

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
On-The-Record Presentation

February 19, 2009
Jefferson City, Missouri

Volume 2

In the Matter of The Application)
Of KCP&L Greater Missouri)
Operations Company For)
Permission And Approval And A)
Certificate Of Public)
Convenience And Necessity)
Authorizing It To Acquire,)Case No. EA-2009-0118
Construct, Install, Own,)
Operate, Maintain, And Otherwise)
Control And Manage Electrical)
Production And Related)
Facilities In Certain Areas Of)
Cass County, Missouri Near the)
City Of Peculiar)

HAROLD STEARLEY, Presiding,
SENIOR REGULATORY LAW JUDGE.

ROBERT M. CLAYTON III, Chairman
JEFF DAVIS,
CONNIE MURRAY,
TERRY JARRETT,
KEVIN GUNN,

COMMISSIONERS.

REPORTED BY:

Pamela Fick, RMR, RPR, MO CCR #447
Midwest Litigation Services

1 APPEARANCES:

2
3 KARL ZOBRIST, Attorney at Law
4 SONNENSCHN, NATH & ROSENTHAL
5 4520 Main Street, #1100
6 Kansas City, Missouri 64111
7 (816) 460-2545
8 kzobrist@sonnenschnein.com

9
10 FOR: KCP&L Greater Missouri
11 Operations Company.

12
13 MARK W. COMLEY, Attorney at Law
14 Newman, Comley & Ruth
15 601 Monroe, Suite 301
16 P.O. Box 537
17 Jefferson City, MO 65102
18 (573) 634-2266
19 comleym@ncrpc.com

20
21 CINDY REAMS MARTIN, Attorney at Law
22 CINDY REAMS MARTIN, P.C.
23 408 S.E. Douglas
24 Lee's Summit, Missouri 64063
25 (816) 554-6444

FOR: Cass County, Missouri.

26
27 DAVID WOODSMALL, Attorney at Law
28 FINNEGAN, CONRAD & PETERSON
29 428 East Capitol, Suite 300
30 Jefferson City, MO 65101
31 (573) 635-2700

32
33 FOR: Sedalia Industrial Energy
34 Users Association.

35
36 CARL J. LUMLEY, Attorney at Law
37 CURTIS, OETTING, HEINZ, GARRETT & O'KEEFE
38 130 South Bemiston, Suite 200
39 Clayton, MO 63105-1913
40 (314) 725-8788
41 clumley@lawfirmemail.com

42
43 FOR: Dogwood Energy, LLC.

1 LEWIS R. MILLS, JR., Public Counsel
P.O. Box 2230
2 200 Madison Street, Suite 650
Jefferson City, MO 65102-2230
3 (573) 751-4857

4 FOR: Office of the Public Counsel
and the Public.

5 NATHAN WILLIAMS, Deputy General Counsel
6 P.O. Box 360
200 Madison Street
7 Jefferson City, MO 65102
(573) 751-3234

8 FOR: Staff of the Missouri Public
9 Service Commission.

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

2 JUDGE STEARLEY: All right. Let's bring
3 this hearing to order. Good morning. Today is
4 Thursday, February 19th, 2009, and we are here for an
5 on-the-record presentation regarding the Stipulation
6 and Agreement filed in GMO's application for a CCN
7 for certain facilities in Cass County.

8 The case is captioned as In the Matter
9 of the Application of KCP&L Greater Missouri
10 Operations Company for Permission and Approval of a
11 Certificate of Public Convenience and Necessity
12 Authorizing It To Acquire, Construct, Install, Own,
13 Operate, Maintain and Otherwise Control and Manage
14 Electrical Production-Related Facilities in Certain
15 Areas of Cass County, Missouri here in the City of
16 Peculiar, and is Case No. EA-2009-0118.

17 My name is Harold Stearley and I'm the
18 Regulatory Law Judge presiding over this matter. Our
19 court reporter this morning is Pam Fick. And we will
20 begin by taking entries of appearance, starting with
21 KCP&L Greater Missouri Operations.

22 MR. ZOBRIST: Karl Zobrist on behalf of
23 the Applicant, Sonnenschein, Nath & Rosenthal, 4520
24 Main Street, Suite 1100, Kansas City, Missouri 64111.

25 JUDGE STEARLEY: Thank you, Mr. Zobrist.

1 County of Cass.

2 MR. COMLEY: Good morning, Judge
3 Stearley. Let the record reflect the entry of
4 appearance of Mark W. Comley, Newman, Comley & Ruth,
5 601 Monroe, Suite 301, Jefferson City, Missouri
6 65101, on behalf of Cass County. And also appearing
7 today and making her appearance is Cindy Reams Martin,
8 408 S.E. Douglas, Lee's Summit, Missouri 64063.

9 JUDGE STEARLEY: Thank you, Mr. Comley.
10 For Sedalia Industrial Energy Users.

11 MR. WOODSMALL: Thank you, your Honor.
12 Appearing on behalf of Sedalia Industrial Energy
13 Users, David Woodsmall of the firm of Finnegan,
14 Conrad & Peterson, 428 East Capitol, Suite 300,
15 Jefferson City, Missouri 65101.

