16 Q. Is it your testimony that the process you have
17 identified in your Rebuttal Testimony and throughout your
18 Surrebuttal Testimony is uninfluenced by the objective of
19 keeping the plant from being dismantled?

20 A. Yes, it is uninfluenced by that.

21 Q. In connection with the application and the
22 cases that have been going on involving this plant, isn't it
23 true, Mr. Wood, that Aquila, and your office, and indeed
24 sometimes the Commission itself, has been in communication
25 with Aquila on updates and progress?

1 A. On the progress of the -- you mean
2 constructing of the South Harper plant?

3 Q. Among other things. So I take it that you
4 would have been updated on the progress of construction; is
5 that correct?

6 MR. WILLIAMS. SHEMWELL: Judge, I'm going to
7 object at this point. I think he's getting beyond the scope
8 of the Commission questions.

9 JUDGE PRIDGIN: Mr. Comley?

10 MR. COMLEY: Your Honor, in the spirit of
11 curative admissibility and following practices that have been
12 accepted by the Commission as of this morning, I think this
13 opportunity would go directly to some of the questions Mr. Gaw
14 had, as well as questions about the process and how it may be
15 influenced.

16 JUDGE PRIDGIN: All right. I'll overrule and
17 let Mr. Wood answer if he knows the answer.

18 THE WITNESS: I'm sorry. Could you ask it
19 again?

20 BY MR. COMLEY:

21 Q. I think my question was, isn't it true that
22 Aquila representatives and members of your own Staff, if not
23 yourself, and even members of the Commission itself, have been
24 in contact with Aquila about the progress of the construction
25 of the South Harper plant?

1 A. Actually and before that as well. You know,
2 we sent Staff to the Camp Branch public meeting and we have
3 been interested in the different things that have been going
4 on since then. Yes, I would agree with that.

5 Q. Would it be fair to say then that you had
6 communications with Aquila, your office and perhaps the
7 Commissions themselves, even during the course of the
8 litigation between Cass County and Aquila?

9 A. I can't speak to if there was any contact with
10 the Commission or not. I know that Staff had some interests
11 and probably was in contact with Aquila at times to determine
12 what sort of communications were taking place and what efforts
13 they were making to try and resolve it and what the
14 construction status was and things like that.

15 Q. Were you contacted following the entry of the
16 injunction against Aquila and advised about Aquila's next
17 steps with respect to the plant?

18 MR. WILLIAMS. SHEMWELL: I'm going to object
19 to that question as being vague as to who contacted the Staff.
20 BY MR. COMLEY:

21 Q. I'll rephrase. Did representatives of Aquila
22 contact your Staff or you to advise when the injunction was
23 issued against it in January of 2005, in connection with the
24 South Harper construction?

25 A. I believe there was -- there were contacts as

1 to, you know, are you aware that this had happened and yes.

2 Q. I'll ask, were you ever consulted or asked to
3 consult with Aquila on what its next steps would be in
4 connection with obeying or not obeying the injunction?

5 MR. WILLIAMS. SHEMWELL: I'm going to object
6 to that question as not identifying who he may have consulted
7 with. Vagueness.

8 JUDGE PRIDGIN: Mr. Comley?

9 MR. COMLEY: I don't care whether it was
10 Aquila or somebody else.

11 JUDGE PRIDGIN: I'll overrule. And, again, if
12 he understands the question, he can answer and if not, he can
13 say he's not sure what you're asking.

14 THE WITNESS: If you could repeat it. I think
15 I could probably repeat it back to you, but it would probably
16 be easier if you just did it.

17 BY MR. COMLEY:

18 Q. Did anyone from Aquila contact you after the
19 injunction was entered and ask for your advice in
20 connection -- and what to do with respect to the entry of the
21 injunction and whether or not to proceed with construction?

22 A. I don't recall a request for advice. I do
23 recall receiving information on what had happened.

24 Q. And I'm gathering that in communications with
25 Aquila and you, your office staff would have known pretty much

1 the state of affairs respecting the litigation and the
2 construction of the plant throughout the entire process; is
3 that correct?

4 A. Not necessarily on real time, but we were
5 watching the court decisions coming out and seeing information
6 in the press. And especially once this case was filed,
7 obviously we were in contact quite a bit more trying to get
8 discovery and receive requests -- answers to questions.

9 Q. Did Staff ever advise Aquila to proceed with
10 construction of the plant even though there was an injunction
11 in place?

12 A. I don't know. I know I didn't, but I don't
13 know.

14 Q. Did you ever advise Aquila not to proceed with
15 construction of the plant because of the injunctions being in
16 place?

17 A. I didn't, but I don't know if any other
18 Staff -- I don't know what discussions may have taken place.

19 MR. COMLEY: Judge Pridgin, thank you. That's
20 all the recross.

21 JUDGE PRIDGIN: Mr. Comley, thank you.

22 Any further recross? Redirect?

23 MR. WILLIAMS: Thank you, Judge.

24 JUDGE PRIDGIN: Mr. Williams.

25 MR. WILLIAMS: May I do that from here?

1 JUDGE PRIDGIN: Yes, sir.

2 REDIRECT EXAMINATION BY MR. SHEMWELL:

3 Q. Mr. Comley asked you some questions about
4 communications between Aquila and the Public Service
5 Commission Staff. Do you recall that?

6 A. I do.

7 Q. Is it typical for utilities that the
8 Commission regulates to keep Staff informed of events that
9 affect those utilities?

10 A. Yes. We -- we're not real pleased about it
11 when we see something come out in the press and they haven't
12 bothered to let us know what's going on.

13 Q. And Commissioner Gaw asked you a number of
14 questions regarding your testimony and the factors and the
15 process that you laid out. What was the intent of your
16 providing that testimony?

17 A. You mean the rebuttal testimony?

18 Q. He did focus in on your rebuttal testimony
19 about the 10-step process.

20 A. The idea was to bring forth a timeline and
21 process to give, rather than a conclusion and what factors
22 were considered by step through a timeline and process.

23 Q. I'm going to ask this as a bit of leading
24 question, but I think it will get us where we need to go more
25 quickly.

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1 A. Okay.

2 Q. Were you intending to tell the Commission
3 these are all the factors that the Commission should consider?

4 A. You mean a detailed list of factors? No.

5 Q. With respect to factors that Commission
6 should -- that the Staff believes the Commission should
7 consider, what was Staff's purpose in your testimony?

8 A. I'm sorry. I don't understand the question.

9 Q. Does your 10-step process lay out factors the
10 Staff considers to be important in siting a power plant?

11 A. Yes.

12 Q. I want to take you back to some questions the
13 Commission-- or a question Commissioner Davis asked you and
14 your response.

15 A. Yes.

16 Q. Do you recall he asked you to lay out what
17 steps you'd taken in order to obtain a copy of -- or view the
18 Cass County zoning map?

19 A. Yes.

20 Q. And as I recall, you indicated that Staff had
21 obtained a copy of I believe it's the comprehensive plan, the
22 zoning ordinance and the subdivision regulations on
23 March 30th?

24 A. Yes.

25 Q. And then on April 6th you'd gone and obtained

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1 a copy of -- a larger size of the comprehensive plan map and
2 also asked to see the zoning map?

3 A. Uh-huh.

4 Q. Was there anything else you did at a later
5 date?

6 A. Well, during deposition later we asked about
7 the map and then asked Commissioner Mallory if he could send
8 us a copy electronically or whatever other means. And we
9 didn't receive it. But we did have a chance to see it
10 yesterday.

11 Q. And do you recall the date of that deposition?

12 A. I'm sorry, I don't.

13 Q. Would it have been roughly 10 days following
14 your visit on April 6th?

15 A. That sounds about right.

16 Q. And did Mister -- or Presiding Commissioner
17 Mallory make any representations to the Staff regarding the
18 map in terms of making it available?

19 A. Yes.

20 Q. And what representations did he make?

21 A. He'd be able to get it to us.

22 Q. And did you see the map before yesterday?

23 A. No.

24 Q. Commissioner Gaw asked you some questions kind
25 of contrasting the best site versus the reasonable site?

1732

1 A. Yes.

2 Q. Do you believe there is a best site?

3 A. It -- it largely depends on what group you're
4 talking to as to what the best site is. I would -- I think
5 it's hard to find a site where all groups will stand around
6 and say, this is the absolute best site.