16 JUDGE STEARLEY: Thank you,
17 Mr. Woodsmall. Dogwood Energy, LLC.

18 MR. LUMLEY: Good morning. Carl Lumley
19 appearing for Dogwood Energy, 130 South Bemiston,
20 Suite 200, Clayton, Missouri 63105.

21 JUDGE STEARLEY: Okay. Thank you,
22 Mr. Lumley. The Staff of the Missouri Public Service
23 Commission.

24 MR. WILLIAMS: Nathan Williams, Deputy
25 General Counsel, P. O. Box 360, Jefferson City,

1 Missouri 65102.

2 JUDGE STEARLEY: And the Office of the
3 Public Counsel.

4 MR. MILLS: On behalf of the Office of
5 the Public Counsel and the public, my name is Lewis
6 Mills. My address is Post Office Box 2330, Jefferson
7 City, Missouri 65102.

8 JUDGE STEARLEY: Thank you, Mr. Williams
9 and Mr. Mills.

10 We have a few preliminary matters to go
11 over this morning. First, as always, I need to
12 advise you-all to please turn off all cell phones,
13 BlackBerries and other electronic devices that may
14 interfere with our recording or webcasting.

15 Additionally, I need to let you-all know
16 that we do have a scheduled agenda meeting this
17 morning for 11 o'clock, and we will need to be taking
18 an intermission at that time, probably breaking till
19 as far as one o'clock if we allow time for lunch as
20 well.

21 So I want to ask the parties if there's
22 any conflicts in scheduling this afternoon for any of
23 our witnesses or anything for us to resume after that
24 time?

25 MR. ZOBRIST: No, your Honor.

1 JUDGE STEARLEY: All right. Well,
2 that -- that will be our tentative plan for in the
3 middle of opening statements or something right at
4 11:00. We'll try and be a little bit flexible with
5 our timing.

6 Additionally, as you-all know, this case
7 has had a lengthy procedural history through several
8 other cases, so the Commission is taking official
9 notice of its prior cases in this matter. And we
10 would include Case No. EA-2005-0248 and the
11 subsequent court case, stopaquila.org versus Aquila,
12 Incorporated, 180 S.W. 3rd, 24 MoApp 2005; also Case
13 No. EA-2006-0309 and the court case State ex rel.
14 Cass County versus the Public Service Commission, 259
15 S.W. 3rd and 544, MoApp 2008.

16 Additionally, the Commission is taking
17 official notice of the cases in which it granted CCNs
18 to GMO's predecessors and interests and for this same
19 service area, in particular Case Nos. 1074, 1449,
20 3171, 5109, 9470 and 11892.

21 Mr. Zobrist, I know you have some
22 exhibits you're going to be offering today. Did you
23 want to premark those or do you want to mark them as
24 you go along?

25 MR. ZOBRIST: I thought I'd just mark

1 them as I go along. I've got four exhibits, Judge.

2 JUDGE STEARLEY: All right. Any other
3 party needing to mark exhibits?

4 (NO RESPONSE.)

5 JUDGE STEARLEY: Okay. Very well. Are
6 there any other preliminary matters we need to
7 address before we begin?

8 (NO RESPONSE.)

9 JUDGE STEARLEY: Hearing none, we'll
10 give you-all an opportunity for opening statements,
11 starting with GMO.

12 MR. ZOBRIST: Thank you, Judge, and may
13 it please the Commission. I think it's appropriate
14 on this cold and clear February morning that we come
15 before you with a Stipulation and Agreement that has
16 been agreed to by all parties except for the
17 industrial intervenors who do not oppose and have not
18 asked for an evidentiary hearing.

19 I just have a couple of brief opening
20 remarks and then we're prepared to put Scott
21 Heidtbrink on the stand. Scott Heidtbrink is senior
22 vice president of supply for Kansas City Power &
23 Light Company. He is here today representing KCP&L
24 Greater Missouri Operations, the former Aquila.

25 The Stipulation and Agreement is

1 premised mainly on the resolution of all the conflict
2 that began several years ago in Cass County,
3 Missouri, and we have resolved all of the outstanding
4 controversies. The major controversy concerned Cass
5 County, and I must say it was a pleasure to work with
6 Mr. Comley and Cindy Reams Martin.

7 Ms. Martin and I were just chatting out
8 in the lobby. We actually tried one of the
9 injunction cases together a number of years ago, and
10 I think we're both pleased here to present this
11 agreement to the Commission for its consideration and
12 hopefully its approval.

13 We have also resolved all the known
14 civil claims that have been presented by landowners
15 and other residents in the Cass County area, and we
16 achieved just a couple of weeks ago the resolution
17 approving the special use permit for the City of
18 Peculiar.

19 So local approval has been attained,
20 settlements have been obtained and certain
21 stipulations that are more of a regulatory nature
22 which I'll outline just briefly have also been
23 reached.

24 This stipulation has no ratemaking
25 effect, so the agreements that the parties have

1 entered into here pursuant to paragraph 23 of the
2 stipulation has been -- the parties have made clear
3 that it will have no effect on any ratemaking
4 proceedings.

5 Paragraphs 20 and 24 indicate that the
6 parties -- pardon me -- 20 and 26 indicate the
7 resolutions of the various civil and governmental
8 claims, and paragraph 24 also indicates that the
9 parties reserve the right to, for example, assert
10 certain capacity issues in a rate case or another
11 appropriate proceeding; for example, that the company
12 should have constructed one or more additional
13 generating units at South Harper or that the Dogwood
14 plant which was formerly the Aries plant owned by
15 Calpine and previously co-owned by Aquila and Calpine
16 remains available as a source of generative capacity.

17 So -- so the -- the objective which we
18 think we have reached in the Stipulation and
19 Agreement is that everything related to a Certificate
20 of Convenience and Necessity is -- is not at issue
21 any longer because the local approvals have been
22 reached through settlements and otherwise with Cass
23 County and with the City of Peculiar, and we believe
24 that there really are no outstanding issues with
25 regard to this.

1 Judge, I've got some exhibits to pass
2 out which I'll do when the opening statements have
3 been concluded. I also have extra copies of the
4 Stipulation and Agreement if any member of the Bench
5 doesn't have that with them.

6 JUDGE STEARLEY: All right.

7 MR. ZOBRIST: And with that, I don't
8 have anything further to add. Thank you.

9 JUDGE STEARLEY: Thank you, Mr. Zobrist.
10 Opening statement by Cass County?

11 MR. COMLEY: Your Honor, thank you. We
12 have no remarks.

13 JUDGE STEARLEY: Dogwood Energy?

14 MR. LUMLEY: No opening, your Honor.

15 JUDGE STEARLEY: SIEU?

16 MR. WOODSMALL: Nothing, your Honor.
17 Thank you.

18 JUDGE STEARLEY: Staff?

19 MR. WILLIAMS: Just briefly. Good
20 morning, Commissioners. As you may already know,
21 this case involves certificates for a power plant
22 located near Peculiar, Missouri that's been called
23 the South Harper Power Plant. It's a site that's
24 designed for up to six 105-megawatt combustion
25 turbine units upon which Aquila at the time was the

1 name of Kansas City -- or KCP&L Greater Missouri
2 Operations Company installed three 105-megawatt CTs
3 on that site and that contemporaneously had also
4 built a substation north of that site near the City
5 of Peculiar which has been referred to as the
6 Peculiar substation.

7 Construction of both those sites were
8 the subject of litigation with Cass County which
9 Mr. Zobrist has alluded to earlier in his opening
10 statement. Hopefully, third time's a charm for
11 Aquila. It's the third time it's been before this
12 Commission asking for certificates for these
13 particular facilities.

14 And at this juncture, there's been a
15 Stipulation and Agreement which is unopposed. And as
16 Mr. Zobrist indicated, one of the provisions in that
17 stipulation is that there's no ratemaking impact by
18 the Commission granting the certificates.

19 Also, the certificates are to be
20 conditioned upon KCP&L Greater Missouri Operations
21 Company having received approval for the South Harper
22 plant from Cass County in 2008 and receiving
23 approval -- approval for the Peculiar substation from
24 the City of Peculiar in 2009.

25 The evidence that you're going to hear

1 today should show that KCP&L GMO has obtained the
2 necessary approvals from both the City of Peculiar
3 and the County of Cass. Thank you.

4 JUDGE STEARLEY: Thank you,
5 Mr. Williams. Public Counsel?

6 MR. MILLS: Your Honor, I agree with
7 what Mr. Zobrist has said and what -- what
8 Mr. Williams has said, and I have nothing further to
9 add.

10 JUDGE STEARLEY: Thank you, Mr. Mills.
11 Do the commissioners have any questions for the
12 attorneys before we proceed with witnesses?

13 (NO RESPONSE.)

14 JUDGE STEARLEY: Okay. Seeing none,
15 Mr. Zobrist, you may call your witness.

16 MR. ZOBRIST: The company would call
17 Mr. Scott Heidtbrink to the stand.

18 (The witness was sworn.)

19 JUDGE STEARLEY: Thank you. You may
20 proceed, Mr. Zobrist.

21 MR. ZOBRIST: Okay. Thank you, your
22 Honor.

23 DIRECT EXAMINATION BY MR. ZOBRIST:

24 Q. Please state your name.

25 A. Scott Heidtbrink.

1 Q. And where are you employed?

2 A. KCP&L.

3 Q. And what is your capacity at KCP&L?

4 A. The senior vice president of supply.

5 Q. Okay. And are you here today

6 representing KCP&L Greater Missouri Operations

7 Company which is the former Aquila, Incorporated?

8 A. Yes.

9 MR. ZOBRIST: Okay. Now, first, I'd

10 just ask the Bench, I have extra copies of the

11 stipulation if any member of the Bench needs these.