7 MR. WILLIAMS: No further questions.

8 JUDGE PRIDGIN: Mr. Williams, thank you.

9 Any further questions from the Bench? All
10 right. Thank you.

11 COMMISSIONER GAW: All right. No.

12 JUDGE PRIDGIN: All right. Seeing none,
13 Mr. Wood, thank you very much. You may step down.

14 Do I understand the Bench may also have some
15 questions for Ms. Mantle?

16 COMMISSIONER GAW: Yes. And I'm hoping that
17 I'm not going to get crossed up here on who is the witness for
18 this between Mr. Wood and Ms. Mantle.

19 JUDGE PRIDGIN: All right. Mr. Wood, if
20 you'll step down, but if you'll stay in the hearing room just
21 in case we need to get back to you.

22 THE WITNESS: Certainly.

23 JUDGE PRIDGIN: Thank you.

24 And, Ms. Mantle, if you'll come forward.

25 MR. WILLIAMS: Judge Pridgin?

1733

1 JUDGE PRIDGIN: Mr. Williams.

2 MR. WILLIAMS: Lera Shemwell has been handling
3 when Ms. Mantle's on the stand generally and I understand
4 she's taken a brief break. I don't know if you want to delay
5 or go forward with me here regardless.

6 JUDGE PRIDGIN: I'd like to go forward. And
7 if Mr. Wood perhaps could try to run down Ms. Mantle [sic] and
8 get her back.

9 MR. WILLIAMS: I understand she's in the
10 restroom.

11 JUDGE PRIDGIN: I'm sorry. Whenever she's
12 reasonably available.

13 MR. WOOD: I'm not going in the restroom.

14 MR. WILLIAMS: When you see her, send her in
15 here.

16 JUDGE PRIDGIN: All right. Ms. Mantle, I'll
17 remind you you're still under oath.

18 And Mr. Chairman, I understand you had no
19 questions for Ms. Mantle; is that correct?

20 CHAIRMAN DAVIS: That's correct.

21 JUDGE PRIDGIN: All right. Thank you.

22 Commissioner Gaw?

23 LENA MANTLE testified as follows:

24 QUESTIONS BY COMMISSIONER GAW:

25 Q. Good morning.

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1 A. Good morning.

2 Q. I want to ask you a few questions about the
3 selection of the type of plant in this case. And it will
4 interrelate somewhat with location.

5 A. Okay.

6 Q. Okay. First of all, did Staff present in
7 evidence in this case any load curves or general analysis for
8 evidence as to the load type and the load needs of Aquila, as
9 compared to its current generation fleet?

10 A. No. What I presented was some pie charts and
11 some calculations on types of load, residential versus
12 industrial.

13 Q. All right. And would you agree, Ms. Mantle,
14 that in order to make a determination as to the appropriate
15 generation for load of a utility, that there is a much more
16 detailed process that Staff would go through in order to
17 evaluate appropriate generation in regard to a utility's load
18 other than just looking at pie charts?

19 A. That's not the only evaluation that Staff did.
20 That is just what I put in my testimony.

21 Q. That's the only evidence we have in front of
22 us?

23 A. Other than I said that we did look at the
24 other evaluations that Aquila did.

25 Q. Did Staff do, in this case, an independent

1 analysis of what generation would be optimal for Aquila based
2 upon its load?

3 A. No, we did not.

4 Q. Did you do that in this case looking forward
5 for the next 5 to 10 years?

6 A. No, we have not.

7 Q. And I assume then you did not do it for a
8 longer period of time?

9 A. No, we have not.

10 Q. So in regard to a siting case such as this,
11 does Staff believe that the prudence of the decision on
12 generation type is relevant or a factor in the determination
13 of siting?

14 A. Definitely.

15 Q. All right. And if that is the case, then is
16 Staff suggesting to this Commission that they have -- that
17 there is sufficient evidence in the record for this Commission
18 to evaluate whether or not this particular generation is a
19 prudent addition to the generation fleet of Aquila?

20 A. Well, we have stated in -- I've stated in my
21 testimony that we've reviewed what Aquila has done and Aquila
22 did present some testimony in that behalf.

23 Q. Well, normally --

24 A. Whether that's --

25 Q. Sorry.

1 A. -- enough or not, that will be up to the
2 Commission to determine.

3 Q. Normally does not the Staff withhold its
4 judgment in regard to the prudence of addition of generation
5 to a utility's generation fleet until a rate case?

6 A. Yes, that's correct.

7 Q. And at that time, is there not some in depth
8 work done to evaluate the appropriateness of that generation
9 from a prudence standpoint?

10 A. I'm kind of at a loss because there's been so
11 little generation added in Missouri and we've come to -- you
12 know, the last rate case in Aquila there was some testimony on
13 this matter. And I testified that Aquila should have added
14 different generation than what it did. And we --

15 Q. And then -- go ahead. I'm sorry to interrupt.

16 A. And the Staff had a different opinion in what
17 it would have put into the rate-base -- rate-base was
18 different than what Aquila had. And, of course, that was a
19 settlement.

20 Q. Yes.

21 A. So I'm not going to get into the legal
22 interpretation of what is exactly in rate-base. I think
23 there's still some disagreements there.

24 Q. And that is in regard to the settlement as to
25 what is or what is not included in rate-base currently in

1 Aquila's rates; is that correct?

2 A. That's correct.

3 Q. But in regard to Staff's position as to the
4 appropriateness or the prudence of Aquila's selection of
5 generation, Staff has questions in regard to whether or not
6 Aquila has made appropriate decisions as to its generation
7 fleet. Is that not correct?

8 A. In this case, given the parameters or given
9 what was available.

10 Q. Now, just from the standpoint of what Staff's
11 position is in regard to Aquila's overall generation fleet,
12 Staff does have questions in regard to the prudence of
13 Aquila's selection of its generation fleet, does it not?

14 A. As a total, yes.

15 Q. All right. And generally, what are Staff's
16 concerns in regard to Aquila's generation fleet?

17 A. Staff is concerned that Aquila's relying too
18 much on purchase power agreements. Because while they may be
19 beneficial in the short run, we are concerned with what that
20 may do to rates -- to the customers' rates in the long run.
21 Staff is concerned that there may be too much reliance on fuel
22 type, which is gas.

23 Q. Okay.

24 A. And we push Aquila to look at different fuel
25 types to not become too reliant on one fuel type.

1 Q. All right. Does Staff believe that Aquila
2 needs to add generation that is not gas fuelled?

3 A. We think that Aquila needs to look at all
4 different types. And in some cases, gas may be the
5 appropriate, but -- and in some cases gas may be appropriate,
6 but we want them to look at all types and not just keep adding
7 more gas and looking at short-term purchase power agreements.

8 Q. Okay. Now, in regard to Aquila's load,
9 looking back over the last 5 years, can you give me an idea
10 about how much change there has been in Aquila's load in
11 character, not in quantity?

12 A. Aquila's load is a lot of commercial and
13 residential. They don't have a large industrial base.

14 Q. Has that character changed significantly in
15 the last 5 years?

16 A. You mean have they added more industrial or --
17 I'm not sure what your question is.

18 Q. Yes. I'm asking whether or not the basic type
19 of load that Aquila is carrying has changed in the last
20 5 years?

21 A. Not to my knowledge.

22 Q. Okay. So would you think that the load curve
23 that Aquila has today is similar to the one they had 5 years
24 ago?

25 A. Another important aspect is the space heating

1 saturation. And I'm not for sure -- I don't even know if
2 Aquila has done appliance saturation surveys to find out what
3 their space heating saturation, how that may have changed
4 because that will affect that load curve also.

5 Q. So --

6 A. My first inclination was to say no, it hasn't
7 changed, but I haven't seen those numbers really to know.

8 Q. All right. You would expect it not to have
9 changed much. Would that be correct?

10 A. That is correct.

11 Q. Now, are you familiar with the Aries facility?

12 A. Somewhat, yes.

13 Q. And there's been testimony, I believe in this
14 case, in regard to that facility, has there not?

15 A. Yes. And I filed some Surrebuttal Testimony
16 on that facility.

17 Q. That facility is located in Harrisonville or
18 around Harrisonville?

19 A. Pleasant Hill.

20 Q. Pleasant Hill, I'm sorry. And is that -- that
21 facility is a combined cycle unit --

22 A. Yes, it is.

23 Q. -- or units?

24 And that facility was at one time owned in
25 part and was developed by Aquila's affiliates --

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1 A. By their non-regulated affiliate.