12 Does any -- does everyone have a copy of those?

13 Thank you.

14 BY MR. ZOBRIST:

15 Q. Mr. Heidtbrink, were you previously

16 employed by Aquila?

17 A. Yes, I was.

18 Q. And just run through the last few

19 positions that you had with Aquila, if you would,

20 please.

21 A. The last few positions -- during the

22 time when all this started, the controversy, I was

23 leading our Six Sigma deployment, Six Sigma per

24 operations across Aquila. In early 2006 I became our

25 vice president of generation and energy resources for

1 going through the appeals, basically I was in charge
2 of operating the plant, had overall responsibility
3 for that. And then about two months before the
4 acquisition was completed when it looked imminent
5 that it was going to happen, that's about the time we
6 were reaching agreement with Cass County in starting
7 to stop Aquila and the other lawsuits, litigants that
8 basically said since I was the only one coming over
9 to KCP&L, it made sense for me to lead it, so I
10 pretty much took over then.

11 Q. So were you involved in the negotiations
12 that led to the memorandum of agreement dated
13 April 21, 2008?

14 A. Yes, I was involved in it.

15 (EXHIBIT NO. 1 WAS MARKED FOR
16 IDENTIFICATION BY THE COURT REPORTER.)
17 BY MR. ZOBRIST:

18 Q. Can you identify what the court reporter
19 has marked as Exhibit 1?

20 A. Yes. This is a memorandum of agreement
21 between Aquila at the time and Cass County that
22 basically spelled out that we would apply for a
23 special use permit. And it outlined the minimum
24 conditions that we could expect to see in that
25 special use permit and also had a provision for the

1 fees and penalties that we would pay when we applied
2 for it.

3 Q. Now, on the final page of this document
4 are the signatures of two commissioners from Cass
5 County, Missouri and the signature of Richard C.
6 Green who at that time was president and chairman of
7 the board of Aquila Inc.?

8 A. That's correct.

9 Q. Okay. And do you recognize Mr. Green's
10 signature?

11 A. Yes.

12 Q. Okay. And is this the -- the first of
13 two agreements that the company came to with Cass
14 County, Missouri in this matter?

15 A. Yes, it is.

16 MR. ZOBRIST: Judge, I offer Exhibit 1
17 into evidence.

18 JUDGE STEARLEY: Okay. Any objections
19 to the offering of Exhibit 1?

20 (NO RESPONSE.)

21 JUDGE STEARLEY: Hearing none, it shall
22 be received and admitted into the record.

23 (EXHIBIT NO. 1 WAS RECEIVED INTO
24 EVIDENCE AND MADE A PART OF THE RECORD.)

25 BY MR. ZOBRIST:

1 Q. Okay. Now, Mr. Heidtbrink, without
2 going into the details, what were the essential
3 elements of the memorandum of agreement marked as
4 Exhibit 1 here?

5 A. Well, it spelled out what -- we would
6 pay fines in terms -- until the SUP was granted, and
7 then basically, it outlined some of the conditions of
8 the special use permit that we could expect to see.
9 It -- it asked us to continue to work with Stop
10 Aquila and the other litigants to try to get to a
11 resolution. It didn't require it, but it asked us to
12 make good efforts to do that.

13 It -- it asked that we hire a
14 consultant, Burns & Mac, to do a sound study to make
15 sure we're in compliance. It just outlined other
16 conditions like defining, you know, what the sound
17 levels could be, daylight, what -- what normal hours
18 of operations were and those kinds of things.

19 Q. Have those conditions been fulfilled?

20 A. Yes.

21 Q. Okay.

22 (EXHIBIT NO. 2 WAS MARKED FOR
23 IDENTIFICATION BY THE COURT REPORTER.)
24 BY MR. ZOBRIST:

25 Q. Mr. Heidtbrink, can you identify what

1 I've asked the court reporter to mark as Exhibit 2?

2 A. Yes. This was an addendum to the
3 memorandum of agreement with Cass County. Basically
4 what happened when we had the original agreement with
5 Cass County, we were going in for a special use
6 permit for both the substations, the Peculiar
7 substation and the South Harper peaking plant itself.

8 During the course of that, somewhere
9 around June of '08, it was determined apparently the
10 City of Peculiar had annexed the land that the
11 substation was on that had been legally challenged,
12 and apparently there was resolution or a final
13 affirmation that they had, in fact, annexed it, and
14 the County agreed that that substation now was a City
15 of Peculiar issue.

16 So this was just to modify the agreement
17 to say that that substation is out of the Cass County
18 agreement and now part of the City of Peculiar and
19 that it also just updated where we are, that we had
20 reached settlement with Stop Aquila and with some of
21 the other litigants.

22 Q. Okay. And the date of the agreement is
23 July 31, 2008?

24 A. That's correct.

25 Q. Okay. Is that your signature on page 3?

1 A. Yes, it is.

2 Q. And to the best of your knowledge, are
3 those the signatures of the three members of the Cass
4 County, Missouri Commission?

5 A. Yes.

6 MR. ZOBRIST: Judge, I offer Exhibit 2
7 into evidence.

8 JUDGE STEARLEY: Any objections to the
9 offering of Exhibit No. 2?

10 (NO RESPONSE.)

11 JUDGE STEARLEY: Hearing none, it shall
12 be received and admitted into the record.

13 (EXHIBIT NO. 2 WAS RECEIVED INTO
14 EVIDENCE AND MADE A PART OF THE RECORD.)

15 BY MR. ZOBRIST:

16 Q. And so to summarize what you've just
17 told the Commission, this essentially confirmed that
18 the Peculiar substation was now the subject of the
19 jurisdiction of the City of Peculiar; is that
20 correct?

21 A. That's correct.

22 Q. Okay. And it confirmed that settlement
23 agreements had been reached with stopaquila.org as
24 well as certain clients represented by John Coffman
25 and Matt Uhrig, U-h-r-i-g; is that correct?

1 A. That's correct.

2 Q. Now, let's shift to the -- let me ask
3 you this: Was -- was a special use permit ultimately
4 issued by Cass County pursuant to these agreements
5 between the company and Cass County?

6 A. Yes, it was.

7 Q. Okay. And that was issued when?

8 A. September 12th, 2008, I believe.

9 Q. Okay. And now things shifted to the
10 City of Peculiar, is that fair to say?

11 A. That's correct.

12 Q. Okay. Can you tell the Commission what
13 process the company went through in that regard?

14 A. We just approached the City of Peculiar
15 and talked about what would be the best way to get
16 the local approval there. Originally they directed
17 us to go through a zoning application, they were
18 going to zone the site appropriately.

19 We filed the zoning application, and a
20 couple months after that is -- I'm not sure the
21 reason why, but they had internal discussions and
22 decided that an SUP would be more appropriate, so
23 they asked us to modify that. And so we modified the
24 zoning application into a special use permit
25 application, refiled it and went through the hearing

1 process there. And the final -- the SUP was approved
2 on February 3rd, 2009.

3 Q. Okay. Now, for the record, when the
4 company filed its application in this case, the
5 zoning application to the City of Peculiar was
6 attached as Appendix 9 to the application; is that
7 correct?

8 A. That's correct.

9 Q. Okay.

10 (EXHIBIT NO. 3 WAS MARKED FOR
11 IDENTIFICATION BY THE COURT REPORTER.)
12 BY MR. ZOBRIST:

13 Q. Would you please identify Exhibit 3?

14 A. Yes. This is the special use permit
15 application for the City of Peculiar, Peculiar
16 substation.

17 Q. And this is dated November 2008?

18 A. That's correct.

19 Q. Okay. Now, is this essentially the same
20 as the zoning application that was submitted in
21 September but updated for various studies and, for
22 example, that reflect the -- the proceedings here?

23 A. Correct. It was substantially the same,
24 just changed to reflect an SUP versus zoning and
25 updated for whatever happened since then.

1 Q. Okay. And were you involved in the --
2 the preparation of this or oversaw the preparation of
3 this at the company?

4 A. Yes, I oversaw it.

5 MR. ZOBRIST: Okay. Judge, I offer
6 Exhibit 3 into evidence.

7 JUDGE STEARLEY: All right. Are there
8 any objections to the offering of Exhibit No. 3?

9 (NO RESPONSE.)

10 JUDGE STEARLEY: Hearing none, it shall
11 be received and admitted into the record.

12 (EXHIBIT NO. 3 WAS RECEIVED INTO
13 EVIDENCE AND MADE A PART OF THE RECORD.)

14 BY MR. ZOBRIST:

15 Q. Now, is this the application that was
16 ultimately approved by the officials at the City of
17 Peculiar including the board of aldermen just earlier
18 this month, February of 2009?

19 A. Yes, it is.

20 Q. Okay.

21 (EXHIBIT NO. 4 WAS MARKED FOR
22 IDENTIFICATION BY THE COURT REPORTER.)

23 BY MR. ZOBRIST:

24 Q. Mr. Heidtbrink, will you identify
25 Exhibit 4?

1 seal our access driveway into the substation. That
2 is basically just a City of Peculiar requirement for
3 dust suppression, that you either pave or chip and
4 seal to keep dust down, so we've agreed to do that.

5 The applicant's -- item three is that we
6 would include a landscape plan with the Missouri
7 Department of Conservation -- Conservation. We have
8 done that. We're just waiting for the weather to be
9 able to plant the trees where they asked us to.

10 Storm water management plant, I believe
11 that has been engineered, but again, we're just
12 waiting for the right weather to start construction
13 for the modifications there.