2 Q. -- is that correct?

3 A. That is correct.

4 Q. And at some point they sold their interest to
5 their partner in that venture, Calpine; is that correct?

6 A. That is correct.

7 Q. And approximately how long ago did that occur?

8 A. I have that in my surrebuttal testimony, I
9 believe. March 2004.

10 Q. And prior to or during the time of the
11 transfer of that facility, did Staff raise concerns about the
12 transfer of that facility?

13 A. Yes, we did.

14 Q. And that site, if I'm not mistaken -- and I
15 think there's evidence in the record of this, but just to
16 verify, that site had initially been planned to be the site of
17 the three generating units that are currently at South Harper;
18 is that correct?

19 A. I believe that site has space for three
20 additional combustion turbines.

21 Q. And, in fact, the exact three turbines that
22 are sitting at South Harper currently; isn't that true?

23 A. I've heard that they were -- could have been
24 placed out there and they were marked for Aries.

25 Q. Have you had an opportunity to see the

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1 testimony of Cary Featherstone that was in Case
2 No. EO-2004-0224?

3 A. I probably read that several years ago when it
4 was filed, but I have not looked at it recently.

5 Q. Okay. And also testimony of Cary Featherstone
6 that was in Case No. EO-2005-0156?

7 A. I read it, but not recently.

8 COMMISSIONER GAW: Now, Judge, both of these
9 documents that I have with regard to that testimony are
10 labeled HC.

11 JUDGE PRIDGIN: All right. If you're going to
12 discuss that, we can go in-camera.

13 COMMISSIONER GAW: Yes. And I'm going to try
14 to --

15 JUDGE PRIDGIN: Let's do that to be safe. If
16 you'll bear with me just a moment.

17 (Reporter's Note: At this time, an in-camera
18 session was held, which is contained in Volume No. 12, Pages
19 1742 through 1746 of the transcript.)

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1 JUDGE PRIDGIN: Okay. We're now back in
2 public forum. Let me see if we have any further questions
3 from the Bench, Commissioner Clayton? Any recross?

4 MR. COFFMAN: May I inquire, the document that
5 Commissioner Gaw was reading from, has that been identified as
6 an exhibit or judicially noticed?

7 JUDGE PRIDGIN: It's been noticed. And
8 correct me if I'm wrong, this is testimony from Cary
9 Featherstone. And if you'll -- EO-2004-0224?

10 MS. SHEMWELL: No. It was EO-2005-0156.

11 JUDGE PRIDGIN: Excuse me. Thank you.

12 COMMISSIONER GAW: And if anyone wants to look
13 at either copy, you're welcome to.

14 MR. COFFMAN: And all the parties to this case
15 wouldn't necessarily have access to the highly confidential
16 volume you have.

17 COMMISSIONER GAW: I'm not sure how that needs
18 to be handled.

19 JUDGE PRIDGIN: I'm not sure if there's a
20 party to this case that was not a party to the 0156 case. And
21 I'm not sure what access they would have under the protective
22 order. You may not have access.

23 MR. COFFMAN: My client in this case does not
24 have access to that.

25 JUDGE PRIDGIN: Correct.

1 MR. COFFMAN: I'm wondering if maybe that
2 should not -- if it's just a small volume of transcript, if
3 perhaps that -- if I might make a motion that that be marked
4 and added as an exhibit in this case --

5 JUDGE PRIDGIN: Mr. Featherstone's
6 testimony --

7 MR. COFFMAN: -- as a highly confidential --

8 JUDGE PRIDGIN: -- as an HC document? All
9 right. I think I understand. If I'm understanding what
10 you're wanting to do, Mr. Coffman, is have this labeled. And
11 I think we would be up to Exhibit 130; is that correct?

12 COMMISSIONER GAW: Actually, there are two of
13 them, Judge. They're both relevant to this discussion.

14 JUDGE PRIDGIN: What I'm understanding, make
15 sure we're all clear, that, Mr. Coffman, you're wanting to
16 label and have offered into evidence a portion of what
17 Ms. Mantle read into the in-camera portion to have this as an
18 HC document; is that correct?

19 MR. COFFMAN: Yes. However, it would be most
20 conveniently added to the record. And in context, I assume if
21 that was a separate highly confidential volume of the
22 transcript --

23 COMMISSIONER GAW: Yes. Judge, just for
24 clarification, I've asked for notice, and I think you've
25 accepted, for both of these, of the volumes. There's two of

1 them. And there's significant material in regard to
2 discussion of Aries and these three or more turbines in both
3 of those documents.

4 MR. COFFMAN: The reason I make that request
5 is I'm not sure that everyone here that is a party to this
6 case was a party and, thus, would have access to that highly
7 confidential volume and just felt that every party should have
8 equal access.

9 JUDGE PRIDGIN: I understand. And what I'm
10 labelling as Exhibit No. 130 for identification purposes is HC
11 and it's from Case No. EO-2004-0224 and it is part of a
12 transcript. Looks like it is Volume 2 of the transcript
13 February 24 -- excuse me, February 24th, 2003.

14 MS. SHEMWELL: Are we intending to admit the
15 entire Volume 2?

16 JUDGE PRIDGIN: If I'm understanding, there's
17 just a small portion of it that is underlined. And it
18 certainly makes me no difference to me whether the entire
19 portion is --

20 COMMISSIONER GAW: I think you have to do it
21 all -- do it all in regard to Featherstone's.

22 MS. SHEMWELL: This is the transcript you're
23 referring to?

24 JUDGE PRIDGIN: That is correct. This is the
25 transcript.

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1 MS. MARTIN: And so the entire testimony of
2 Featherstone would be a portion then of this exhibit admitted
3 into evidence in these proceedings?

4 MS. SHEMWELL: Or is that going to be 131?

5 JUDGE PRIDGIN: Let me get Mr. Featherstone's
6 testimony as 131. Let me keep these separate. 130 is
7 Volume 2 of the transcript from EO-2004-0224, dated
8 February 24th, 2003. And it is HC.

9 And, Mr. Coffman, are you moving this to be
10 admitted?

11 MR. COFFMAN: Yes, your Honor.

12 JUDGE PRIDGIN: All right. Any objections?
13 Hearing none, 130 is admitted.

14 (Exhibit No. 130 was received into evidence.)

15 JUDGE PRIDGIN: And 131 will be
16 Mr. Featherstone's testimony. And I don't think I have a copy
17 of that if that's rebuttal, Commissioner Gaw.

18 COMMISSIONER GAW: I'm sorry.

19 JUDGE PRIDGIN: Is that rebuttal for
20 Mr. Featherstone?

21 COMMISSIONER GAW: Yes, I think.

22 JUDGE PRIDGIN: Rebuttal testimony in Case
23 No. EO-2005-0156.

24 And I'm sorry, Ms. Mantle, you have a copy of
25 that; is that correct?

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1 THE WITNESS: Yes. It is rebuttal testimony.

2 JUDGE PRIDGIN: And it was noted as

3 Exhibit 9-HC in the 0156 case; is that correct?

4 THE WITNESS: That is correct.

5 JUDGE PRIDGIN: Okay. That is labeled as

6 Exhibit 131-HC in this case.

7 MR. COFFMAN: My understanding would be that
8 the parties are bound by the protective order in this case --

9 JUDGE PRIDGIN: Yes.

10 MR. COFFMAN: -- now as to those documents --

11 JUDGE PRIDGIN: Yes.

12 MR. COFFMAN: -- those portions designated as
13 highly confidential.

14 JUDGE PRIDGIN: Yes. And, Mr. Coffman, are
15 you moving that be admitted?

16 MR. COFFMAN: Yes, your Honor.

17 JUDGE PRIDGIN: Any objection?

18 MS. SHEMWELL: Just a question. Is there a
19 need to admit the entire thing or is just the portion that
20 Ms. Mantle read sufficient?

21 COMMISSIONER GAW: I think all of it is --

22 JUDGE PRIDGIN: I would prefer to admit the
23 entire exhibit.

24 COMMISSIONER CLAYTON: What is the entire
25 exhibit again?

1 JUDGE PRIDGIN: Again, this is Cary
2 Featherstone's rebuttal testimony in Case No. EO-2005-0156, is
3 that correct, Ms. Mantle? Is that what you were reading from?