14 Condition five is just any future
15 modifications and admitting that we would come in for
16 approval to see if we needed approval before we would
17 move forward with anything. And then --

18 Q. And the company's agreeable to that?

19 A. Oh, yes.

20 Q. Okay.

21 A. And then item six is just that if --
22 assuming that we've basically resolved the other
23 five, the top five conditions, if we haven't, we need
24 to go back in one year and reapply for another
25 special use permit.

1 MR. ZOBRIST: All right. Did I offer
2 that into evidence, Judge?

3 JUDGE STEARLEY: Not yet.

4 MR. ZOBRIST: Okay. I'd offer
5 Exhibit 4.

6 JUDGE STEARLEY: Any objections to the
7 offering of Exhibit No. 4?

8 MR. WILLIAMS: I have no objection, but
9 I would like to make an inquiry.

10 JUDGE STEARLEY: Go ahead, Mr. Williams.

11 MR. WILLIAMS: Mr. Heidtbrink, turning
12 to the -- following the first "whereas" clause in
13 that resolution, it says, "The applicant, Kansas City
14 Power & Light Greater Missouri Operations Company,"
15 should that instead say "KCP&L Greater Missouri
16 Operations Company"? Or to put it another way, is,
17 in fact, the applicant KCP&L Greater Missouri
18 Operations Company?

19 THE WITNESS: That is, in fact, the
20 applicant, yes.

21 MR. WILLIAMS: So if the applicant's
22 misnamed, it's just an error that the City of
23 Peculiar made?

24 THE WITNESS: Honestly, I hadn't even
25 picked up on that before today, so yes, I guess it

1 would be.

2 MR. WILLIAMS: So in fact, the
3 resolution pertains to KCP&L Greater Missouri
4 Operations Company?

5 THE WITNESS: That's correct.

6 MR. WILLIAMS: No further questions.

7 MR. ZOBRIST: Judge, if I can just ask
8 one other question. On the special use permit
9 application which is Exhibit 3, is the company
10 properly named there as KCP&L Greater Missouri
11 Operations Company?

12 THE WITNESS: Yes, it is.

13 MR. ZOBRIST: Okay. Judge, I renew my
14 offer.

15 JUDGE STEARLEY: All right. Any -- any
16 other inquiries or objections?

17 (NO RESPONSE.)

18 JUDGE STEARLEY: Hearing none, Exhibit
19 No. 4 shall be received and admitted into evidence.

20 (EXHIBIT NO. 4 WAS RECEIVED INTO
21 EVIDENCE AND MADE A PART OF THE RECORD.)

22 MR. ZOBRIST: Okay. Thank you, and I
23 have no further questions.

24 JUDGE STEARLEY: Okay. Mr. Zobrist,
25 before we start with cross, the Commission would like

1 you to offer a copy of the stipulation --

2 MR. ZOBRIST: All right.

3 JUDGE STEARLEY: -- and a copy of the
4 application as exhibits.

5 MR. ZOBRIST: Okay. I didn't bring a
6 copy of the application because it was filed in the
7 docket, but I do have a copy of the stipulation that
8 I can enter at this time.

9 JUDGE STEARLEY: Okay. And we'll mark
10 the stipulation as Exhibit 5, the application will be
11 marked as Exhibit 6, and presuming all parties have
12 not had any problem with accessing these documents,
13 are familiar with them.

14 (EXHIBIT NO. 5 WAS MARKED FOR
15 IDENTIFICATION BY THE COURT REPORTER.)

16 MR. ZOBRIST: Your Honor, Mr. Williams
17 had a good point. Perhaps we could request the Bench
18 to take official notice of the application and its
19 contents since it is an official part of the file of
20 the Commission. Or do you prefer us to -- to mark as
21 Exhibit 6 and tender as a late-filed exhibit the
22 application?

23 JUDGE STEARLEY: Why don't you go ahead
24 and late-file it.

25 MR. ZOBRIST: Okay. All right. Thank

1 you, Judge.

2 JUDGE STEARLEY: I just want to have our
3 record as clean as possible.

4 MR. ZOBRIST: Okay. Fine.

5 JUDGE STEARLEY: Were there any
6 objections to the offering of Exhibits 5 or 6?

7 (NO RESPONSE.)

8 (EXHIBIT NOS. 5 AND 6 WERE RECEIVED INTO
9 EVIDENCE AND MADE A PART OF THE RECORD.)

10 JUDGE STEARLEY: And Mr. Zobrist, if you
11 could have that filed within a week.

12 MR. ZOBRIST: Will do, Judge.

13 JUDGE STEARLEY: All right. Very well.

14 MR. ZOBRIST: Okay. Thank you. Nothing
15 further.

16 JUDGE STEARLEY: All right.
17 Cross-examination for Mr. Heidtbrink, Cass County,
18 any cross?

19 MR. COMLEY: No cross. Thank you.

20 JUDGE STEARLEY: Dogwood Energy?

21 CROSS-EXAMINATION BY MR. LUMLEY:

22 Q. Just for clarification, you'd referred
23 to Appendix 9 of the application was your special use
24 permit application to the county, but Appendix 8 is
25 actually the permit as well, correct?

1 A. Is it -- I would have to look again.

2 MR. ZOBRIST: Well, I would agree with
3 counsel that that's correct, yeah. Exhibit 8 is the
4 special use permit issued to Cass County. Appendix 9
5 is with regard to the Peculiar substation.

6 MR. LUMLEY: Okay.

7 JUDGE STEARLEY: Any other questions,
8 Mr. Lumley?

9 MR. LUMLEY: Nothing.

10 JUDGE STEARLEY: Cross, SIEU?

11 MR. WOODSMALL: Nothing, your Honor.

12 JUDGE STEARLEY: Staff, Mr. Williams?

13 MR. WILLIAMS: Thank you, Judge.

14 CROSS-EXAMINATION BY MR. WILLIAMS:

15 Q. I believe Mr. Zobrist didn't ask you
16 anything about the special use permit with regard to
17 Cass County, did he? You didn't identify it as a
18 document, did you?

19 A. I don't believe we did, no.

20 Q. Was the special use permit, the KCP&L
21 Greater Missouri Operations Company obtained from
22 Cass County included in the application as
23 Appendix A? Is that a true and accurate copy of the
24 special use permit the company received?

25 A. Yes, I believe it is.

1 Q. And did that use permit incorporate by
2 reference certain provisions out of the memorandum
3 of -- and understanding between KCP&L Greater
4 Missouri Operations Company and Cass County that were
5 marked as, I believe it would be probably just
6 Exhibit 1 in this case?

7 A. Yes, it did.

8 Q. And does that appear at paragraph 7 of
9 that special use permit?

10 A. I don't have the special use permit in
11 front of me, so I -- for Cass County, so I'm not sure
12 if it's that one. Yes, it does.

13 MR. WILLIAMS: No further questions.

14 JUDGE STEARLEY: Thank you,
15 Mr. Williams. Mr. Mills?

16 MR. MILLS: No questions.

17 JUDGE STEARLEY: All right. Going to
18 questions from the Bench beginning with Chairman
19 Clayton?

20 CHAIRMAN CLAYTON: Thank you, Judge.

21 QUESTIONS BY CHAIRMAN CLAYTON:

22 Q. I only have really one question. I
23 guess I want to start off with just a quick comment.
24 The -- the South Harper issue is -- is one that's
25 been around the Commission for quite a few years now.

1 It's involved, what, half a dozen Commission cases,
2 whether you're looking at the financing, whether
3 you're looking at the actual certificate of need and
4 the certificate that goes with both the power plant
5 and the substation. It's taken up a lot of Staff
6 time, it's taken up a lot of the parties' time. All
7 the parties have been quite active in this -- in this
8 regard.

9 As I recall, back in one of the original
10 cases that we had with South Harper, one of the
11 comments that came down from a former Aquila employee
12 was that Aquila just needed to be a better
13 neighbor -- needed to be a good neighbor in how it
14 pursued its projects, out in this particular area
15 especially.

16 I guess the only question I have to
17 Kansas City Power & Light is, as we move forward and
18 address, you know, all the issues in the Stipulation
19 and Agreement, is -- is KCP&L prepared to be a good
20 neighbor to the folks that are living around this
21 plant on a going-forward basis?

22 A. Yes, I would say definitely they are. I
23 mean, we held several community meetings, and I -- as
24 I was talking to the different community leaders and
25 neighbors that were at those meetings, you know, that

1 was a question that always came up, how did this all
2 start?

3 And ultimately, what I told them was,
4 when it finally comes down to it -- I don't know all
5 the details, I wasn't part of that -- but ultimately
6 we're the utility. It's our responsibility to get
7 generation sited, and it's not the Public Service
8 Commission's responsibility, it's not Cass County's
9 responsibility, it's not the City of Peculiar's
10 responsibility, it all falls on us. And the
11 expectation is, is that we'll do that with a minimum
12 of controversy and nobody can look back at what
13 happened and say that happened.

14 So you know, that's on us and we
15 apologize for that. But I can assure you going
16 forward that KCP&L does have the right attitude, that
17 we will work with the local officials and we'll do it
18 right.

19 CHAIRMAN CLAYTON: Okay. Well, I -- I
20 applaud the parties for coming up with this
21 comprehensive Stipulation and Agreement. I -- I
22 applaud the company in -- in getting the special use
23 permit. I think the matter of legality of granting
24 the certificate at this point has been removed and
25 the special use permit is now addressed in Cass

1 County.

2 So having said that, I don't think I
3 have any other questions and look forward to
4 resolving a pretty rough chapter in Commission
5 history. So I wish you-all the best of luck.