4 THE WITNESS: Yes.

5 JUDGE PRIDGIN: All right. Thank you.
6 Hearing no objections, 131-HC is admitted.

7 (Exhibit No. 131-HC was received into
8 evidence.)

9 JUDGE PRIDGIN: All right. No further
10 questions from the Bench.

11 Do we have any recross? I'm sorry,
12 Mr. Chairman.

13 CHAIRMAN DAVIS: No recross. Judge, as a
14 point of clarification, can we take judicial notice of other
15 things that are in the record in some of those previous cases?

16 JUDGE PRIDGIN: Certainly. I mean, if that,
17 you know, any -- and I think the parties have even brought
18 up, if I recall correctly, using data requests and information
19 from a previous rate case, from I think ER-2005-0436, if I
20 remember the case number correctly. From EO-2005-0156. And
21 you may -- probably from the EO-248 case as well,
22 EO-2005-0248.

23 CHAIRMAN DAVIS: Okay. Thank you, Judge.

24 JUDGE PRIDGIN: All right. Any recross?

25 MS. MARTIN: Cass County has recross, your

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1 Honor.

2 JUDGE PRIDGIN: Yes, ma'am.

3 RECROSS-EXAMINATION BY MS. MARTIN:

4 Q. Ms. Mantle, you testified that the Public
5 Service Commission Staff was aware of the sale of an interest
6 in the Aries plant which occurred in March or April of 2004;
7 is that correct?

8 A. It was March -- I believe I said March of
9 2004.

10 Q. And yet through resource planning, you are
11 aware that as of January 2004, Aquila was reporting to you
12 its plan to self-build a three CT gas peaking plant; is that
13 correct?

14 A. That is correct.

15 Q. And though in your testimony you have
16 indicated you, in your position with Staff, played no role in
17 the location or siting of that plant, you were indeed aware
18 that Aquila was proceeding from and after January of 2004 with
19 plans to construct that plant; is that correct?

20 A. Are you talking about the three combustion
21 turbines?

22 Q. Yes, ma'am.

23 A. Yes, we were aware of that.

24 Q. And you, in your position with the Public
25 Service Commission, were aware that the plant proceeded with

1 construction even after the entry of an injunction in January
2 of 2005; is that correct?

3 A. I was aware of that, yes.

4 Q. Did Aquila ever consult you with respect to
5 resource planning about whether it should or should not
6 proceed with the construction of the South Harper plant after
7 the entry of the injunction in January of 2005?

8 MS. SHEMWELL: Judge, I'm going to object to
9 this. I didn't hear anything from the Bench that related to
10 this in any way and this is recross based upon questions from
11 the Bench. It's recross.

12 MS. MARTIN: I think this goes directly to the
13 scope of the questioning by Mr. Gaw -- or Commissioner Gaw,
14 excuse me, with respect to need and with respect to Aquila's
15 relationship with Staff.

16 Again, I would also echo the comments made by
17 Mr. Comley with regard to the extent of reexamination of
18 witnesses in light of earlier discussions this morning. But I
19 also believe this absolutely relates to the subject matter of
20 the inquiry this morning.

21 JUDGE PRIDGIN: All right. I'll overrule and
22 let her answer.

23 THE WITNESS: I do not recall them ever
24 personally coming and asking -- asking me, no.

25 BY MS. MARTIN:

1 Q. But you were aware, contemporaneous with the
2 decision of Aquila to proceed with construction that, in fact,
3 it was proceeding with construction despite the entry of the
4 injunction?

5 A. Yes.

6 Q. And did you contact Aquila in your capacity as
7 the person responsible for resource planning to advise whether
8 the Staff had a view one way or the other on that decision?

9 A. And what -- I'm not for sure what you mean by
10 responsible for resource planning.

11 Q. In your capacity as a person who coordinates
12 with Aquila in connection with resource planning, did you at
13 any time contact Aquila to express a view one way or the other
14 about its decision to proceed with construction of the South
15 Harper plant after the entry of the injunction?

16 A. No.

17 Q. And though you have indicated that Staff has a
18 concern that Aquila has too much reliance on fuel type, and I
19 believe you identified gas, would you agree with me that Staff
20 had essentially authorized, if not in a formal sense,
21 certainly informally, Aquila's construction of the South
22 Harper plant?

23 A. Staff did not in any way express approval of
24 the plant.

25 Q. Let me ask the question this way. Are you

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1 aware of any representative of the Public Service Commission
2 Staff that has ever expressed the view that the South Harper
3 plant should be dismantled given the issues that have
4 surrounded its construction?

5 MS. SHEMWELL: Relevance.

6 MS. MARTIN: It's highly relevant --

7 MS. SHEMWELL: I don't think it's relevant.

8 MS. MARTIN: -- to the issue of the
9 development of standards and the issue of need in this case
10 with respect to whether this plant should or should not be at
11 this location.

12 JUDGE PRIDGIN: Overruled.

13 THE WITNESS: Could you restate your question,
14 please?

15 MS. MARTIN: Madam Court Reporter, could you
16 please read the question back? I'm sorry.

17 THE COURT REPORTER: "Question: Let me ask
18 the question this way. Are you aware of any representative of
19 the Public Service Commission Staff that has ever expressed
20 the view that the South Harper plant should be dismantled
21 given the issues that have surrounded its construction?"

22 THE WITNESS: No, I am not.

23 BY MS. MARTIN:

24 Q. Do you think, in your capacity as the person
25 with the Public Service Commission involved with Aquila and

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1 resource planning, that the South Harper plant should be
2 dismantled given the issues surrounding its construction?

3 A. As a representative of the Staff or my
4 personal opinion?

5 Q. Well, I guess I'd be interested in both.

6 A. As a representative of the Staff, it is not my
7 position to say or not. It is my position to give information
8 to the Commission itself. And, therefore, I have no opinion
9 on that.

10 I'm here to give the Commission information
11 based off my review of the need. And my review of the need
12 says they do need these three CTs. And they went about
13 reviewing the need and they did review of that need using
14 proper resource planning guidelines and models. And based off
15 our reasonableness review, we believe that that shows a need
16 for these three plants.

17 Q. And so when this case was filed and Mr. Wood,
18 as he's described it, was evaluating this mess in an eye
19 toward developing a process for reviewing the reasonableness
20 of Aquila's decision in where it had located this plant, did
21 he consult with you to determine your view with respect to
22 this plant remaining based on your view of quote, need?

23 A. So is the question whether or not Warren
24 consulted with me to determine whether the site was
25 appropriate based on need?

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1 Q. No, ma'am. My question was whether Mr. Wood,
2 after this case was filed, consulted with you about whether
3 you felt this plant should remain?

4 A. He is my supervisor so, yes, we've discussed
5 this case.

6 Q. And you have expressed to him that you feel
7 the plant should remain?

8 A. Yes.

9 Q. And so, Ms. Mantle, would you agree with me
10 that the PSC Staff has, in connection with these proceedings,
11 developed its testimony with an eye toward this plant not
12 being dismantled?

13 A. Only after doing the review necessary to come
14 up with that. We did not go into it with that purpose in
15 mind.

16 Q. You talked about the Aries plant, Ms. Mantle,
17 and you talked about certain matters during the confidential
18 portion of your testimony that I don't necessarily need to
19 repeat at this moment.

20 But with respect to the three CTs that are at
21 the South Harper plant, you were aware, were you not, through
22 resource planning, that Aquila's merchant side had consulted
23 with Cass County in 2002 and had secured the necessary advance
24 approval to place those three CTs at the Aries plant?

25 MS. SHEMWELL: Judge, I think this goes way

1 beyond questions from the Bench.

2 MS. MARTIN: I think this is directly related
3 to the line of inquiry about the Aries plant in the context of
4 need, your Honor, and more particularly, the need for the
5 South Harper plant, whether or not at this location. It's
6 directly related to Commissioner Gaw's questions.

7 JUDGE PRIDGIN: And I agree. I'll overrule.
8 And, again, I'll need to be reminded or alerted if anybody
9 thinks we're getting into HC and if we need to go in-camera.

10 THE WITNESS: I believe that request was made
11 by Aquila Merchant Services. The resource planning meetings
12 are conducted by the regulated portion of Aquila. So, no,
13 that was not part of our meetings with the resource planning
14 meetings.