6 THE WITNESS: Thank you.

7 CHAIRMAN CLAYTON: Thanks.

8 JUDGE STEARLEY: Questions, Commissioner
9 Jarrett?

10 COMMISSIONER JARRETT: Thank you, Judge,
11 I have no questions. Thank you for your testimony.

12 THE WITNESS: Thank you, sir.

13 JUDGE STEARLEY: Commissioner Gunn?

14 COMMISSIONER GUNN: I just have a quick
15 one. I apologize if everyone in the room knows but I
16 don't.

17 QUESTIONS BY COMMISSIONER GUNN:

18 Q. The memorandum of understanding was
19 signed by only two of the commissioners from Cass
20 County but the addendum was signed by all three. Do
21 you know the circumstances under which that one
22 commissioner was missing? Was it -- was it -- I
23 mean, let me rephrase that.

24 Was it because he was opposed to the
25 memorandum of understanding or was it because he

1 wasn't available to sign?

2 MS. REAMS MARTIN: I can answer that
3 question, Commissioner. He was not available at that
4 meeting to sign. He was ill that day during that
5 hearing, so he was not present and did not vote one
6 way or the other on the matter before the Commission.

7 COMMISSIONER GUNN: Excellent. Thank
8 you very much, appreciate it. That's all I have.

9 QUESTIONS BY JUDGE STEARLEY:

10 Q. All right. Mr. Heidtbrink, are you
11 familiar with the Stipulation and Agreement and the
12 application in this case?

13 A. Yes, I am.

14 Q. Are you familiar with the individual
15 paragraphs and factual representations made in those
16 documents?

17 A. Yes, I am.

18 Q. All right. To the best of your
19 knowledge, information and belief, are the factual
20 representations made in those documents true and
21 correct?

22 A. Yes.

23 Q. Thank you very much. One other
24 question. Do you believe the Stipulation and
25 Agreement fairly resolves any and all material issues

1 in this matter?

2 A. Yes, I do.

3 JUDGE STEARLEY: That's all the
4 questions I have. Recross based on questions from
5 the Bench beginning with Cass County?

6 MR. LUDWIG: None, thank you.

7 JUDGE STEARLEY: Dogwood Energy?

8 MR. LUMLEY: No, Judge.

9 JUDGE STEARLEY: SIEU?

10 MR. WOODSMALL: None.

11 JUDGE STEARLEY: Staff?

12 (NO RESPONSE.)

13 JUDGE STEARLEY: Public Counsel?

14 MR. MILLS: No questions.

15 JUDGE STEARLEY: Any redirect from GMO?

16 MR. ZOBRIST: No redirect.

17 JUDGE STEARLEY: Mr. Heidtbrink, I thank
18 you for your testimony. You may step down and you
19 are finally excused.

20 THE WITNESS: Thank you.

21 JUDGE STEARLEY: Mr. Williams, I know
22 you've brought a couple witnesses to be made
23 available should the Commission have any questions
24 for them. Did you intend to put them on the stand
25 with any foundational issues or are they just here to

1 answer questions if the Bench has them?

2 MR. WILLIAMS: Just here to answer
3 questions if the Bench has questions.

4 JUDGE STEARLEY: All right. Very well.
5 Poll the Commissioners. Commissioner Gunn,
6 Commissioner Jarrett, do you have any questions for
7 the witnesses Staff has provided?

8 COMMISSIONER GUNN: No.

9 COMMISSIONER JARRETT: I don't have any
10 questions.

11 JUDGE STEARLEY: All right. It appears
12 we don't need to call your witnesses, Mr. Williams.

13 MR. WILLIAMS: I'm sure they're
14 relieved.

15 JUDGE STEARLEY: Any of the parties like
16 to give closing statements or arguments?

17 MR. ZOBRIST: Judge, I don't have any
18 argument. We're here to resolve arguments. I
19 just -- I want to again thank -- thank the parties,
20 in particular Staff, you know, provided a lot of very
21 helpful clarification and commentary to -- to achieve
22 this document.

23 It really was -- you know, I almost get
24 a little emotional, I think, at the end of the
25 chapter when Cindy and I were -- first -- first met

1 each other years ago, and it was a pleasure, of
2 course, to -- it was a pleasure work with her as an
3 adversary, but it's more pleasurable to work with her
4 as a -- as a co-offeror of this agreement.

5 I would just echo what Chairman Clayton
6 said, that Missouri law was unclear on several
7 points. Those points have been clarified. I think
8 that this Stipulation and Agreement adds further
9 clarity, and I think going forward, this company has
10 nothing but the best of intentions to work with local
11 authorities in Cass County, in the City of Peculiar
12 to avoid any controversy coming before the Commission
13 again. Thank you.

14 JUDGE STEARLEY: All right. Thank you,
15 Mr. Zobrist. Are there any other matters we need to
16 address this morning before we adjourn?

17 (NO RESPONSE.)

18 JUDGE STEARLEY: All right. I want to
19 thank you all very much, and we will go off the
20 record now. Case No. EA-2009-0118 is hereby
21 adjourned.

22 (WHEREUPON, the On-The-Record
23 Presentation was concluded.)

24

25

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