15 BY MS. MARTIN:

16 Q. But whether or not it was a part of your
17 meetings, you were aware there had been discussions with
18 respect to the placement of those three CTs at Aries in 2002
19 in collaboration with Cass County?

20 A. We do not discuss sites until a decision is
21 made on what is going to be done and then sites are only
22 discussed in a very general manner. So, no, I was not aware
23 that those -- that site was available in the resource planning
24 meetings.

25 MS. MARTIN: And for the record, your Honor,

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1 I'm referencing Exhibit 81 that is already in evidence.

2 One last question and it is one question, but

3 I do fear it will require us to go into in-camera proceedings.

4 JUDGE PRIDGIN: All right. Let's go

5 in-camera. Bear with me just a moment, please.

6 (Reporter's Note: At this time, an in-camera
7 session was held, which is contained in Volume No. 12, Pages
8 1761 through 1762 of the transcript.)

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1 JUDGE PRIDGIN: Let me see if we have any
2 further recross. Mr. Swearengen and I assume Mr. Eftink. I'm
3 sorry. Mr. Swearengen, go ahead.

4 MR. SWEARENGEN: Thank you, Judge. Just a
5 couple.

6 RE-CROSS-EXAMINATION BY MR. SWEARENGEN:

7 Q. Ms. Mantle, do you have your rebuttal
8 testimony there with you?

9 A. Yes, I do.

10 Q. If you could turn to Page 7, please. On
11 Line 24 you make the statement, A utility should build
12 capacity to match its loads.

13 Do you see that?

14 A. Yes, I do.

15 Q. Is that still your testimony this morning?

16 A. Yes, it is.

17 Q. And if you would turn to Page 9, please, of
18 that testimony. Do you have that in front of you?

19 A. Yes.

20 Q. on line 6 you're asked the question, So is it
21 Staff's position that Aquila needs the three CTs that Aquila
22 chose to build at South Harper and that they are an
23 appropriate generation resource for Aquila to be adding in
24 order to continue to be able to meet growth in its customers'
25 electrical needs?

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1 Do you see that?

2 A. Yes, I do.

3 Q. And you say, In its customers' electrical
4 needs. Should that really be, And its customers' electrical
5 needs or did you intend to use the word "in"? I'm just asking
6 for clarification.

7 A. It's to be able to meet the growth of its
8 customers' electrical needs is probably a better reading of
9 it.

10 Q. All right. Thank you. Thank you. And your
11 answer is -- or was, Yes, it is.

12 Do you see that?

13 A. Yes, I do.

14 Q. And is that still your testimony this morning?

15 A. Yes, it is.

16 Q. Fine. Thank you.

17 MR. SWEARENGEN: That's all I have.

18 JUDGE PRIDGIN: Mr. Swearengen, thank you.

19 Mr. Eftink?

20 MR. EFTINK: I pass.

21 JUDGE PRIDGIN: Further recross, Mr. Coffman?

22 MR. COFFMAN: Yes. Just one question.

23 RECROSS-EXAMINATION BY MR. COFFMAN:

24 Q. Ms. Mantle, are you looking at that portion of
25 your testimony Mr. Swearengen just read you?

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1 A. Yes.

2 Q. And where he said that your answer was yes, it

3 is --

4 A. Yes.

5 Q. That wasn't your complete answer, was it?

6 A. I -- there is more to that answer, that's

7 correct.

8 Q. Would you read the next sentence, please?

9 A. But, again, I am not testifying on Aquila's
10 site selection of the South Harper location.

11 Q. Thank you.

12 MR. COFFMAN: That's all I have.

13 JUDGE PRIDGIN: Thank you.

14 Any redirect?

15 MS. SHEMWELL: Thank you.

16 REDIRECT EXAMINATION BY MS. SHEMWELL:

17 Q. When you testify as to what Aquila needs, what
18 do you mean by that in terms of energy?

19 A. In terms of energy, it needs to be the
20 appropriate resource to meet the type of energy that Aquila's
21 customers are demanding. And in this case it's a resource
22 that's to meet a fluctuating type of energy that changes every
23 hour. It's not a base load type energy. It's more of a
24 peaking energy.

25 Q. What kind of facilities provide peaking

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1 energy?

2 A. Generally, combustion turbine. I can't think
3 of anything else. Maybe a hydro may be able to do peaking,
4 but generally they're considered a base load. But something
5 that changes from hour to hour, CTs are basically the peaking
6 type of generation.

7 Q. What kind of unit is Aries?

8 A. Aries is a combined cycle unit. It's
9 considered an intermediate type generation.

10 Q. Is it the type of facility that can be used to
11 meet peaking needs?

12 A. Generally, no.

13 Q. Why not?

14 A. Because it takes some time to come online to
15 build up to its capacities -- total capacity. And then once
16 it's on, it has a must-run time that it must stay on to be
17 efficient.

18 Q. Did Staff ask to investigate the sale of
19 Aries?

20 A. Yes, we did.

21 Q. Is it your understanding that Aries is a
22 merchant plant?

23 A. That is my understanding.

24 Q. What happened when Staff asked to investigate
25 that sale?

1 A. Well, I have -- I do have the Commission order
2 with me. My basic non-legal rendering of the order is that
3 the Commission said it is a merchant plant and that the
4 Commission did not have authority over the sale of that plant.

5 Q. Ms. Mantle, do you give legal advice to
6 utility companies?

7 A. I try not to, but unfortunately in my job, I'm
8 asked quite often. And even when I say it's not legal advice,
9 it's engineering advice, I'm asked to give my interpretation
10 sometimes.

11 Q. And were you asked in this case to give a
12 legal opinion?

13 A. To a utility?

14 Q. By any party to the case.

15 A. Early on, I remember that Mr. Eftink did call
16 and ask for my opinion. And when I tried to get him to call
17 the general counsel, he -- he wanted my opinion and not the
18 general counsel's opinion in the matter in this case.

19 Q. Did you give him a legal opinion?

20 A. No. I gave him an engineering opinion and
21 told him that he needed to talk to the general counsel.

22 Q. In this case do you testify at all regarding
23 location?

24 A. No.

25 MS. SHEMWELL: That's all I have. Thank you.

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1 JUDGE PRIDGIN: All right. Ms. Shemwell,
2 thank you.

3 Is there anything further from the Bench?

4 Ms. Mantle, thank you very much. You may step
5 down.

6 And I believe the Bench may have some
7 questions for Mr. Empson. And Mr. Empson, if you could come
8 forward, I think the Chairman has just a few questions for
9 you. And, Mr. Empson, I'll remind you you're still under
10 oath.

11 CHAIRMAN DAVIS: Judge, I have a handout.
12 It's an article from today's Kansas City Star I'd like to --
13 I've got copies for all of the counsel as well as for the
14 court reporter.

15 JUDGE PRIDGIN: I'm going to label that as
16 Exhibit No. 132.

17 CHAIRMAN DAVIS: I'm not presenting it to
18 authenticate this document.

19 JUDGE PRIDGIN: I understand.

20 CHAIRMAN DAVIS: Be sure Mr. Empson gets a
21 copy of that.

22 JON EMPSON testified as follows:

23 QUESTIONS BY CHAIRMAN DAVIS:

24 Q. Mr. Empson, are you familiar with this article
25 that appeared in this morning's Kansas City Star?

1 A. I did see it in the newspaper this morning,
2 yes.

3 Q. And are you familiar with an article that
4 appeared in The Kansas City Star approximately a week ago that
5 may have been a predecessor to this article? I don't have a
6 copy of that article, but do you know the one I'm referring
7 to?

8 A. There have been many articles in The Kansas
9 City Star and Kansas City Business Journal with our company so
10 I'm not sure specifically, Mr. Chair, which one you're
11 referring to.

12 Q. Well, one specific to pensions of certain
13 employees there at Aquila.

14 A. Yes, I've read several stories about that,
15 yes, sir.

16 Q. Okay. Mr. Empson, what was the premise for
17 giving these bonuses?

18 A. The bonuses for the sale of the utility
19 properties was a decision made by the board of directors. I
20 think there were two issues that they were dealing with.

21 We were at a critical time in our
22 restructuring and they wanted to make sure the focus of the
23 management team was on completing the sale of our utility
24 properties. And then the second was there was an interest in
25 making sure they did retain the management team, the

1 leadership team. So it was a dual.

2 Q. And who would you refer to as the management
3 team?

4 A. At the time that those came out, there were
5 nine people that were part of the leadership team. And the
6 leadership team was led by Rick Green and then the
7 corporate -- those designated as corporate officers.

8 Q. Do you think Rick Green's in danger of going
9 anywhere?

10 A. That's not my decision to be made or to view.
11 I don't believe he is. I think he's committed to try to work
12 through this transition and to make Aquila a strong utility
13 performer.

14 Q. Do you know how Mr. Green was hired for his
15 current position?

16 A. I do not know how he was hired. I'm sure he
17 went through the process. It was a family utility business
18 that he has been involved in since he was a child.

19 Q. Okay. So when there's discussion in this
20 article here about, you know, you've got -- I'm just
21 paraphrasing, but the need to attract the kind of executive
22 talent it needs, "it" referring to Aquila, you know, it's not
23 necessarily referring to Mr. Green because he's more or less
24 inherited his position. Is that fair to say?

25 A. I couldn't judge if it was inherited or not.

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1 Board of directors has to look at who the leadership team is,
2 make sure we have competent leadership in place to manage the
3 business.

4 Q. Do you think good management ought to be
5 rewarded?

6 A. That good management ought to be rewarded?
7 Yes, I do.

8 Q. Do you think bad management ought to be
9 punished?

10 A. I believe when you make bad decisions, you
11 should suffer the consequences, yes, I do.

12 Q. Has Aquila made any bad decisions?

13 A. I'm sure we have made some bad decisions.

14 Q. Has anybody been punished?

15 A. I believe there has been some change in our
16 management team over the time and I think we're -- of the nine
17 people that might have existed at the beginning of 2000, we're
18 probably down to three of those individuals still being part
19 of the leadership team.

20 Q. What about since January -- well, what about
21 since January 2004?

22 A. We've lost -- and I can't correlate to say
23 there's punishment, but we've had turnover in our leadership
24 team. Brock Sheeley (ph.) our chief risk manager officer,
25 we've had Bob Paling (ph.), head of energy resources now leave

1 the company. So we have had some turnover at the leadership
2 team and also the management under the team. Our controller
3 has left, treasurer just recently resigned and left. So we
4 are seeing significant turnover in our -- in our management
5 and officer ranks.

6 Q. Mr. Empson, are you familiar with utility
7 practices in general, not those just exclusive to Aquila?

8 A. Utility practices in general? Yes, I would
9 be.

10 Q. Okay. When assets are being sold, is it
11 common to pay management a bonus before the sale of those
12 assets is completed?

13 A. It's my understanding that the board of
14 directors hired an outside firm to review what should be done.
15 And the way they structured it, that there was a partial
16 bonus, about 25 percent, that was paid at the start of the
17 process and then there would be 75 percent that would be paid
18 at the end of the process. And that their advice to the board
19 was that is not -- that is a typical type of a process and not
20 atypical.

21 Q. So it was a typical type of process?

22 A. That you would have some type of a
23 compensation program put into place to keep the focus of
24 management.

25 Q. So it's your testimony that without those

1 bonuses, then, you know, management might not have had the
2 incentive to complete the deals, that they would have just
3 gone out on the golf course or something?

4 A. That is not my testimony. That is the -- the
5 reaction that the board felt was important to fulfill their
6 fiduciary responsibility. They felt if they didn't take that
7 type of action and a critical person might have left, they
8 could have been held accountable.

9 My personal view is my self-motivation was all
10 that was necessary to get this company into a transition where
11 we would be on a stronger financial footing and would be a
12 sound utility company moving forward.

13 Q. In Paragraph 3 of this article, is it correct
14 that Mr. Green is scheduled to receive \$909,000 a year in
15 retirement pay?

16 A. I don't --

17 Q. Is that correct?

18 A. I don't believe it is correct.

19 Q. Well, can you tell us what number he is
20 scheduled to receive?

21 A. It will be dependent upon -- the way our
22 retirement or pension plan works, it's the highest of -- in
23 the last 10 years, the highest 4 consecutive years. So what
24 this was based upon was going back into the year 2000.

25 Q. And that includes bonus. Correct?

1 A. That is correct. It includes bonus.

2 Q. Is that a common industry practice?

3 A. I think there is -- we've done some work on
4 that. I don't know if I can say it's a common industry
5 practice or not, but they did find several recommendations
6 when they made their recommendation to the board. But the
7 important fact is that was based on 2000, 2001 where bonuses
8 were significant.

9 When you look at Mr. Green, he's 51 years old,
10 he'll retire when he's 62 and none of those bonuses will, in
11 fact, influence what his pension is. And this number
12 represents as if he retired today at that age, that's what he
13 would receive. So it is a very misrepresent-- it's a mass
14 misrepresentation of what he'll actually receive. I talked
15 too fast, didn't I?

16 Q. So what will he receive?

17 A. It will depend upon the highest --

18 Q. So if he were to retire today, what would he
19 receive?

20 A. It's my understanding if he retired today,
21 you're going to have to discount it back to his current age at
22 age 51, not 62 --

23 Q. Right.

24 A. -- and then make that determination. So I
25 can't tell you exactly what it would be.

1 Q. So if he stays until 62, is that what he gets?

2 A. It is not.

3 Q. So did Mr. Everly, the author of this
4 article -- do you have any idea where he would come up with
5 this number?

6 A. He looked at our 10-K filing. And what it
7 was -- what the 10-K talks about is the value if you retired
8 today at a specified age and you go into this table. So
9 Mr. Everly, from what I can understand, went in to say if
10 Mr. Green has the salary that he has from those highest
11 4 years on average and retired at age 62, that's what he would
12 get.

13 But the point is when he gets to 62, those
14 10 years that you're using don't even exist today. So to
15 speculate on what he gets -- we'll not know until we know what
16 the highest 4 years are in those 10 years that precede his
17 retirement.

18 Q. So it could go higher?

19 A. It most likely will be a lot lower. We're not
20 into the bonus programs we had back in the days of the
21 merchant business where the officers at that time were
22 rewarded for both the utility performance and the merchant
23 performance.

24 Q. Merchant performance hasn't done so well, has
25 it?

1 A. It has not, Mr. Chairman.

2 Q. Now, earlier I believe there was some
3 questioning from Mr. Coffman to Mr. Peshoff concerning the
4 potential, I guess, creation of a fund to make reparations to
5 local landowners in the event that the siting approval is
6 given to the Aquila South Harper peaking facility. Do you
7 remember that line of questioning? Were you present?

8 A. Yes, I was.

9 Q. And do you have any thoughts on that?
10 Approve, disapprove?

11 A. I don't believe it would be appropriate to set
12 such a fund up.

13 Q. You don't believe it would be appropriate to
14 set such a fund up. And why not?

15 A. I think we're then creating a lot of
16 controversy over how you would pay out of that fund, on what
17 conditions, what's the demonstration of impact. Instead, the
18 types of programs we've been dealing with on the local
19 neighbors we think has been fairly effective.

20 Q. So you've read the Western District Court of
21 Appeals case that's been referred to occasionally in this
22 proceeding, have you not?

23 A. Yes, I have.

24 Q. Is it your impression that there is any limit
25 to this Commission's ability to place restrictions on Aquila

1 as a condition of granting this application?

2 A. Without offering a legal opinion, all I would
3 say is that I believe this Commission has the ability to put
4 conditions on any authorization that it would issue to us or
5 not issue to us during this proceeding.

6 Q. So if we were to set aside an amount equal to
7 Mr. Green's total compensation package for 4 years, that would
8 be a condition. Would you be willing to go along with that?

9 A. If you put that into the order, I guess we'd
10 have no choice but to go along with that.

11 Q. What if we said no more executive bonuses
12 until the company actually turns a profit?

13 A. Again, I can't -- I can't evaluate. I would
14 hate to see the Commission get into some of those management
15 decisions by doing something that would say no more executive
16 bonuses. There's probably appropriate times when bonuses
17 should be awarded to management.

18 Q. But has the board of directors taken any
19 action at all with regard to any perceived inadequacies or
20 problems associated with the siting of the South Harper
21 location?

22 A. The board of directors has asked a lot of
23 questions. They've asked for legal opinions to come in from
24 other counsel besides our general counsel and the existing
25 counsel that we had from the outside to validate the initial

1 position that was taken by the company. And after that
2 review, felt that the advice from -- the advice from counsel,
3 that no further action was taken -- was needed.

4 Q. Mr. Empson, can you relate to the impression
5 that some people may have that it seems like Aquila's board is
6 operated, you know, sort of on a one-way street, that the
7 impression is that management has been rewarded, but
8 management hasn't been punished for any of the things that
9 have happened associated with Aquila's management in the past
10 few years?

11 A. I understand those positions, yes.

12 Q. So you could understand why certain people
13 would want to restrict the board's ability to give bonuses and
14 to maybe set aside amounts of money to make reparations to
15 people who might not be -- might not be covered any other way?

16 A. I understand the concerns, yes.

17 CHAIRMAN DAVIS: No further questions, Judge.

18 JUDGE PRIDGIN: Mr. Chairman, thank you.

19 Commissioner Gaw or Commissioner Clayton?

20 QUESTIONS BY COMMISSIONER CLAYTON:

21 Q. Good afternoon, Mr. Empson.

22 A. Good afternoon.

23 Q. First of all, who are some of the directors
24 that are on the board at Aquila?

25 A. Michael Crow, Irv Hockaday, Heidi Hutter, Nick

1 Singer, Mr. Ikenberry. Those are the ones that come to my
2 mind immediately.

3 Q. Are they Kansas City people or Missouri
4 people, Kansas people, or are they national?

5 A. National.

6 Q. National folks?

7 A. We have both local and national, yes.

8 Q. Hockaday is Kansas City?

9 A. That's correct.

10 Q. Yeah. How many Greens sit on the board?

11 A. Just Mr. Green, Rick.

12 Q. Rick Green. And the brother, Robert Green, is
13 not on the board?

14 A. No. He's no longer employed by the company.

15 Q. Or on the board?

16 A. That's correct.

17 Q. Okay. Okay. Are there any other Missouri
18 people who are on the board? Missouri -- I want to -- Kansas
19 City area or Missouri area, Kansas.

20 A. Well, right now I don't -- I don't believe so,
21 but if you showed me the whole list, I'd have a better
22 feeling. I'm sorry.

23 Q. I don't have the whole list. I'm asking the
24 question. Do you know how the \$50,000 in directors' fees
25 compares to other companies of a similar size?

1 A. All I'm aware is that they -- they hire
2 outside firms to determine what those fees should be. And
3 they would be comparable to board of directors' fees paid by
4 other companies.

5 Q. Do you know if directors' fees really are
6 \$50,000 a year?

7 A. I do not. All I know is the process we go
8 through. I do not know.

9 Q. That's a lot of money for 10 meetings a year,
10 isn't it?

11 A. I can say it's market based and there's really
12 more than 10 meetings a year typically. I think our board,
13 during the last couple years, various committees is meeting
14 between 30 and 40 times a year.

15 Q. Do they stay for the entire meeting or -- this
16 article seems to reference that they leave early from the
17 meetings sometimes.

18 A. Unfortunately, I did not get to attend the
19 meeting. I was here during the Annual Meeting. Don't know
20 what happened.

21 Q. The last question that I wanted to ask is, I
22 want to read you a quote from Mr. Green that's in this. And
23 it says, quote, The biggest mistake we made was we didn't
24 listen to and respect our neighbors, closed quote. That's on
25 the second page, about five lines from the bottom. If you

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1 want to look that over real quick, I'm going to ask you a few
2 questions about that.

3 A. That line, I see it, thank you.

4 Q. Do you know what mistake he's referring to?

5 A. I do not.

6 Q. Do you know what issue he's referring to in
7 that quote?

8 A. He's talking about the South Harper plant.

9 And I assume that references back to it, but again, I don't
10 know the context of the statement.

11 Q. Do you agree that Aquila didn't listen to the
12 neighbors that were around the South Harper facility?

13 A. I do not.

14 Q. So you disagree with Mr. Green?

15 A. Again, I don't know the context of what he
16 said. This is one sentence pulled out of some other comments
17 he made.

18 Q. Well, look over the quote and make sure that
19 you read the other lines that are associated with the quote,
20 because I'm going to ask you more questions about them.

21 A. Okay.

22 Q. Now, would you agree with me that this is a
23 line of question in regard to the South Harper facility?

24 A. Yes, I would.

25 Q. Okay. And I think you previously said that

1 you disagreed or -- I don't think you said that.

2 Do you agree that Mr. Green is referencing
3 that Aquila did not listen to its neighbors in constructing
4 the South Harper plant?

5 A. That is what this says, yes.

6 Q. And do you agree with Mr. Green in that
7 statement?

8 A. I do not.

9 Q. Okay. Why do you disagree?

10 A. I was involved in a lot of the efforts to go
11 out and try to, first of all, meet within the community and
12 also with working with Terry Hedrick and Tom Miller out there
13 on trying to listen to the neighbors so that we could do
14 things to mitigate their concerns about visibility or noise or
15 other things at the plant. So I believe we -- we did listen
16 to the neighbors.

17 Q. The statement also from Mr. Green is that
18 Aquila did not respect its neighbors. Do you agree with
19 Mr. Green on that topic?

20 A. A modified yes and no. I believe we did show
21 respect. Could we have done a better job with working with
22 them and showing respect? Yes, we could have.

23 Q. Were you aware that you had a disagreement
24 with the CEO of the company with regard to whether or not
25 Aquila listened and respected its neighbors regarding the

1 South Harper facility?

2 A. I can't agree that I do have a disagreement.
3 This is one sentence that's quoted. I have no idea what else
4 Mr. Green might have said to put it into context. We've had
5 many discussions about this facility and he and I are
6 generally in agreement about the plant and how it was built.

7 Q. Does any other part of the management team
8 believe that Aquila didn't listen or respect its neighbors in
9 constructing the South Harper facility?

10 A. I could not speak for the other members of the
11 management team.

12 Q. Do you know why Mr. Green would have made this
13 statement, since you're not sure whether you agree or disagree
14 with him? Is there a reason why he would suggest to a
15 different audience that Aquila didn't listen or respect its
16 neighbors in constructing the South Harper facility?

17 A. Again, it's one sentence. And I don't know
18 the context, but I think when we had Norma Dunn on the stand,
19 she talked about how we elevated the effort that we were
20 doing.

21 And I have to assume that what Mr. Green was
22 talking about here was that elevation of the effort that we
23 made was something that he might believe we could have started
24 earlier in the process versus later in the process.

25 Q. That elevation occurred before or after the

1 plant was built?

2 A. I believe Ms. Dunn testified that she started
3 in about April of '05, so I believe the plant was under
4 construction, and that she started getting more actively
5 involved maybe in June of '05 when the plant was just almost
6 completed.

7 Q. Did that elevation occur before or after the
8 various court cases were decided against Aquila?

9 A. The original injunction was January of '05 so
10 it would have started after that. But it was then during the
11 whole '05 period of time.

12 Q. Well, I guess the greatest concern that I have
13 here is that we've got a statement that's been listed in the
14 Kansas City press to one audience admitting to making a
15 mistake that Aquila didn't listen or respect its neighbors and
16 then we have presentations from Aquila before this Commission
17 indicating that, well, we made no mistakes, that we did listen
18 and we did respect our neighbors. Would you agree those are
19 conflicting messages?

20 A. I'm not sure about the made no mistakes. All
21 I'm saying is that this is a one-sentence statement coming
22 from Mr. Green and we need to know the context of all of his
23 comments about South Harper.

24 COMMISSIONER CLAYTON: Okay. Thank you,
25 Mr. Empson.

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1 JUDGE PRIDGIN: Commissioner Clayton, thank
2 you.

3 Any further questions from the Bench?
4 Mr. Chairman?

5 CHAIRMAN DAVIS: No further questions for
6 Mr. Empson.

7 JUDGE PRIDGIN: All right. If there's nothing
8 further from the Bench, recross?

9 MS. MARTIN: No recross, but I would move
10 admission of Exhibit 132.

11 JUDGE PRIDGIN: Any objections?
12 Hearing none, 132 is admitted.
13 (Exhibit No. 132 was received into evidence.)

14 JUDGE PRIDGIN: If there's no recross,
15 redirect? I'm sorry, Mr. Coffman.

16 MR. COFFMAN: I'm sorry. May I just ask a
17 couple?

18 JUDGE PRIDGIN: Yes, sir.

19 RECROSS-EXAMINATION BY MR. COFFMAN:

20 Q. Mr. Empson, can you tell me if you have any
21 knowledge of any bonuses or potential bonuses relating to the
22 turbines that have been placed at the South Harper facility?

23 A. Not aware of any bonuses potential or past
24 relating to the turbines at South Harper.

25 Q. When I first cross-examined you in this

1 particular case, we talked about the gamble that Aquila made
2 after the injunction had been issued. Do you recall that?

3 A. I don't know if you used the word "gamble,"
4 but yeah, I do recall that cross-examination.

5 Q. Well, I believe you agreed with me that Aquila
6 was taking a chance by building while it was under that
7 injunction --

8 A. Yes.

9 Q. -- do you recall that?

10 Is successfully being able to keep those
11 turbines where they are something that would typically be
12 reviewed under the type of bonus system that is in place at
13 Aquila?

14 A. No.

15 Q. And why not?

16 A. It just isn't. The arrangement we have right
17 now as leadership team members, except for the exception where
18 they gave a board, do not qualify for any type of a bonus.
19 And our employee bonuses that are provided or incentives are
20 totally driven by customer satisfaction and customer service.

21 And the elements that we're dealing with there
22 are response time to emergencies, call center response time,
23 reliability of our electric system. So the -- the incentives
24 for our employees are all driven by utility factors that we
25 feel are important to our customers.

1 Q. So you're telling us that you have no bonus on
2 the line regarding the outcome of this particular case?

3 A. That is correct.

4 MR. COFFMAN: Thank you.

5 JUDGE PRIDGIN: Mr. Coffman, thank you.

6 Redirect?

7 MR. SWEARENGEN: I have no questions.

8 JUDGE PRIDGIN: All right. Mr. Swearengen,
9 thank you.

10 Mr. Empson, thank you very much, sir. You may
11 step down.

12 Assuming there's nothing further from the
13 Bench --

14 CHAIRMAN DAVIS: Your Honor, can I ask
15 Mr. Coffman one or two quick questions?

16 JUDGE PRIDGIN: Yes, sir.

17 CHAIRMAN DAVIS: Mr. Coffman, I believe in
18 your -- I'm not sure whether it would be examination or
19 cross-examination of Mr. Peshoff, you mentioned that it was, I
20 believe -- and correct me if I'm wrong -- it was customary
21 that in other states that at times they would -- businesses
22 would set aside a fund for reparation to local landowners in
23 the event of condemnation or other events if there was
24 devaluation of their property values; is that correct?

25 MR. COFFMAN: Yes. And that was not based on

1 any testimony that my clients offered, although I believe I
2 have heard reference, but not -- I do not have any of the
3 background information to a case in Florida and a case in Ohio
4 regarding funds that were set aside and in some way involved a
5 Public Utility Commission. I don't -- I don't have that
6 information. I could try to find that.

7 I believe also there was an article that
8 Mr. Wood referenced that dealt with some unique rate-making
9 treatment, but --

10 CHAIRMAN DAVIS: Right.

11 MR. COFFMAN: -- those are the only things. I
12 mean, I was -- I mean, I was intrigued and just wanted to
13 follow up on those cases.

14 CHAIRMAN DAVIS: Well, I mean, hypothetically
15 speaking, if this Commission were to issue or order granting
16 the certificate of convenience and necessity, would you
17 support such a condition?

18 MR. COFFMAN: I plan to discuss that with my
19 clients and consider making some recommendation perhaps in
20 that regard. Assuming that the Commission was going to, over
21 the objection, grant an application that did not condition
22 such approval upon local zoning, I would hope to talk to my
23 clients and make some recommendation to you if that seemed
24 appropriate after discussing it.

25 CHAIRMAN DAVIS: So you don't have any idea of

1 what dollar amount that would be or anything?

2 MR. COFFMAN: No. Not at this time. I will
3 certainly think about it.

4 CHAIRMAN DAVIS: Do you think a four-year
5 average of Mr. Green's compensation would be appropriate?

6 MR. COFFMAN: Well, it does depend on exactly
7 what would be compensated, who would qualify and who would be
8 making the decisions, but I think it's an intriguing idea.

9 CHAIRMAN DAVIS: Are there any other
10 conditions that you think this Commission could consider?

11 MR. COFFMAN: I believe that the most
12 appropriate condition would be --

13 CHAIRMAN DAVIS: Planning and zoning?

14 MR. COFFMAN: -- would be simply asking what
15 every other utility has ever done and that is to also seek
16 land use approval. But barring that, I would hope to have
17 alternative suggestions to you and --

18 CHAIRMAN DAVIS: And I'll open this question
19 up for Mr. Comley and Cass County as well. Hypothetically
20 speaking, if we deny the application, do you think we can put
21 conditions on the denial of the application?

22 MR. COMLEY: The way I understand the
23 Commission's authority, you have the authority to impose
24 conditions on the certificates you grant.

25 CHAIRMAN DAVIS: Right.

1 MR. COMLEY: Your Honor, Commissioner, I don't
2 think I'm in a position of rendering any legal comment on your
3 proposal there. So forgive me. I think I'll defer waiting
4 until the event happened, if it were to happen. Not that it
5 will, but -- Ms. Martin may have some comments too.

6 MS. MARTIN: My only comment is that we've
7 been oft reminded that this Commission apparently has very
8 broad authority. And whether or not it would be in the
9 statement of conditions or some other action taken by this
10 Commission, I think the Commission may have other authority in
11 other provisions of the statute and/or its rules to impose
12 whatever conditions or punishments or issues it feels would be
13 appropriate even if the certificate or application is denied.

14 MR. COFFMAN: Your Honor --

15 CHAIRMAN DAVIS: Sure.

16 MR. COFFMAN: -- my understanding of the law
17 is that the Commission may not issue an order unless it
18 believes that it is in the public interest, and that whatever
19 conditions appear to be necessary for the Commission to render
20 a decision that was adequately protective of the public
21 interest is appropriate.

22 And I know there's been controversy in the
23 past about whether those particular conditions put on the
24 applicant are within the Commission's authority. It's always
25 been my opinion that whether those would be appropriate things

1 JUDGE PRIDGIN: All right. If there's nothing
2 further from the Bench, normally I would reserve time for
3 counsel to make closing argument, but I think I already
4 informed counsel instead of oral closing argument, I would
5 prefer briefs.

6 I believe that the order has counsel to
7 provide proposed reports and orders by May 18th. And I also
8 want to give counsel the opportunity to file summations, if
9 you will, or closing arguments and let me order that by
10 May 12th, which would be a week from tomorrow.

11 And because of the compressed schedule, I
12 understand that may be somewhat incomplete and I don't --
13 filing anything by the 12th would not prevent you from
14 supplementing it with your proposed Report and Order by the
15 18th. It's just a matter of timing.

16 And I understand that your May 12th filing, if
17 anything, may be somewhat summary and I do not want to prevent
18 folks from supplementing that with your May 18th filing.
19 Does that make any sense? It's just a matter of having
20 something for the Commission to read on your position of what
21 the evidence was by the 12th and then give you an additional
22 opportunity on the 18th. Are there any questions?

23 Mr. Williams?

24 MR. WILLIAMS: Judge, Commissioner Clayton had
25 requested Staff to try to put together a list of earlier

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1 Commission cases. Would that be something that we could
2 provide May 12th or May 18th or whenever we obtain it?

3 JUDGE PRIDGIN: Certainly.

4 MR. WILLIAMS: Just file it as a pleading?

5 JUDGE PRIDGIN: Absolutely.

6 All right. Anything further from counsel
7 before we close?

8 All right. Hearing nothing, we are off the
9 record. This concludes the hearing in Case No. EA-2006-0309.

10 (Exhibit Nos. 130-HC, 131-HC and 132 were
11 marked for identification.)

12 WHEREUPON, the hearing was concluded.

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EXHIBITS INDEX

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MARKED

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3 Exhibit No. 128

4 Mr. Peshoff's research documents

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5 Exhibit No. 129

6 Letter from Mr. Hedrick to Mr. Leeper
7 dated 4/6/05

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8 Exhibit No. 130-HC

9 Volume 2 transcript from

10 Case No. EO-2004-0224

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11 Exhibit No. 131-HC

12 Mr. Cary Featherstone's rebuttal testimony
13 from Case No. EO-2004-0224

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14 Exhibit No. 132

15 Kansas City Star article

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